Organization for Security and Co-operation in Europe
MISSION IN KOSOVO

Human Rights and Rule of Law

REMEDIES CATALOGUE

REMEDIES CATALOGUE

I. Introduction

The sustainable protection and promotion of human rights aims to encourage, support and facilitate the use of effective remedies to address potential or actual human rights violations. This entails a shift of focus from the violation itself, as traditional human rights protection concentrates on, to the available remedy to avert the violation or provide compensation for it. Not only are such remedies directly required under human rights instruments; they are also capable of preventing injustice and abuse of power by providing a correction of the wrong or a review by the authorities.

An authority which reviews a violation has to be capable of applying accurately the relevant laws and human rights standards. Furthermore, based on such review the authority must be able to make a decision, which is binding and enforceable towards the authorities that are subject to the review. An appeal to the Ombudsperson Institution is therefore not a remedy according to this understanding because the Ombudsperson decisions are not binding upon the authorities.

The following work constitutes an updated issue of the Remedies Catalogue, originally launched by the OSCE Mission in Kosovo in May 2003. This catalogue reflects the increased focus of the Department of Human Rights and Rule of Law on sustainable human rights. It aims to identify the applicable remedy, or lack thereof, to each issue where human rights might be at stake.

This catalogue focuses on remedies for arguable violations of rights guaranteed under domestic law and international instruments applicable in Kosovo.

1. The right to an effective remedy

The right to an effective remedy before a national authority for a human rights violation is enshrined in Article 13 of the European Convention on Human Rights and Fundamental Freedoms (ECHR).

The European Court of Human Rights has said, where an individual has an arguable claim to be the victim of a violation of the rights set forth in the Convention, there should be a remedy before a national authority in order both to have the claim decided and, if appropriate, to obtain redress."[1]

[1] Silver v. the United Kingdom, Judgement of 25 March 1983, para 113.

The effect of Article 13 is to require the competent authority both to deal with the substance of the complaint concerned and to grant appropriate relief. Thus, the effectiveness of a remedy does not depend on the certainty of a favourable outcome for the applicant. Furthermore, it does not require any particular form of remedy; States are afforded discretion in conforming to their obligations under the provision.[2]

The authority referred to in Article 13 need not be a judicial authority, but if it is not, the powers and the guarantees, which it affords, are relevant in determining whether the remedy before it is effective. In cases where no single remedy in itself satisfies the requirement of effectiveness, the aggregate of remedies provided for under domestic law may do so.[3]

However, this catalogue does not attempt to measure the effectiveness of the available remedies in Kosovo. It does not attempt to analyse whether the available remedies meet the requirements of international instruments, such as Article 13 of the ECHR. Furthermore, it does not attempt to address if or when a remedy is required for the alleged violation.

This catalogue is not limited to rights under the ECHR. It is intended to include remedies to violations of rights afforded to individuals under the applicable law, which includes international human rights standards.

2. Illegal denial of a remedy

The right to a legal remedy is protected under Article 174 of the Provisional Criminal Code of Kosovo (PCCK), which foresees a punishment for anyone who prevents another person from exercising this right. Article 174 reads:

(1) Whoever, by use of force or serious threat, prevents another person from using his or her right to lodge a complaint or to use any other legal remedy shall be punished by a fine or by imprisonment of up to one year.
(2) When the offence provided for in paragraph 1 of the present article is committed by an official person abusing his or her position or authorisations, the perpetrator shall be punished by imprisonment of three months to three years.

[2] Vilvajarah and Others, Judgement of 30 October 1991, pp. 37-38.
[3] The Leander case, Judgement of 26 March 1987, pp. 29-30

3. Remedies which are generally applicable

The catalogue lists a number of remedies to particular violations of a person's rights. Apart from the specific remedies listed in the catalogue a number of general remedies are available to persons whose rights might have been infringed. The general remedies apply if there is no specific remedy in the applicable law.

Appeal of court decision (criminal cases)

The right to have one's conviction and sentence reviewed by a higher court is prescribed by the international conventions on human rights applicable in Kosovo - Articles 14(5) of the International Covenant on Civil and Political Rights (ICCPR) and Article 2 of Protocol 7 to the ECHR - and by the domestic law.

Article 398 of the Provisional Criminal Procedure Code of Kosovo (PCPC) states that an appeal against a verdict rendered in the first instance shall be filed within 15 days from the date of its delivery. Article 399 of PCPC determines the parties who can make an appeal.

As a rule the appeal court shall only review the contested issues of the first instance's verdict. However, Article 415 PCPC stipulates that the appeals court must always review issues ***ex officio*** if certain essential procedural guarantees of the PCPC have been violated or where criminal laws have been infringed to the detriment of the accused.

The defendant is entitled to appeal on account of all the grounds on which the verdict may be disputed, including claims for damages (unlike the public prosecutor). The defendant and his/her defence counsel each have an independent right to appeal and an appeal by the defendant does not exclude an appeal by the counsel. The defence counsel must obtain the defendant's consent to appeal.

However, in the case of a juvenile defendant, the applicable domestic law (Article 75 (2) of the JJC) provides that the defence counsel may lodge an appeal against his/her will. It must be noted that the spouse of the accused, a direct blood relative, adoptive parent, brother, sister and a foster-parent may also file an appeal for the benefit of the accused. Like the defence counsel, the above-mentioned persons may file an appeal for the benefit of the juvenile defendant against his/her will. As protector of the legality and representative of the public interest, the public prosecutor may also file an appeal against the verdict for the benefit of a juvenile defendant.

Concerning the injured party, distinction must be made between whether or not the injured party has taken over the prosecution (as a subsidiary or private prosecutor, cp. Articles 54, 62 PCPC). In the normal case of a public prosecution, the injured party may challenge a judgment only with respect to the court's decision on the punitive sanctions for criminal offences committed against life or body, against sexual integrity or against the security of public traffic and on the costs of criminal proceedings. When the prosecutor does not lodge an appeal or when he abandons the appeal, the injured party can not take his/her position as prosecutor. But where the injured party is (or was, cp. Article 399 (3)) acting as a subsidiary or private prosecutor, he/she can lodge an appeal on all the grounds on which the verdict can be disputed (Article 399 (1), 402 PCPC).

An injured party also has the right to make a claim for damages in criminal proceedings if authorised to pursue that claim in civil litigation. He/she can also file a separate property claim under property law in civil proceedings in front of a civil court.[4]

Appeal of court decision (civil cases)

A party can appeal against a judgement of the court of first instance within fifteen days from receiving a copy of the judgement.[5] .[6] The court of second instance decides on the appeal against the judgement.[7]

If still unsatisfied, the party may apply for a review against a valid judgement passed at second instance within thirty days from receiving a copy of the judgement.[8] The review is adjudicated by the Supreme Court.[9]

General Administrative Appeal:

A party can appeal or seek remedy against an administrative decision or action. In general, a party first may exhaust administrative procedural appeal avenues which are applicable. If satisfaction is not achieved through these avenues, then an administrative lawsuit can be filed with the competent court if a party considers that any of his/her rights or interests have been violated by an administrative act (Article 2, Law on Administrative Disputes, Official Gazette SFRY, No. 4/77). Such a lawsuit must be filed within thirty (30) days from the day when the administrative act in question is served.

---

[4] Article 108 (1) PCPC

[5] Article 348 of the Civil Procedure Code, Official Gazette 4/77.

[6] The first instance court would be either the Municipal Court or the District Court depending on the type of claim. See Articles 26.2 and 29.2 on the Law on Regular Courts of the Socialist Autonomous Province of Kosovo, 1978.

[7] The second instance court would be either the District Court or the Supreme Court. See Articles 29.1 and 31 of the Law on Regular Courts of the Socialist Autonomous Province of Kosovo, 1978.

[8] Article 382 of the Civil Procedure Code, *supra* note 6.

[9] Article 383 of the Civil Procedure Code, *supra* note 6.

To generalise further regarding administrative procedural remedies is difficult. The particular administrative procedural remedy available depends upon from where and what level of government the administrative decision or action is taken, as well as provisions provided in any applicable law specific law regulating the procedure in question.

However, some general observations can be made. The Law on Administrative Procedures (Official Gazette SFRY 1986, No. 47) remains applicable, but only in so far as it does not conflict with Section 35, UNMIK Regulation 2000/45 On Self-government of Municipalities in relation to administrative decisions issued by a municipal body.

Under this Regulation, a person may file a complaint about an administrative decision of a municipality if he or she claims that his or her rights have been infringed by the decision. Complaints must be submitted in writing to the Chief Executive Officer or made in person at the office of the Chief Executive Officer within the period of one (1) month from the complainant being notified of the decision. If the complainant is dissatisfied with the response of the Chief Executive Officer, the complainant may refer the matter to the Central Authority, which shall consider the complaint and decide upon the legality of the decision. This second instance appeal should be submitted through the Directorate of Administrative Affairs, which has been designated to co-ordinate the distribution of such appeals to the relevant Central Authority. The decision of the appropriate "Central Authority" must be issued within two (2) months (Article 247, Law on Administrative Procedures). The regulation and restructuring of the governing structure has caused confusion in determining the appropriate "Central Authority" through which to exercise the right to an effective administrative remedy. Once this avenue is exhausted, a complaint (administrative lawsuit) can be filed at the Administrative Chamber of the Supreme Court.

When an administrative decision or act emanates from a higher level, the procedures outlined in the Law on Administrative Procedures appear to apply fully unless specific laws are applicable.

4. Organisation of the Catalogue

The catalogue comprises five major sections: criminal justice, security issues, non-discrimination, victims of crime and property issues. Under each section there are subsections containing specific issues. The issue, which is found in the left column, describes the nature of a violation, for example "unlawful detention by the police". The right column first states the applicable law for the remedy, then the evidence that the user of the remedy has to be able to present in order to raise his/her claim, and finally describes the remedy to the particular violation.

II. Criminal Justice

A. Police Custody

1. Unlawful detention by police

Right to challenge the lawfulness of detention
Articles 5 ECHR & 9(4) ICCPR
Article 151 (13) PCPC.

Applicable Law:

Article 212 (6) PCPC reads in pertinent part:
"The arrested person shall have the right to appeal a decision [on detention] […] to the pre-trial judge. The police and the public prosecutor have a duty to ensure that the appeal is delivered to the pre-trial judge. The appeal shall not stay execution of the decision. The pre-trial judge shall decide on the appeal within forty-eight hours of the arrest."

Article 286 (2) PCPC
"At any time, the detainee or his or her defence counsel may petition any pre-trial judge or presiding judge to determine the lawfulness of detention."

Evidence:

Police records of arrest and detention, list of detainees of detention centres and facilities.

Description of Remedy:

Article 212 (6) foresees an appeal by the arrested/detained person or/and his/her defence counsel to the pre-trial judge. The pre-trial judge must render a decision within 48 hours from the receipt of the appeal. The appeal by the arrested/detained person or/and his/her defence counsel against police detention decision does not stay the execution of the order. The complaint against unlawful detention by police can also be included in an appeal against first pre-trial detention decision.

Article 286 (2) PCPC
Habeas Corpus mechanism:
At any time during the criminal proceedings, the detainee or his or her defence counsel may petition to pre-trial judge or presiding judge to determine the lawfulness of detention. The petition should establish a prima facie case that the grounds for detention on remand no longer exist due to changed circumstances or the discovery of new facts since the last court order on detention on remand or that the detention is unlawful for some other reason. In such cases the pre-trial judge or the presiding judge may conduct a detention hearing. The pre-trial judge or the presiding judge shall order the immediate release of the detainee if it is found that the grounds for detention on remand no longer exist, that the period of detention on remand ordered by the court has expired, that the period of detention on remand ordered by the court exceeds the lawful time limits or that the detention is unlawful for some other reason.

2. Compensation for illegal detentions or arrests or detention without justification

Article 16 of the PCPC reads: “Any person who is unlawfully convicted, arrested, detained or held in detention on remand shall be entitled to full rehabilitation, just compensation from budgetary resources and other rights provided for by law”.

Article 534 PCPC
Article 538 PCPC

Applicable Law:

Article 535 PCPC
Article 536 PCPC reads: “If the petition for compensation for damages is not granted or the competent public entity in the field of judicial affairs and the injured party do not reach agreement within three months from the day of the filing of the petition, the injured party may file a claim for compensation for damages with the competent court. If agreement was reached regarding only a part of the petition, the injured party may bring a claim for the outstanding part.”

Evidence:

Police records of arrest and detention, list of detainees of detention centres and facilities.

Description of Remedy:

A petition for compensation should be filed by the person entitled to compensation or his/her lawyer with the Compensation Commission consisting of three Supreme Court judges. A person shall not be compensated for damage if he brought about his arrest through his own impermissible actions. The petition should be addressed to the Director of the Department of Judicial Administration. The right to compensation shall expire three years from the entry into force of the judgment in the first instance acquitting the accused of the charge or rejecting the charge, or from the entry into force of the first instance ruling dismissing the charge or terminating the proceedings. If the person was acquitted following an appeal decided by a higher court, the right to seek compensation shall expire three years from the receipt of the decision of that court.

A petition should not be submitted until a final decision on the petitioner’s release has been made. Upon reviewing the petition and relevant files, the Commission may either invite the petitioner to participate in a hearing, or may simply offer the petitioner a certain amount of compensation. If the petitioner is not satisfied with the offer (part or in full) or if the Commission does not render a decision on a petition within 3 months of the date it was filed, she/he may initiate a legal proceeding in the competent court (Article 536 (1, 3) PCPC).
Justice Circular 2001/1 on Decision for Establishing the Commission for Compensation of Wrongfully Accused, Convicted and/or Wrongfully Detained Persons.

3. Violation of the right to be promptly informed about the reasons for arrest in a language that he/she understands

UNMIK Regulation no. 2001/28 On the rights of the Persons Arrested by Law Enforcement Authorities, Section 2.1.a
Article 9(2)ICCPR, 5(2) Article ECHR, Article 40(2)(b)(ii) of the Convention on the Rights of the Child
Article 14 PCPC
Article 214 (1)(3) PCPC

Applicable Law:

Article 83 (1) PCPC reads:
"Private charges, indictments, summary indictments, motions for prosecution, legal remedies and other statements and communications shall be filed in writing or given orally on the record."

No specific legal provision available. However, the remedy is indirectly incorporated in Articles 212 (6) and 286 (2) PCPC. See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

Evidence:

Police records of arrest and detention, witness and detainees' statements

Description of Remedy:

Defence motion before the pre-trial judge. The motion might be presented orally in detention hearing or could be included in the appeal against police detention and/or against first pre-trial detention decision. See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

The Habeas Corpus mechanism is applicable. See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

4. Violation of the right to be promptly brought before a judge

Article 9 (3) ICCPR, Article 5 (1)(c),(3) ECHR
Article 211 PCPC

Applicable Law:

No specific legal provision available

The remedy is indirectly incorporated in Articles 212 (6) and 286 (2) PCPC. See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

Evidence:

Police records of arrest and detention, witness and detainees' statements

Description of Remedy:

Defence motion before the pre-trial judge (Article 83(1) PCPC). See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

Could be included in the appeal against police detention and/or against first pre-trial detention decision. See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

The Habeas Corpus mechanism is applicable. See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

5. Violation of the right to remain silent

Sections 2.1.b, 2.2, 2.3, 6.1.e UNMIK Regulation no.2001/28 On the rights of the Persons Arrested by Law Enforcement Authorities
Article 214(1)(2) PCPC

Applicable Law:

No specific legal provision available
The remedy is indirectly incorporated in Articles 212 (6) and 286 (2) PCPC. See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

Evidence:

Police records of arrest and interviews, witness and detainees' statements

Description of Remedy:

Defence motion before the pre-trial judge (Article 83(1) PCPC). See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

Could be included in the appeal against police detention and/or against first pre-trial detention decision. See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

The Habeas Corpus mechanism is applicable. See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

6. Violation of the right to be given free assistance of an interpreter if he/she cannot understand /speak the language of the law enforcement authorities

Section 2(1)(c) UNMIK Regulation no.2001/28 On the rights of the Persons Arrested by Law Enforcement Authorities
Principle 14 of Body of Principles
Article 214(1)(3) PCPC

Applicable Law:

No specific legal provision available
The remedy is indirectly incorporated in Articles 212 (6) and 286 (2) PCPC. See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

Evidence:

Police records of arrest and interviews, witness and detainees' statements

Description of Remedy:

Defence motion before the pre-trial judge (Article 83(1) PCPC). See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

Could be included in the appeal against police detention and/or against first pre-trial detention decision. See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

The Habeas Corpus mechanism is applicable. See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

7. Violation of the right to assistance of defence counsel

Violation of right to legal assistance of defence counsel of his/her choice, of right to be provided defence counsel in case he/she cannot afford to pay for legal assistance, of right to confidential communication, of right to the presence of defence counsel during interviews by law enforcement authorities
Section 3 UNMIK Regulation no. 2001/28 On the rights of the Persons Arrested by Law Enforcement Authorities; Administrative Direction No. 2001/15 Implementing UNMIK Regulation no. 2001/28; UNMIK Justice circular 2000/17; Principles 1, 8 and 22 of the Basic Principles On the Role of Lawyers, Rule 93 of the European Prison Rules,
Article 6 (3)(b, c) ECHR
Article 214(1)(4) PCPC

Applicable Law:

Article 74(3) PCPC reads in pertinent part:

[…]If the police or the public prosecutor refuses the request of the defendant for the appointment of a defence counsel at public expense, the defendant may appeal to the pre-trial judge.

See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

Evidence:

Police records of arrest and interviews, witness and detainees' statements

Description of Remedy:

Defence motion before the pre-trial judge (Article 83(1) PCPC). See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

Could be included in the appeal against police detention and/or against first pre-trial detention decision. See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

The Habeas Corpus mechanism is applicable. See Chapter II, Criminal Justice, Unlawful detention by police, A.1

8. Violation of the right to notify family or other appropriate person about the arrest

A detainee has the right to notify family member or any other appropriate person of her/his choice about his/her arrest. Also should be notified: Centre for Social Work if the arrested person displays signs of mental illness; Liaison office, consular post, diplomatic mission of the State, competent international organisation if foreign citizen; parents or guardian if under the age of 18.
Sections 2(1)(e, f) and 2(2)(4) UNMIK Regulation no.2001/28 On the rights of the Persons Arrested by Law Enforcement Authorities; Rule 92 of the Standard Minimum Rules;
Principle 16 (2) of the body of Principles;
Rule 10(1) of the Beijing Rules;
Rule 22 of the UN Rules for the Protection of Juveniles deprived of their Liberty
Article 214(1)(5) PCPC
Article 215 PCPC

Applicable Law:

No specific legal provision available

Evidence:

Police records of arrest and interviews, witnesses and detainees' statements

Description of Remedy:

No remedy, except complaint against KPS or UNMIK Police officers. UNMIK Regulation 2001/28 contains no remedies for arrested persons.

See complaints against law enforcement Chapter III, UNMIK Police, KPS, KPC and KFOR. Violation of code of conduct or criminal law, A and B and Chapter II, Criminal Justice, Violation of the right of a detained person to be treated with humanity and respect for his/her dignity, A.9.

9. Violation of the right of a detained person to be treated with humanity and respect for his/her dignity.

Articles 10(1) ICCPR,
Article 3 ECHR
Article 155(1) PCPC
Article 288 PCPC

Applicable Law:

No specific legal provision available. However the law generally foresees the complaints of the detainees as remedies.
Articles 206 and 297 PCPC.
Article 212 (6) PCPC reads:
"The arrested person shall have a right to appeal a decision [on detention][…] to the pre-trial judge."

Article 235 PCPC
"If the examination of the defendant was conducted in violation of the provisions of […] Article 234 paragraph 2 of the present Code, the statements of the defendant shall be inadmissible."
Article 155(3) PCPC: "If questioning or examination has been conducted in violation of paragraph 1 of the present article, no record of such questioning or examination shall be admissible".

Evidence:

Police records of arrest and interviews, witnesses and arrested person statements, Medical report in case of physical abuse.

Description of Remedy:

Defence motion before the pre-trial judge. There is no real remedy. The defence motion is an unclear remedy but can as a minimum provide proof that the issue has been raised at this stage, if the defence counsel will in the main trial attempt to suppress evidence obtained through duress. See Chapter II, Criminal Justice, Violation of right to humane conditions of detention and freedom from torture during pre-trial detention, C.2 below. Detainee or his defence counsel can submit a complaint against KPS or UNMIK Police officer. See complaints against law enforcement Chapter III, UNMIK Police, KPS, KPC and KFOR, Violation of code of conduct or criminal law, A and B.

A person against whom any of the measures provided for in Articles 201, 202, 204 or 205 of PCPC has been taken is entitled to file a complaint with the competent public prosecutor within three days. The public prosecutor shall, without delay, verify the grounds for the complaint and if it is established that the actions or measures taken violate the criminal law or the code of conduct applicable to the police or employment obligations, he or she shall act in accordance with the law and shall inform the person who filed the complaint (Article 206 (2, 3) PCPC).

Note: The measures described in the above Articles are meant to locate the perpetrator, to prevent the perpetrator or his or her accomplice from hiding or fleeing, to detect and preserve traces and other evidence of the criminal offence and objects which might serve as evidence, and to collect all information that may be of use in criminal proceedings. These measures include: gathering information from persons; performing provisional inspection of vehicles, passengers and their luggage; restricting movement in a specific area; taking steps to establish the identity of persons and objects; organizing a search to locate an individual or an object being sought by sending out a search circular; searching specific buildings and premises of public entities in the presence of a responsible person and examining specific documentation belonging to them; confiscating objects which must be confiscated under the PCPC or which may serve as evidence in criminal proceedings; physical examination of the injured party, etc.

10. Violation of right to a medical examination and treatment

Sections 2(1)(g), 5, 6(1)(h) UNMIK Regulation no.2001/28 On the rights of the Persons Arrested by Law Enforcement Authorities; Principle 24 of the Body of Principles Article 216 PCPC

Applicable Law:

No specific legal provision available
Article 212 (6) PCPC reads:
"The arrested person shall have a right to appeal a decision [on detention][…] to the pre-trial judge."

Evidence:

Police records of arrest and interviews, witnesses and arrested person statements.

Description of Remedy:

Defence motion before the pre-trial judge. See Chapter II, Criminal Justice, Violation of the right of a detained person to be treated with humanity and respect for his/her dignity, A.9.

Complaint against KPS or UNMIK police officer. See complaints against law enforcement Chapter III, UNMIK Police, KPS, KPC and KFOR, Violation of code of conduct or criminal law, A and B.

B. Extra Judicial Detention

1. Extra judicial detention by KFOR

Right to challenge the lawfulness of detention
Article 5 ECHR;
Article 9 (4) ICCPR;
Article 286 (2) PCPC

Applicable Law:

Article 7(k) KFOR Detention Directive 42:
"Detainees may submit petitions regarding their detention"

Article 286 (2) PCPC reads:
"At any time, the detainee or his or her defense counsel may petition any pre-trial judge or presiding judge to determine the lawfulness of detention."

Evidence:

KFOR Detention Directive 42 form, subsequent decisions regarding detention

Description of Remedy:

No detailed mechanism or deadlines are provided in KFOR Detention Directive 42.

Defence counsel may file a petition with the court exercising the Habeas Corpus mechanism. See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

2. SRSG's executive detention orders

Right to challenge the lawfulness of detention
Article 5 ECHR;
Article 9 (4) ICCPR;
Article 286 (2) PCPC

NOTE: *The remedy provided by Reg. 2001/18 is no longer applicable as its scope was limited to a three months period of time and to one single individual case (the Nĭs express case). However, the SRSG's authority to issue executive orders to detain has not been expressly abolished and therefore the need for an appropriate remedy remains.*

Applicable Law:

Section 4.1 UNMIK Reg. 2001/18, on the Establishment of a Detention Review Commission for Extra-Judicial Detentions based on Executive Orders.
"The Commission shall review extra-judicial detentions based on executive orders. A review may be initiated by the Commission on its own motion or upon the petition of a person detained on the basis of such an executive order or of his or her defence counsel."

Article 286 (2) PCPC reads:
"At any time, the detainee or his/her defence counsel may petition any pre-trial judge or presiding judge to determine the lawfulness of detention."

Evidence:

SRSG executive order

Description of Remedy:

Petition of the detained person or his/her defence counsel to the Detention Review Commission (DRC) charged with the task of reviewing executive orders. The DRC shall issue a decision as speedily as possible, but no later than 7 days from the receipt of the petition. Not an independent body under Article 6 ECHR.

The Habeas Corpus mechanism is applicable. See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

C. Investigation pre- and post-indictment

1. Illegal detention
Right to challenge detention/Notification of grounds for detention
Article 9(4) ICCPR; Article 5(4) ECHR; Principles 11(2), 32 & 39 of the Body of Principles;
Article 151(13) PCPC

Applicable Law:

Article 283 (3) PCPC – Appeal against the detention order of the pre-trial judge
"Each party may file an appeal within twenty-four hours of being served with the ruling. The appeal shall not stay execution of the ruling. If only one party appeals, the appeal shall be served by the court on the other party who may submit arguments to the court within twenty-four hours of being served with the appeal. The appeal shall be decided within forty- eight hours of the filing of the appeal."

Article 285(5) PCPC reads in pertinent part:
"Each ruling on the extension of detention on remand can be appealed. [...]"

Article 287 (1) PCPC – Appeal against the detention order after the indictment is rendered until the conclusion of the main trial
"After the indictment has been filed and until the conclusion of the main trial, detention on remand may only be ordered or terminated by a ruling of the trial panel or, when the trial panel is not in session, the presiding judge who shall first hear the opinion of the public prosecutor, if proceedings have been initiated at his or her request, and the opinion of the defendant or the defence counsel. The parties may appeal against the ruling. […]"

Article 287 (2) – Appeal against detention orders issued every two months:
"Upon the expiry of two months from the last ruling on detention on remand, the trial panel or, when the trial panel is not in session, the presiding judge shall examine, even in the absence of a motion by the parties, whether reasons for detention on remand still exist and render a ruling by which detention on remand is extended or terminated. The parties may appeal against the ruling. […]"

Evidence:

Police and investigative records, detention order and subsequent extensions, request and decision to conduct an investigation, indictment or withdrawal of charges, witness and accused statements, list of detainees for detention centre and facilities.

Description of Remedy:

Defence motion before the pre- trial judge. These motions consist of oral submissions regarding the grounds for detention to the pre-trial judge or panel of judges. See Chapter II, Criminal Justice, Violation of the right to be promptly informed about the reasons for arrest in a language that he/she understands, A.3.

Appeal of a detention order and subsequent extensions by the arrested/detained person or/and his/her defence counsel. Appeal of the pre-trial judge decision (extending the detention for one month after the arrest) is filed before the first instance panel of judges. The subsequent detention orders (issued by a panel of judges) are appealed before an appeals' panel of judges. Both appeals shall be filed within 24 hours from the time the order was presented. Both panels of judges must render a decision within 48 hours. The appeals do not stay the execution of the order.
In cases the detention is declared illegal the detained person can submit a petition for compensation. See Chapter II, Criminal Justice, Compensation for illegal detentions or arrests or detention without justification, A.2 regarding compensation for unjustified detention.

2. Violation of right to humane conditions of detention and freedom from torture during pre-trial detention

Articles 7, 10 ICCPR;
Article 3 ECHR;
Article 2(2) Torture Convention)
Article 155 PCPC
Article 288 PCPC

Applicable Law:

Article 212 (6) PCPC:
"The arrested person shall have a right to appeal a decision [on detention][…] to the pre-trial judge."

Article 235 PCPC:
"If the examination of the defendant was conducted in violation of the provisions of Article 155 paragraph 1,[…] of the present Code, the statements of the defendant shall be inadmissible."

Evidence:

Investigative report, witness and accused statements, Medical report in case of physical abuse

Description of Remedy:

Complaint against KPS or UNMIK police officer. See Chapter III, Complaints against Law Enforcement, UNMIK Police, KPS, KPC and KFOR, Violation of code of conduct or criminal law, A and B.

Defence motion before the pre-trial judge. There is no clear remedy. The defence motion can as a minimum provide proof that the issue has been raised at this stage, if the defence counsel will in the main trial attempt to suppress evidence obtained through duress. See Chapter II, Criminal Justice, Violation of the right of a detained person to be treated with humanity and respect for his/her dignity, A.9 and Compelled to testify or confess guilt/violation of the right to silence, D. 4 (on a motion to suppress evidence obtained through duress).

3. Violation of right to a lawyer in pre-trial stage

Principle 1 of the Basic Principles on the Role of Lawyers;
Principle 17(1) of the Body of Principles;
Article 69 PCPC

Right to adequate time and facilities to prepare a defence: Articles12 and 321(3) PCPC.

Access to counsel while detained: Article 69 PCPC, Principle 7 of the Basic Principles on the Role of Lawyers.

Confidential communications: Principle 18(1) of the Body of Principles; Principle 22 of the Basic Principles on the Role of Lawyers; Articles 77 (2) and 213 (3) PCPC

Right to have a lawyer assigned free of charge: Article 74 PCPC; Principle 17(2) of the Body of Principles; UNMIK Circular 2000/17; Article 6 (3)(c) ECHR, Principle 6 of the Basic Principles on the Role of Lawyers.
Juvenile's special rights Article 40 Juvenile Justice Code

Applicable Law:

Article 314 (2) PCPC:
"The judge shall then satisfy himself or herself that the right of the defendant to defence counsel has been respected and that both parties have fulfilled the obligation relating to the disclosure of evidence […]"

Article 235 PCPC
"If the examination of the defendant was conducted in violation of the provisions of,[…] Article 231 paragraphs 2 and 3, […] of the present Code, the statements of the defendant shall be inadmissible."

Article 153 PCPC reads:
" Evidence obtained in violation of the provisions of criminal procedure shall be inadmissible when the present Code or other provisions of the law expressly so prescribe".

Article 403 (1)(8) PCPC (ground for appeal):
"There is a substantial violation of the provisions of criminal procedure if […] The judgment was based on inadmissible evidence;"

Evidence:

Investigative records, witness and accused statements, court decisions.

Description of Remedy:

Petition to the pre-trial judge. A party shall raise an issue relating to admissibility of evidence at the time when the evidence is submitted to the court and in particular in the proceedings on the confirmation of the indictment. Exceptionally it may be raised later, if the party did not know such issue at the time when the evidence was submitted or if there are other justifiable circumstances. The court may request that the issue be raised in writing. In the absence of an application by a party, the court must rule on the admissibility of evidence ex officio if at any time during the proceedings a suspicion arises about the legality of evidence (Article 154 PCPC).

The defence can challenge the admissibility of pre-trial statement during main trial, citing Article 6 ECHR and Article 235 PCPC.

Could be included in an appeal to the verdict. The appeal of the verdict should be filed by the accused or his/her defence counsel within 15 days (8 days when the defendant is a juvenile) from the day when the transcript of the verdict was delivered (Article 398(1) PCPC and Article 75 JJC)
Petition to reopen the criminal proceeding filed by the accused or his/her defence counsel. Decided by a first instance panel that tried the case. May be filed even after the convicted person has served his sentence (Articles 442 (4), 443 (2) PCPC).

4. Violation of right for defence to examine evidence during pre-trial stage/Right to present defence

Right of the defence to examine witnesses against the accused and to present defence witnesses during pre-trial investigation.

Right to examine the court file/Right to copies
Principle 21 of the Basic principles of the Role of Lawyers; Article 14(3)(d) ICCPR; Article 6(3)(d) ECHR; UNMIK Regulations 2001/20, 2001/21, 2002/1, 2002/2)
Section 1.3 (a), (b), (c) AD 2002/25,

Right of the defence to participate in all examinations by the police
Article 218 (1) PCPC

Right of the defence to see, to examine, to photocopy and to photograph the materials from the case file, at all stages of the procedure
Article 142 (1) PCPC;

Right of the accused and defence to examine witnesses
Article 165(1) PCPC

Right of the defence to participate in closed hearing during the testimony of the anonymous witness proposed by him/her
Article 171(2) PCPC

Right of the defence to participate in closed hearing during the testimony of the anonymous witness NOT proposed by him/her
Article 172 PCPC

Right of the defence to have in his/her disposal records in relation to the surveillance and technical measures, save in cases under by law specified conditions
Article 263(4) PCPC

Applicable Law:

Article 239 (2) PCPC: "[…]If the public prosecutor rejects the application to collect evidence, he or she shall render a decision supported by reasoning and notify the injured party or the defendant. The injured party or the defendant may appeal such decision to the pre-trial judge."

Article 142 (3) PCPC in pertinent part:
" […] The public prosecutor may refuse to allow the defence to inspect, copy or photograph specific records, books, documents, photographs and other tangible objects in his or her possession, custody or control if there is a sound probability that the inspection, copying or photographing may endanger the purpose of the investigation or the lives or health of people. In such case, the defence can apply to a pre-trial judge to grant the inspection, copying or photocopying. The decision of the pre-trial judge is final."

Article 173 (3) PCPC:
"[…] An appeal against an order for anonymity and the use of methods to prevent disclosure of identity to the public, injured parties, witnesses, defence counsel and the defendant may be made to a three judge panel, if the order has been issued by a pre-trial judge. Otherwise it may only be appealed in an appeal of the judgment."

Article 263 PCPC

Evidence:

Court decisions, investigative reports/records, statements of witnesses and accused.

Description of Remedy:

If the public prosecutor refuses the inspection of the investigation of prosecution files, the injured party can file an appeal with the pre-trial judge. The decision of the pre-trial judge is final. However, if the pre-trial judge refuses the inspection of the court files, an appeal can be filed with the three-judge panel (Article 143 (3,4) PCPC).

Included in appeal against verdict. See Chapter II, Criminal Justice, Violation of right to a lawyer in pre-trial stage, C. 3.

No specific remedy against refusal to examine and present witnesses. Remedy included in: written objections to the indictment or the admissibility of evidence in case of waiver of confirmation of indictment (Article 309/3(3)); appeal of decision for arrest/detention; appeal against the judgement. See Chapter II, Criminal Justice, Unlawful detention by police, A.1 and Violation of right to humane conditions of detention and freedom from torture during pre-trial detention, C.2.

Appeal against the order for anonymity addressed to three-judge panel, if such order has been issued by pre-trial judge (Article 173(3) PCPC).

Complaint to Surveillance and Investigation Review Panel against the materials received upon order for covert and technical measures of surveillance and investigation to which the defendant was subjected (Article 263 (1) PCPC).

5. Right to trial within a reasonable time or release from detention

Article 5(3) ECHR; Article 9(3) ICCPR
Articles 5 and 225 PCPC

Applicable Law:

Article 284 (4) PCPC:
"If the indictment is not filed before the expiry of the prescribed periods of time […], the detainee shall be released."

Article 285 (5) PCPC in pertinent part:
Each ruling on the extension of detention on remand can be appealed.

Evidence:

Detention orders and subsequent extensions, investigative reports, list of detainees from detention centres and facilities.

Description of Remedy:

Written complaint to Court President.

Motion to release (also on pledge or bail) /Motion to release if indictment not filed within 12 months of detention to pre-trial judge or competent first instance panel of judges.

Appeal of detention order and subsequent extensions by the arrested/detained person or/and his/her defence counsel. See Chapter II, Criminal Justice, Illegal detention, C. 1. PCPC provides for fines and possibility to request disciplinary measures against defence counsel, an authorized representative or legal representative, an injured party, a subsidiary prosecutor or a private prosecutor if his or her actions are obviously aimed at prolonging criminal proceedings (Article 146 PCPC).

The request for such penalties might come from the judge/presiding judge of the panel or from the party affected in the procedure. There are no clear and specific provisions regulating the procedure.

6. Incommunicado detention

Right to have access to the outside world: family; Liaison office, consular post, diplomatic mission of the State of origin, competent international organisation; doctors Principles 15, 16 & 19 of the Body of Principles; Rule 92 of the Standard Minimum Rules; Article 7 ICCPR; Article 3 ECHR, Article 294 (1,2,3,4) PCPC

Applicable Law:

Article 294 (5) PCPC:
"When the pre-trial judge refuses a visit pursuant to paragraph 1 of the present article or prohibits communication pursuant to paragraph 4 of the present article, the detainee on remand may apply to the three-judge panel to grant such permission."

Article 295 (4) PCPC

General appeal, Article 398(1) PCPC:
"Authorized persons may file an appeal against a judgment rendered at first instance within fifteen days of the day the copy of the judgment has been served."

Evidence:

Detainee's declaration; records of the detention centre; witness statements

Description of Remedy:

In case the pre-trial judge prohibits communication or refuses the visit, the detainee/defence may apply to the three judges panel to grant such permission (Article 294 (5) PCPC).
Restriction on visits and correspondence on a detainee, who has committed disciplinary breach, may be appealed to a three judge's panel within twenty four hours of the receipt of the restriction (Article 295 (4) PCPC).

Complaint to Department of Justice, Petition to the president of the court. There is no particular legal basis for complaints to the Department of Justice but the practice suggests this option.

See also Chapter II, Criminal Justice, Violation of right to a lawyer in pre-trial stage, C.3 and Violation of the right of a detained person to be treated with humanity and respect for his/her dignity, A.9.

D. Trial & Retrial

1. Violation of the right to a trial by a competent, independent and impartial tribunal established by law

Law on Regular Courts (1978), Law on the Public Prosecutors (1976), UNMIK Reg. 2000/64, 1999/7, 2000/57, 2001/8, Articles 44-47 of the Book of Rules on Internal Activity of the Courts, 6/1 ECHR, 14/1 ICCPR, 10 of Universal Declaration, 40/2b(iii) of the Convention of the Rights of the Child, 10 of the Guidelines on the Role of Prosecutors, Basic Principles on the Independence of the Judiciary
Article 2 PCPC
Article 8 PCPC

Applicable Law:

Article 42 PCPC regulates disqualification of judges. The provisions on the disqualification of judges and lay-judges apply to public prosecutors, and persons who are authorized to represent the public prosecutor in proceedings according to the Law on the Office of The Public Prosecutor, authorized persons in the police, recording clerks, interpreters, specialists, and expert witnesses, unless otherwise provided (Article 45 PCPC).

General appeal, Article 398(1) PCPC.

See Chapter II, Criminal Justice, Violation of right to a lawyer in pre-trial stage, C.3.

Evidence:

Police and investigative records, indictment, statements of witnesses and accused, trial's records, written verdict.

Description of Remedy:

The disqualification of a judge may also be requested by the parties.
A party shall be bound to request disqualification of a judge or a lay judge as soon as he or she learns of the existence of grounds for disqualification and no later than before the conclusion of the main trial and, in the case of disqualification on the grounds set forth in the Code, before the commencement of the main trial (Article 42 (2) PCPC).

If requesting the disqualification of a judge of a superior court or of an appellate prosecutor a party may address a petition in an appeal or in a response to an appeal (Article 42 (3) PCPC). Such petition should be addressed to the president of the respective court or to the immediately higher public prosecutor (Articles 43 (1) and 45 PCPC).

A party may seek disqualification only of a judge or lay judge who acts in a case or of a judge of a superior court, if he or she is identified by name (Article 42 (4) PCPC).
The party must state in the petition the circumstances supporting his or her allegation that there are legal grounds for disqualification. Reasons presented in a previous petition for disqualification which have been rejected may not be cited again in a petition (Article 42 (5) PCPC).

A panel of judges, a presiding judge or a pre-trial judge shall decide on the disqualification of a recording clerk, interpreter, specialist and expert witness. When an authorized police officer conducts investigative actions on the basis of the PCPC a competent public prosecutor may decide on his or her disqualification. If a recording clerk participates in conducting such actions, the official who conducts the action shall decide on his or her disqualification (Article 45 PCPC).

Request for assignment of international judges and prosecutors and/or change of venue may be submitted by the accused or his/her defence counsel to the DoJ at any time during the criminal proceedings. A new venue or panel shall not be designated once a trial session or an appellate panel session has already commenced. However, such panel can be established for a subsequent review or an extraordinary remedy (UNMIK Regulation 2000/64 On Assignment of International Judges and Prosecutors and/or Change of Venue).

If the decision on the disqualification was made after the indictment was brought; it can only be contested through a general appeal of the verdict, because there is no specific provision on this issue in the PCPC.
See Chapter II, Criminal Justice, Violation of right to a lawyer in pre-trial stage, C.3

Petition to reopen the criminal proceeding filed by the accused or his/her defence counsel. Decided by a first instance panel that tried the case. May be filed even after the convicted person has served his sentence (Articles 442 (4), 443 (2) PCPC).

If an individual believes that a judge, prosecutor or lay judge was acting in an unlawful manner he or she can complain to the Judicial Inspection Unit (JIU). The JIU shall investigate the activities of individuals working in the judicial system, and make recommendations to the Director of the Department of Justice (UNMIK Administrative Direction 2001/4 *implementing UNMIK Regulation 2000/15 on the Establishment of the Administrative Department of Justice*). Upon request of the Department of Justice, the Kosovo Judicial and Prosecutorial Council shall be responsible for hearing all cases of alleged misconduct (UNMIK Regulation 2001/8, Section 7).

2. Violation of the right to a public trial

Permissible exceptions to a public trial (juveniles, protection of witnesses/victims).
Article 6(1) ECHR;
Article 10 of the Universal Declaration, 14(1) ICCPR
Article 328 PCPC
Article 329 PCPC

Applicable Law:

No specific legal provision

General appeal, Article 398(1) PCPC

Evidence:

Statements of witnesses and accused, trial's records, written verdict.

Description of Remedy:

No special remedy for the violation of the right to a public trial. Can be ground for an appeal of the verdict itself. See Chapter II, Criminal Justice, Violation of right to a lawyer in pre-trial stage, C.3.

Parties could file motion for hearing in camera if they believe such measures are justified.

Request to the President of the Supreme Court to allow the use of film or television recording (Article 93 (3) PCPC).

3. Violation of the presumption of innocence
(i.e. attributes of guilt borne by the accused: prisoner's uniform and/or handcuffs)

Article 6/2 ECHR;
Article 11 of the Universal Declaration; Article 14/2 ICCPR; Article 40/2b(I) of the Convention of the Rights of the Child;
Article 1(2) PCPC;
Article 3 PCPC

Applicable Law:

No specific legal provision

General appeal, Article 398(1) PCPC

Evidence:

Police and investigative records, indictment, statements of witnesses and accused, trial records, written verdict.

Description of Remedy:

Defence motion pending trial or retrial. See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

No special remedy for violation of the presumption of innocence, but can be a ground for general appeal of the verdict. See Chapter II, Criminal Justice, Violation of right to a lawyer in pre-trial stage, C.3.

4. Compelled to testify or confess guilt/violation of the right to silence

Article 6 ECHR;
Article 14/3g ICCPR;
Article 40/2b(iv) on the Convention of the Rights of the Child; Guideline 16 of the Guidelines on the Role of Prosecutors; Articles 12, 15 & 16 of the Declaration against Torture,
Article 214 (2)(2) PCPC;
Article 231 (2)(2) PCPC

Applicable Law:

No specific legal provision

General appeal, Article 398 (1) PCPC.

Evidence:

Police and investigative records, indictment, statements of witnesses and accused, trial records, written verdict.

Description of Remedy:

Defence's motion for exclusion of evidence elicited as a result of torture, cruel, inhuman or degrading treatment & other coercion. Not an independent legal authority for such a motion but the application of international standards provide the option.

No special remedy if the right to silence is breached, but can be ground for an appeal of the verdict. See Chapter II, Criminal Justice, Violation of right to a lawyer in pre-trial stage, C.3.

5. Retroactive application of criminal laws and of double jeopardy

Article 14/7 & 15/1 ICCPR;
Article 7 ECHR;
Article 4 of Protocol 7 ECHR;
Article 11/2 of the Universal Declaration;
Article 2 PCPC
Article 404(3) PCPC
Article 442 (1)(4)

Applicable Law:

General appeal, Article 398 (1) PCPC.

Article 443 (1) PCPC reads:
" The reopening of criminal proceedings may be requested by the parties and defence counsel. After the death of the convicted person, the reopening may be requested by the public prosecutor or by the spouse, the extramarital spouse, a blood relation in a direct line to the first degree, an adoptive parent, an adopted child, a brother, a sister or a foster parent of the convicted person."

Evidence:

Police and investigative records, indictment, statements of witnesses and accused, trial's records, written verdicts.

Description of Remedy:

Defence's motion pending or during trial. See Chapter II, Criminal Justice, Violation of the right to be promptly informed about the reasons for arrest in a language that he/she understands, A.3.

No specific remedy regarding retroactive application of criminal law. However, retroactive application can be grounds for appeal of the verdict. See Chapter II, Criminal Justice, Violation of right to a lawyer in pre-trial stage, C.3

Criminal Proceedings terminated by a final judgement may be reopened if a person was tried more than once for the same offence or several persons were convicted of the same offence which could have been committed only by a single person or only by some of them (Article 442 (1) (4) PCPC).

The reopening of criminal proceedings may be requested by the parties and defence counsel (Article 443 (1) PCPC).

6. Violation of the right to be tried without undue delay or to be released

Article 5 PCPC
Article 14(3)(c) ICCPR, Article 5(1)(c), 5(3), 6(1) ECHR; Article 40/2b(iii) of the Convention of the Rights of the Child; Rule 17 of the UN Rules for the Protection of Juveniles deprived of their Liberty
Article 37 Juvenile Justice Code

Applicable Law:

No specific legal provision. New PCPC foresees additional alternatives for ensuring the presence of the defendant in the proceedings, apart from detention: house detention (Article 278 PCPC); attendance at the police stations (Article 273 PCPC); promise of the defendant not to leave his/her place of current residence (Article 271 PCPC).

Evidence:

Statements of witnesses and accused, investigative records, detention orders and subsequent extensions, bond or real estate lien as collateral for the bail.

Description of Remedy:

Defence can file a motion before the trial panel of release pending trial or propose release on bail or pledge (Article 274 PCPC). The substance of the motion would be based on international standards, namely Article 6 ECHR.

Appeal of decisions on detention ordered by the trial's panel.

7. Violation of right to defend oneself in person or through counsel

Equality of Arms/Right to choose defence counsel/Right to have free legal assistance/Right to Confidential Communication with counsel/Access to effective Legal Representation Articles, 6(3)(b,c,d) ECHR; Article 14(3)(d) ICCPR; Article 40(2)(b)(ii) of the Convention of the Rights of the Child; Basic Principles of the Role of Lawyers; Article 12(2) PCPC

Right of the defence to have at its disposal the materials and copies from the case file that was in possession of public prosecutor
Article 307 (1) PCPC

Right of the defence to be present at the confirmation of indictment session
Article 309 (2) PCPC

Right of the defence to present his/her standpoint in relation to the guilty plea of the defendant

Article 315 (2) PCPC

Applicable Law:

Article 75 (4) PCPC:
"The president of the court may dismiss an appointed defence counsel who is not performing his or her duties properly at the request of the defendant or with his or her consent. The president of the court shall appoint an independent defence counsel of experience and competence commensurate with the nature of the offence in place of the dismissed defence counsel."

Article 239 PCPC
"(1) During the investigation the injured party or the defendant may apply to the public prosecutor to collect certain evidence.
(2) […] If the public prosecutor rejects the application to collect evidence, he or she shall render a decision supported by reasoning and notify the injured party or the defendant. The injured party or the defendant may appeal such decision to the pre-trial judge."

Article 322 PCPC:
"(1) The parties, defence counsel and the injured party may request even after the main trial has been scheduled that new witnesses or expert witnesses be summoned to the main trial or that new evidence be collected. The request must be supported by reasoning and must indicate which facts are to be proven and by which of the items of evidence proposed.
(2) If the presiding judge rejects the motion for new evidence to be collected, such motion may be repeated during the main trial."

Article 376 (3) PCPC:
"When the indictment has been modified, the accused or the defence counsel may make a motion to recess the main trial in order to prepare the defence. The trial panel shall recess the main trial to allow for the preparation of defence, if the indictment has been substantially modified or extended."

Evidence:

Police and investigative records, indictment, statements of witnesses and accused, trial's records, written verdict

Description of Remedy:

Separate application against the decision withholding the permission to examine and copy the record of individual criminal cases when special reasons of endangering the purpose of the investigation or the lives or health of people so require. In such case, the defence can apply to a pre-trial judge to grant the inspection, copying or photocopying of court documentation (Article 142 (3, 4) PCPC).

Accused request to the president of the court to dismiss an appointed defence counsel not performing his duties properly and to appoint another one (Article 75(4) PCPC).

Defence's motion requesting to postpone trial to prepare defence, requesting forensic analysis & presentation of any supporting new evidence; to adequately question witnesses & defendant; to object to inadmissible evidence; to make remarks on records; to challenge presiding judge's refusal to allow questions.

Separate appeal against panel's decision on separation of records, due to their inadmissibility (Article 154 (2) PCPC).

The injured party or the defendant may appeal the decision of the prosecutor for the collection of certain evidence proposed by the parties, to the pre-trial judge (Article 239 (2) PCPC).

8. Violation of right to be tried in one's presence
(including trial in absentia)

UNMIK Reg. 2001/1,
Articles 14(3)(d) ICCPR;
Article 6 ECHR;
Article 12(2) PCPC;
Article 472 PCPC

Applicable Law:

General appeal, Article 398 (1) PCPC.
Article 403 (1)(3) PCPC:
" There is a substantial violation of the provisions of criminal procedure if:
The main trial was conducted in the absence of persons whose presence at the main trial is required by law […]"

Article 415(1)(2) PCPC:
"The court of second instance shall examine the part of the judgment which is challenged by the appeal. In addition, when an appeal is filed, the court shall examine *ex officio*:
[…]
2) Whether the main trial was, contrary to the provisions of the present Code, conducted in the absence of the accused;"

Evidence:

Police and investigative records, indictment, statements of witnesses and accused, trial's records, written verdicts.

Description of Remedy:

General appeal. See Chapter II, Criminal Justice, Violation of right to a lawyer in pre-trial stage, C.3 Petition to reopen the criminal proceeding filed by the accused or his/her defence counsel. Decided by a first instance panel that tried the case. May be filed even after the convicted person has served his sentence (Articles 442 (4), 443 (2) PCPC).

9. Violation of right to free interpreter and translation

UNMIK Reg. 2000/46,
Article 6(3)(a,e) ECHR;
Article 14(3)(f) ICCPR;
Article 40(2)(b)(vi) on the Convention of the Rights of the Child
Article 15 PCPC

Applicable Law:

No specific legal provision

General appeal, Article 398 (1) PCPC.

Article 403 (1)(3) PCPC
"There is a substantial violation of the provisions of criminal procedure if:
[…]
3) […]the accused, […] was, notwithstanding his or her request, denied the right to use his or her own language in the main trial and to follow the course of the main trial in his or her language (Article 15 of the present Code)"

Evidence:

Police and investigative records, indictment, statements of witnesses and accused, trial's records, written verdict.

Description of Remedy:

Defence's motion pending trial or retrial. See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

No special remedy except for general appeal of the verdict. See remedy Chapter II, Criminal Justice, Violation of right to a lawyer in pre-trial stage, C.3

Ground for reopening of the criminal proceedings. Petition to reopen the criminal proceeding filed by the accused or his/her defence counsel. Decided by a first instance panel that tried the case. May be filed even after the convicted person has served his sentence (Articles 442 (4), 443 (2) PCPC).

10. Violation of principle of separate systems for juvenile's justice

Article 40(2)(b) of the Convention on the Rights of the Child;
Article 14(4) ICCPR;
Article 3 (1), Article 4 JJC

Applicable Law:

No specific legal provision.
General appeal, Article 398 (1) PCPC

Evidence:

Police and investigative records, indictment, statements of witnesses and accused, trial's records, written verdicts

Description of Remedy:

Defence motion, submitted verbally or in written before a trial panel with the evidence that arguments the age of the defendant. See Chapter II, Criminal Justice, Unlawful detention by police, A.1.

No special remedy except for general appeal of the verdict. See Chapter II, Criminal Justice, Violation of right to a lawyer in pre-trial stage, C.3 and Violation of the right of a detained person to be treated with humanity and respect for his/her dignity, A.9.

11. Violation of right to appeal the verdict

Includes failure of the court to inform parties about the right to appeal and failure to deliver a written copy of the verdict.
Article 2 of Protocol 7 ECHR;
Article 14/5 ICCPR;
Article 394 (1) PCPC;
Article 395 (4) PCPC

Applicable Law:

No specific legal provision

General appeal, Article 398(1) PCPC

Article 174 (1) PCC reads:
Whoever, by use of force or serious threat, prevents another person from using his or her right to lodge a complaint or to use any other legal remedy shall be punished by a fine or by imprisonment of up to one year."

Evidence:

The record of the proceedings of the main trial. The allegation for the criminal offence as above.

Description of Remedy:

General appeal. See Chapter II, Criminal Justice, Violation of right to a lawyer in pre-trial stage, C.3

General complaint to the police/prosecution. See Chapter V, Victims of Crime.

III. UNMIK Police, KPS, KPC and KFOR: Violation of code of conduct or criminal law

A. UNMIK Police

1. UNMIK Police – violation of the code of conduct – administrative remedy

Includes improper behaviour, breaches of policy, regulation, or procedure.

Applicable Law:

Policy and Procedures Manual (PPM) part 3, section 2.2.1.
"All alleged breaches of the rules and regulations must be documented in a Preliminary Report (PR) by the immediate supervisor of the officer involved."

Note -There are no explicit procedures set out for citizens filing a complaint based on violations of the code of conduct. However, the possibility of such a complaint being investigated is implicit in the parts of the PPM as set out below, and in the investigative and disciplinary procedures that follow from the submission of a Preliminary Report.

Evidence:

PPM part 3, section 2.2.2: "The PR shall include an analysis of what, when, where, how and why the incident occurred, identity of the staff involved and accounts of complainant, witness and victims."

Description of Remedy:

The Preliminary Report must be forwarded through the chain of command within 24 hours to the Officer's designated Responsible Supervisor and to the Regional Internal Investigation Officer. The Responsible Supervisor will notify the Deputy Police Commissioner for Administration (DPC/A) within 24 hours of the alleged breach.

The Regional Internal Investigation Officer (RIIO) shall then contact the Chief of the Mission Headquarter Internal Investigation Section (IIS) and, under his/her direction and control, start the investigation.

After the investigation is complete, the case file, including a written summary of the findings, will be submitted to the DPC/A. The DPC/A will then make a decision as to the disciplinary measure to be imposed.

If deemed necessary, DPC/A appoints a Committee of Enquiry consisting of a Chairperson, four additional members and a non-voting Secretary. The Committee of Enquiry will arrive at a finding based on a simple majority vote and will provide a written report of those findings to DPC/A within 10 days.

In the case of a founded breach, the DPC/A will advise the Responsible Supervisor of the discipline to be imposed. The Responsible Supervisor shall then implement that disciplinary decision.

The accused UNMIK Police Officer may appeal an imposition of discipline by the DPC/A by appealing in writing to the Commissioner within 5 days after the date of receipt of the disciplinary measure. After reviewing the disciplinary case, the Commissioner will make a decision which will be final.

2. UNMIK Police – violation of the code of conduct and/or criminal law – legal remedy

Applicable Law:

Criminal laws applicable in Kosovo in conjunction with the Policy and Procedures Manual part 3 section 2.10.

"This policy formally recognises that a Civpol may be placed in Provisional Custody for the purposes of investigation when the Civpol Officer is alleged to have committed a criminal act (not a misconduct issue).

It must be clearly understood that the Immunity granted to a Civpol is limited to the organisational level and the Civpol is not shielded from arrest and detention should a criminal act be committed."

Evidence:

Medical records in case of physical abuse, witnesses

Description of Remedy:

All criminal investigations of UNMIK Police Officers shall be conducted by the Central Criminal Investigation Unit (CCIU) and referred to the relevant International Prosecutor. If the International Prosecutor determines not to prosecute, the Police Commissioner or Designate shall initiate an internal investigation.

If the International Prosecutor determines to proceed with a prosecution, the Police Commissioner or Designate shall direct the CCIU to create an Investigation Team to assist the Investigative Judge.

However, on deciding to proceed with a prosecution, the International Prosecutor immediately submits a request for a Waiver of Immunity to the Legal Advisor of the SRSG. The Investigation Team shall not formally approach the suspect UNMIK Police officer for statements until the Waiver of Immunity returns from the UN Headquarter in New York.

B. Kosovo Police Service

1. KPS - violation of code of conduct – administrative remedy

Includes improper behaviour, breaches of policy, regulation, or procedure.

Applicable Law:

KPS Policy Manual sections P-1.30 (II):

"Disciplinary action will be taken to correct any inappropriate behaviour."

KPS Policy Manual P-4.16(III)(D)(3):
"The Station Commander or KPS Supervisor will interview the citizen to determine the extent of his or her complaint. If the complaint is a misunderstanding between the citizen and the officer, the Station Commander or KPS Supervisor will explain the police procedures to the citizen. If the citizen is satisfied with the explanation, a preliminary report is not required."

KPS Policy Manual P-4.16(III)(D)(3a):
"If the citizen complains about actual police misconduct, use of unnecessary or unjustified physical force, use of deadly force, human rights violations, criminal activity or police corruption, the Station Commander or KPS supervisor will interview the citizen to ascertain the basis facts about the complaint. The Station Commander or KPS Supervisor will complete the Citizen Complaint Form and forward it to the regional Professional Standards Unit office located at the regional headquarters."

Evidence:

Medical records in case of physical abuse, witnesses.

Description of Remedy:

There are two mechanisms for reporting allegations of misconduct committed by officers of the Kosovo Police Service: *internal discipline reports* and *citizen complaints*. The purpose of both types of reporting forms is to insure the integrity and professional conduct of the Service and to provide a standard and uniform mechanism to properly report and investigate such allegations. The term "allegation" means there exists some basis of belief that the officer may have violated a policy, procedure or rule or regulation of the Service. Allegations are not positive evidence of misconduct and ordinarily will not be used as the basis for disciplinary action until fully investigated by proper authority. KPS officers are presumed to have acted correctly in performance of their official duties unless facts and supporting evidence indicate otherwise. It is an inherent duty and responsibility of supervision to monitor the conduct and activities of Kosovo Police Service officers and take corrective or disciplinary action when appropriate and warranted.

The Station Commander or KPS Supervisor will interview the citizen to determine the context of his/her complaint. If the complaint is a misunderstanding between the citizen and the officer, the Station Commander or KPS Supervisor will explain the police procedures to the citizen. If the citizen is satisfied with the explanation, a preliminary report is not required.

If the citizen complains about actual police misconduct, use of unnecessary or unjustified physical force, use of deadly force, human rights violations, criminal activity, or police corruption, the Station Commander or KPS Supervisor will interview the citizen to ascertain the basic facts about the complaint. The Station Commander or KPS Supervisor will complete the "*Citizen Complaint Form*" and forward it to the regional Professional Standards Unit office located at the regional police headquarters. The "*Citizen Complaint Form*" shall be the primary method of making a formal complaint against a KPS officer. Memoranda, written letters, electronic mail, or telephone calls are discouraged and ordinarily should not be used to initiate a complaint against a KPS officer.

Upon the decision to conduct an investigation in allegations of misconduct, either at the local command level, or by the Professional Standards Unit (PSU), the Responsible Authority (see P-130 III, the Deputy Police Commissioner for Operations and/or the Director of the KPS or when discipline is awarded at the local level, the appropriate Regional Commander or his/her designee) must advise the accused officer, in writing, of

the fact that he/she is the subject of an investigation and include a statement of those allegations, provided, that in cases requiring a separate or concurrent criminal investigation, notification will not be made as required herein. Upon the completion of any criminal investigation, the Responsible Authority shall have seventy-two (72) hours to make the necessary advice.

2. KPS - violation of code of conduct and/or criminal law – legal remedy

Applicable Law:

Criminal laws applicable in Kosovo in conjunction with: KPS Policy Manual sections P-1.35

KPS Policy Manual sections P-4.16(III)(B)(3)

"a. PSU investigations will be initiated when any criminal investigation of a KPS Officer has been completed and no criminal prosecution is determined. In situations where public authority may seek criminal prosecution, the Chief of the Professional Standards Unit may order or instruct the PSU investigation be deferred until resolution of the criminal matter is completed."

KPS Policy Manual section (III)(D)(3).

See above and (3) b: "All complaints of serious police misconduct, use of unnecessary or unjustified physical force, use of deadly force, human rights violations, criminal activity or police corruption should be referred immediately to the PSU regional office. The PSU investigator will then contact the PSU central office … of the receipt of the citizen's complaint and initiation of the investigative process."

Evidence:

Medical records in case of physical abuse, witnesses

Description of Remedy:

See above on KPS Administrative Remedy. All complaints of serious police misconduct, use of unnecessary or unjustified physical force, use of deadly force, human rights violations, criminal activity or police corruption should be referred immediately to the Professional Standards Unit regional office. The PSU investigator will then contact the PSU central office via fax, e-mail, or telephone of the receipt of the citizen's complaint and initiation of the investigative process.

C. Kosovo Protection Corps

1. Kosovo Protection Corps (KPC) – violation of the code of conduct – administrative remedy

Applicable Law:

Kosovo Protection Corps Disciplinary Code section 5.3

Any member of the public or agency, including the KPC, may submit complaints concerning any KPC member. Complainants shall provide the information described in Annex B, and their report may be submitted either to KPC Headquarters (HQ KPC), UNMIK Police, UNMIK Regional Officers, Multi National Brigade Joint Implementation Committee (MNB JICs) or to the KFOR Headquarter Joint Implementation Committee (HQKFOR JIC).

Note: There is no provision for the complainant to be informed of the outcome of the internal investigation.

Evidence:

The complainant has to fill out a Standard Complaint Form by providing the name of the KPC members involved, their identifying information and a description of the incident, including the date, time and location. It is optional for the complainant to provide his/her name and contact information.

Description of Remedy:

Complaints may be submitted to HQ KPC, UNMIK Police, UNMIK Regional Officers, MNB JICs or HQKFOR JIC.

For minor breaches of the KPC code of conduct, the appropriate Regional Task Group (RTG) Commander or the Commander of the KPC (COMKPC) shall order an internal investigation. KPC commanders down to RTG/Central Unit level may deal with acts considered to be minor in nature. MNB JIC/HQ KFOR JIC shall be notified of such breaches.

For major acts of non-compliance, COMKPC shall forward the complaint to KFOR JIC. COMKPC may be required, under the direction of the Joint Security Executive Committee (JSEC), to suspend the KPC member.

MNB JICs shall immediately forward reports of any major incidents to HQKFOR JIC. Each MNB is responsible for co-ordinating any investigation of alleged major acts of non-compliance committed within their area of responsibility. HQKFOR JIC shall provide JSEC with a recommended course of action on completion of the investigation. This recommendation will be developed jointly with the UNMIK officials responsible for matters relating to the KPC.

Only the JSEC may make decisions about disciplinary action for major acts of non-compliance.

MNBs shall forward details of any act that could constitute a criminal or serious civil offence to UNMIK Police.

Disciplinary action must be taken when a court of competent jurisdiction convicts a KPC member for a criminal act. In addition to the sanctions imposed by the court, JSEC will take disciplinary action for those criminal acts. Neither COMKPC nor the RTG commanders are authorised to take disciplinary action with respect to criminal acts committed by KPC members.

2. Kosovo Protection Corp

Applicable Law:

Criminal laws applicable in Kosovo in conjunction with the Kosovo Protection Corps

– violation of the code of conduct and/or criminal law – legal remedy

Disciplinary Code section 5.4:

"A complaint alleging that a KPC member has committed a criminal act shall be forwarded by COMKPC to UNMIK Police for investigation …
When a member of the KPC is alleged to have committed a criminal act or a major act of non-compliance, COMKPC may be required, under JSEC direction, to suspend the KPC member immediately. The KPC Inspectorate shall not undertake a criminal investigation of its own, but shall refer the complaint to the UNMIK Police."

Evidence:

Medical records in case of physical abuse, witnesses

Description of Remedy:

Any member of the public, or any agency, including KPC, may submit complaints concerning any KPC member. Complaints may be submitted to HQ KPC, UNMIK Police, UNMIK Regional Officers, MNB JICs or HQKFOR JIC.

Allegations of criminal acts by KPC members shall be forwarded by COMKPC to UNMIK Police for investigation in accordance with normal police procedures.

UNMIK Police shall notify the appropriate MNB JICs and HQKFOR JIC when a KPC member is arrested and shall provide those JICs with a copy of the incident report. UNMIK Police shall forward a copy of any judicial findings, including acquittals, to HQKFOR JIC.

Normal criminal justice procedures apply whenever a KPC member is suspected or charged with a criminal offence.

D. KFOR

1. KFOR – violation of the relevant State's Military Criminal Code – both administrative and criminal remedy

Applicable Law:

KFOR is immune from domestic prosecution under UNMIK Reg. 2000/47 on the status, privileges, and immunities of KFOR and UNMIK and their personnel in Kosovo.

2.4 KFOR personnel …shall be immune from jurisdiction before courts in Kosovo in respect of any administrative, civil or criminal act committed by them in the territory of Kosovo. Such personnel shall be subject to the exclusive jurisdiction of their respective sending States; and immune from any form of arrest or detention other than by persons acting on behalf of their respective sending States. If erroneously detained, they shall be immediately turned over to KFOR authorities.

Note: Minor disciplinary infractions (messy uniform, etc.) are dealt with on base by commanding officer. (Not applicable for civilians).

Evidence:

N/A

Description of Remedy:

No official information available on the process. A number of practical examples are known but do not give an indication of what course of action is likely to be taken under particular circumstances. Such examples include the following:

A KFOR soldier walks into a shop in Malishevë/Mališevo and steals several candy bars. The shop owner had no remedy and the soldiers were not disciplined.

A KFOR officer breaks into a bridal store and puts on a wedding dress while inebriated.

The shop owner had no remedy and officer was not disciplined.

A KFOR soldier raped and killed a 12-year-old girl. The soldier was taken to Germany for court-martial, found guilty and sentenced to 15 years in prison.

A KFOR soldier crashes a KFOR jeep into a civilian car while intoxicated. The civilian was compensated. The soldier lost a rank, but was not court-martialled.

2. KFOR – claims compensation

Claims for death, personal injury and the damage, destruction, expropriation of fixed and movable property

Applicable Law:

KFOR is immune from domestic prosecution under UNMIK Reg. 2000/47. However, Section 7 of UNMIK Reg. 2000/47 states: "Third party claims for property loss or damage and for personal injury, illness or death arising from or directly attributed to KFOR, UNMIK or their respective personnel and which do not arise from "operational necessity" of either international presence, shall be settled by Claims Commissions established by KFOR and UNMIK, in the manner to be provided for."

COMKFOR has promulgated a Standard Operating Procedure 3023 for Claims in Kosovo (SOP) on 22 March 2003. The SOP is binding only upon troops serving at HQ KFOR Main.

Under Section 6, each "Troop Contributing Nation [TCN] is responsible for adjudicating claims that arise from their own activities, in accordance with their own claims rules, regulations and procedures." Annex B of the SOP contains an advisory process for TCNs to follow.

Right to Appeal:

Section 7 of the SOP creates a Kosovo Claims Appeal Commission (KCAC) which is "A non-binding voluntary appeal system in which HQ KFOR Claims Office and those TCNs who wish, will participate in." Annex C elaborates on the power of the KCAC. "If a claimant disagrees with the decision of the HQ KFOR Claims Officer or the TCN Claims Officer, the claimant may appeal to the [KCAC] if he is entitled to do so." It is not clear under what circumstances a claimant would not be entitled to appeal. In order to change a decision of the TCN or HQ KFOR the KCAC's three judicial officers must reach a unanimous decision. Lastly, "The decision of the KCAC is persuasive but not final, as there is not an approved Kosovo Claims Policy -- reviewed and approved by the TCN's national governments or NATO SHAPE. Without this recognition, the KCAC's legal powers are not legally binding on either the TCN or HQ KFOR."

Evidence:

The Claims Officer will work with the claimant to ensure that all necessary information is received. (Annex A Section 4)

Police report
Two repair/replacement estimate
Proof of ownership
Copy of any insurance paperwork
Photos/diagrams of damage
Witness statements
Medical records, bills/receipts
Cadastral Land Registration Entry proving ownership of land
Proof of use of land by KFOR

Every document will be translated into English and the language of the Claims Office will be English.

Description of Remedy:

When a claim is received the Claims Assistant will log the claim into the claims database and it will be given a NATO Claim Number.

The Claims Office is responsible for investigating and adjudicating all claims against HQ KFOR. When the Claims Officer (CO) has collected all information required, the CO reviews the claim to determine whether it meets the requirements set out in UNMIK Reg. 2000/47 Section 7 (in essence to determine subject matter jurisdiction).

"To prove the claim the Claimant must prove on the balance of probabilities (51%), each element, of a claim, namely did HQ KFOR owed [sic] a duty of care; was there a breach of this duty; did damage occur; and 'but for' the acts or omissions of HQ KFOR the damage occurred. If the act or omission was caused by "operational necessity," HQ KFOR is relieved of liability." (Annex A Section 5)

If the CO determines that HQ KFOR personnel were involved and at fault, the CO will recommend to the J8 (Economics and Finance) to pay the claim. (Annex A Section 6)

The CO will work with local legal professionals to clarify any local guidelines or limitations related to the adjudication of damages. (Annex A Section 7)

If the claimant agrees with the amount, the claimant will sign a settlement agreement in full and final satisfaction of the claim and the CO will ensure that J8 pays. (Annex A Section 8). If the claimant rejects the offer, appeals to KCAC and loses the appeal unanimously, the CO settlement offer is revoked. If the KCAC decision does not unanimously reject the appeal the settlement offer remains open. (Annex C Section 12).

If the claim is rejected the refusal letter must state the legal basis for the rejection of the claim. (Annex A Section 9)

Appeals
See Applicable Law – Right to Appeal above.

The KCAC consists of three judicial officers, one from the TCN who is the subject of the appeal and two appointed by HQ KFOR Legal Adviser or by delegated authority the CO. (Annex C Section 1).

All parties will be notified 30 days before the appeal hearing. All parties may submit additional evidence up to 10 days before the hearing. The Claimant and the TCN or HQ KFOR each has 15 minutes to present their evidence and legal arguments. The KCAC has 30 minutes to question the two parties and a written decision is rendered within 15 days to the parties. (Annex C Section 3-8)

If KCAC directs a payment to be made will occur within 30 days. (Annex C Section 13)

D. Non-Discrimination

A. General Remedy I

Principle of non-discrimination
Article 13 ECHR
Article 26 ICCPR

Applicable Law:

Section 35, UNMIK Regulation 2000/45, On Self-government of Municipalities
Relevant Municipal Instructions
Chapter 9, Section 4, Article 9 (4) (2), UNMIK Regulation 2001/9, On a Constitutional Framework for Provisional Self-Government in Kosovo.
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Proof that a request was made to the appropriate authority and not complied with, such as a letter of request or refusal from the administrative body. Evidential standards provided in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

UNMIK Regulation 2000/45 and the applicable administrative law provide for the following mechanism:

a. A written complaint must be filed to the Chief Executive Officer (CEO) of the Municipality within one (1) month of the refusal. Municipalities also may have specific procedures; the onus is on the claimant to inquire. The CEO is required to respond within one (1) month (Section 35 (1-2), UNMIK Regulation 2000/45).
b. If the claimant disagrees with the decision, a complaint then can be filed with the central authority (Section 35 (3) UNMIK Regulation 2000/45). Currently, all such appeals should be filed with and coordinated by the Directorate of Administrative Affairs, which is to distribute the appeal to the appropriate "central authority" for the substantive issue. The central authority must respond within one (1) month (Section 35 (4), UNMIK Regulation 2000/45).
c. An appeal against this second-instance decision can be filed at the Supreme Court (Article 31, Law on Regular Courts). The deadline for initiating an administrative lawsuit is 30 days from the day the administrative act is served or, if the party did not receive the act, 60 days from the day it was served (Article 24, Law on Administrative Disputes).
d. A further appeal or request for extraordinary review of a court decision can be lodged against a decision in an administrative lawsuit (Article 19-20, 45-50, Law on Administrative Disputes). Either must be submitted to the competent court within 30 days of delivery of the disputed decision. (Article 46, Law on Administrative Disputes)

See also Chapter VI, Property Issues, B.2, Wrongful denial of access to cadastral/Registry information, for a description of another use of this remedy.

B. General Remedy II

Applicable law:

Section 23, UNMIK Regulation 2000/45 on Self-Government of Municipalities in Kosovo
Relevant municipal instructions
Chapter 9, Section 4, Article 9.4.2, UNMIK Regulation 2001/9, On a Constitutional Framework for Provisional Self-Government in Kosovo
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)
Administrative Instruction 2003/002, issued by the Office of the DSRSG for Civil Administration

Evidence:

Proof that a request was made to the appropriate authority and not complied with, such as a letter of request or refusal from the administrative body. Evidential standards provided in Articles 159-201, Law on Administrative Procedures.

Description of remedy:

If the Communities Committee considers that action has been taken, or is proposed to be taken, by or on behalf of the Municipal Assembly, which has violated or may violate the rights of a community or a member of a community or which is or may be prejudicial to the interests of a community, it shall refer the matter immediately to the Mediation Committee (Section 23.6 UNMIK Regulation 2000/45).

The Mediation Committee must examine all matters referred to it by the Communities Committee. It should carry out such investigations as are necessary to establish whether the rights of a community or a member of a community have been or would be violated or whether action which is or would be prejudicial to the interests of a community has been taken or proposed. It shall seek to resolve the matter by mediation. The Mediation Committee shall within 28 days submit a report on each matter to the Municipal Assembly, with recommendations as to how it considers the matter should be dealt with (Section 23.7 UNMIK Regulation 2000/45).

The Municipal Assembly shall consider each report submitted to it by the Mediation Committee and shall decide what action, or further action, to take in relation to the matter (Section 23.8 UNMIK Regulation 2000/45).

If the Municipal Assembly fails to make a decision under within 21days of the submission of the report of the Mediation Committee or if the Communities Committee is dissatisfied with the decision taken by the Municipal Assembly it may refer the matter to the Central Authority for review. It is unclear what the Central authority would be (Section 23.9 UNMIK Regulation 2000/45).

Additionally in cases of dismissals, the individuals affected can complain to the Community Committee in writing, setting out its reasons for the dismissal, within one week of the decision. (Section 5.7 Administrative Instruction 2003/002) No deadlines for response to the complaint are provided, but if the complainant is dissatisfied with the response of the Committee, he or she may refer the matter to the Deputy SRSG for Civil Administration, who shall review the complaint and recommend appropriate action to the SRSG for consideration. The complaint shall be submitted for an appeal within 30 days upon receiving the dismissal by the Committee. (Section 5.8 Administrative Instruction 2003/002)

Note: The scheme described above constitutes a mixture of a political mechanism and a legal remedy. It appears that at least in some cases it could be used as a remedy for violations of the rights of members of minority communities.

C. Anti-Discrimination Law

Applicable law:

The Anti-Discrimination Law (ADL)

Note: the ADL was promulgated on 20 August 2004.

Evidence:

Proof of direct or indirect discrimination (including cases of harassment, victimisation and segregation) based on sex, gender, age, marital status, language, mental or physical disability, sexual orientation, political affiliation or conviction, ethnic origin, nationality, religion or belief, race, social origin, property, birth or any other status.

Description of remedy:

Under the ADL, a person who alleges that he/she was directly or indirectly discriminated may file a discrimination claim with administrative bodies and courts of competent jurisdiction, which have jurisdiction over the concrete issue covered by the claim.
See Chapter IV, Non- Discrimination, A, General Remedy, Description of Remedy.

If the claimant is not satisfied with the decision or lack of decision made under the law on general administrative procedures, that person may bring a claim before the court of competent jurisdiction under the applicable law (Section 7.3 ADL)

The burden of proof in discrimination cases is on the respondent, who shall prove that there has been no breach of the principle of equal treatment. However, the claimant may still present its own evidence to defend the case of discrimination (Section 8.1-8.2 ADL).

The claimant may also use mediation or conciliation procedures without that precluding his right to file a claim with the appropriate administrative body or court of competent jurisdiction at any time. Furthermore, with the consent of either a claimant or claimants, associations, organisations or other legal entities may support the use of any judicial and/or administrative procedure by acting on their behalf (Section 7.4 -7.6 ADL).

D. Claims of discriminatory practices in public employment

Includes claims of discrimination in central and municipal hiring practices brought by employees of the central authority or municipality against the central authority or municipality.

Governing principles of the civil service enumerated in UNMIK/REG/2001/36 on the Kosovo Civil Service, Section 2 (1) (g).

I. Applicable Law:

Section 11(1), UNMIK Regulation 2001/36:
”A civil servant who is aggrieved by a decision of an employing authority in breach of the principles set out in section 2.1 of the present regulation may appeal such decision to the Board* in accordance with the provisions of the present section. Each such appeal shall be heard by a panel of three Board members, who shall act for the Board in connection with the appeal assigned to them.”
* Independent Oversight Board for Kosovo.

Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Applicable Municipal Instructions
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Proof that a request was made to the appropriate authority and not complied with, such as a letter of request or refusal from the administrative body. Evidential standards provided in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

The claimant can seek remedies first through the Independent Oversight Board (IOB) established by UNMIK Regulation 2001/36 and then through the courts.

The IOB shall hear and determine appeals against decisions of employing authorities. Before appealing to the IOB, an aggrieved civil servant or applicant must exhaust the internal appeals procedures of the employing authority concerned, unless the Board

excuses this requirement based on evidence of reasonable fear or retaliation, failure by the employing authority to resolve such internal appeal within sixty (60) days, or other good cause. (Section 11 (2) UNMIK Regulation 2001/36).

Note: The IOB shall be composed of seven members, appointed by the Special Representative of the Secretary-General in consultation with the Prime Minister. Board members shall be selected on the basis of competence, integrity and their commitment to establishing a politically impartial civil service in Kosovo that is based on merit and reflects the multi-ethnic character of Kosovo. At least three of its members shall be appointed from the Kosovo Albanian Community and at least two members from among the non-Kosovo Albanian communities in Kosovo. (Chapter III, 8 (1) and 8 (2) UNMIK Regulation 2001/36)

The IOB structure has not been implemented yet by the Ministry of Public Services as required under Section 9 of UNMIK Regulation 2001/36. In August 2004, the last board member was appointed and the OSCE was informed that the IOB will be operational as of September 2004.

Until the IOB is established, or, once it is established and after the appeal in front of it is exhausted, a discrimination claim can be filed with the Supreme Court. (See Chapter IV, Non-discrimination A. I, General Remedy, Description of Remedy c))

A further appeal or request for extraordinary review of a court decision can be lodged against a decision in an administrative lawsuit. (See Chapter IV, Non-discrimination, A. I, General Remedy, Description of Remedy d))

E. Claims of discriminatory practices in public employment under ADL

II. Applicable Law:

Section 2 (b) ADL

Evidence:

Proof of direct or indirect discrimination (including cases of harassment, victimisation and segregation) based on sex, gender, age, marital status, language, mental or physical disability, sexual orientation, political affiliation or conviction, ethnic origin, nationality, religion or belief, race, social origin, property, birth or any other status with regard to employment in the frame of public bodies of all levels.

Description of Remedy:

Under the ADL, a person who alleges that he/she suffered direct or indirect from employment discrimination by an employer that is a public body may file a claim with a higher administrative body and/or competent court, which have jurisdiction over the concrete issue covered by the claim. The claim may concern conditions for access to employment, self employment and occupation, working conditions, access to all types and to all levels of vocational guidance, vocational training and retraining (Section 4 (a), (b) and (c) ADL).

For detailed description see Chapter IV, Non- Discrimination, B, Anti-Discrimination Law.

F. Claims of discrimination in municipal hiring practices

Brought by persons seeking employment in the Municipal Administration.

Applicable Law:

Section 35, UNMIK Regulation 2000/45, On Self-government of Municipalities
Relevant Municipal Instructions
Section 23, UNMIK Regulation 2000/45 on Self-Government of Municipalities in Kosovo
Relevant Municipal Instructions
Chapter 9, Section 4, Article 9.4.2, UNMIK Regulation 2001/9, On a Constitutional Framework for Provisional Self-Government in Kosovo.
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Proof that a request was made to the appropriate authority and not complied with, such as a letter of request or refusal from the administrative body. Evidential standards provided in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

See Chapter IV, Non-discrimination, A.I, General Remedy, Description of Remedy.

G. Claims by civil servants against a discriminatory decision of a Disciplinary Board

Applicable Law:

UNMIK Administrative Direction 2003/2 Implementing UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, Section 33 (1):
"Each employing authority shall establish an Appeals Board to hear civil servant appeals against a decision of the Disciplinary Board […]"

Evidence:

Proof that a request was made to the appropriate authority and not complied with, such as a letter of request or refusal from the administrative body. Evidential standards are provided in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

The Appeals Board may hear civil servants appeals. In the case of appeals against decisions of the disciplinary board it has the following functions:
- To decide whether there are prima facie grounds to admit an appeal against a decision of a disciplinary board;
- If an appeal is admitted, to decide whether it is justified or not after going through the evidence and hearing the parties concerned;
- In case the appeal is held to be justified, to pass orders for providing appropriate relief to the appellant (Section 33 (5) UNMIK Administrative Direction 2003/2).

The Appeals Board shall complete the hearings of a case within thirty days of its receipt (Section 33 (6) UNMIK Administrative Direction 2003/2).
The Ministry of Public Services must issue necessary instructions to facilitate the functioning of the Appeals Board, further specifying the appeals procedure (Section 33 (7) UNMIK Administrative Direction 2003/2).

Note:
To date such instructions have not been issued.

H. Claims of discrimination of the use of one's language in seeking access to public services

UNMIK Regulation 2001/9, Chapter 3-4 on the Constitutional Framework for Provisional Self-Government in Kosovo

UNMIK Regulation 2000/45, Section 9.1: Members of communities shall have the right to communicate in their own language with all municipal bodies and all municipal civil servants. UNMIK Regulation 2000/45, Section 23 (4) (a)

Applicable Law:

Section 35, UNMIK Regulation 2000/45, On Self-government of Municipalities
Relevant Municipal Instructions
Section 23, UNMIK Regulation 2000/45 on Self-Government of Municipalities in Kosovo
Chapter 9, Section 4, Article 9.4.2, UNMIK Regulation 2001/9, On a Constitutional Framework for Provisional Self-Government in Kosovo
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Proof that a request was made to the appropriate authority and not complied with, such as a letter of request or refusal from the administrative body. Evidential standards provided in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

See Chapter IV, Non-discrimination, A.1, General Remedy, Description of Remedy.

I. Claims of discrimination in access to education by education officials

School attendance is compulsory from six to fifteen years
Section 1(1) Regulation 2000/51 On the Age of Compulsory School Attendance in Kosovo

Education staff shall not discriminate against pupils or others because of race, sex, sexual orientation, colour, creed, handicap, national origin, status or ancestry.
Section 5(1) Department of Education and Science Administrative Instruction, 23/2001, Code of Conduct.

I. Applicable Law:

Regulation 2002/19 On the Promulgation of a Law Adopted by the Assembly of Kosovo on Primary and Secondary Education in Kosovo
Section 35, UNMIK Regulation 2000/45, On Self-government of Municipalities
Department of Education and Science Administrative Instructions 21/2001, and 23/2001
Chapter 9, Section 4, Article 9.4.2, UNMIK Regulation 2001/9, On a Constitutional Framework for Provisional Self-Government in Kosovo.
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Proof that a request was made to the appropriate authority and not complied with, such as a letter of request or refusal from the administrative body. Evidential standards provided in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

Any person alleging conduct leading to discrimination in access to education can file a written complaint with the Designated Official of the Staff member (Section 3 (1) of Department of Education and Science Administrative Instruction 21/2001).

Education staff may be disciplined for neglect of duty or violation of obligation in letter of appointment, terms and conditions of employment, Code of Conduct or local rules issued by the Department of Education and Science. (Section 2 (2) Department of Education and Science Administrative Instruction 21/2001)

If the complaint is grounded, the Department of Education and Science may take disciplinary and/or administrative action. (Section 2 (1), Department of Education and Science Administrative Instruction, 23/2001)

If a complaint is made against a teacher or if there is evidence of conduct that may require disciplinary action that comes to the school director's personal attention, he/she must investigate the complaint and give the teacher the right to reply to the allegation(s) made. (Sections 4 (1-2) Administrative Instruction, 21/2001)

If, after investigation and after having given the teacher the right to reply, the school director decides that there has been conduct that requires disciplinary action, he/she must, prior to the disciplinary action taking effect, notify the teacher in writing of the disciplinary action. Except in the case of an oral warning, the school director must inform the teacher in writing that the teacher may appeal the disciplinary action within 10 days after receipt of such notification. A review panel must conduct the appeal hearing, and within 7 days, issue a written decision to the teacher. (Sections 4 (2) Administrative Instruction, 21/2001)

If a complaint is made against a school director or if there is evidence of conduct that may require disciplinary action that comes to the CEO's personal attention, a review panel shall be established in order to conduct an investigation. (Section 5(1) Administrative Instruction, 21/2001)

If the complainant is not satisfied with the decision taken under the above-mentioned procedures, the complainant may file an appeal with the Supreme Court. (See A. I. General Remedy, Description of Remedy c))

A further appeal or request for extraordinary review of a court decision can be lodged against a decision in an administrative lawsuit. (See Chapter IV, Non-discrimination, A. I., General Remedy, Description of Remedy d))

J. Claims of discrimination in access to education by education officials under ADL

II. Applicable Law:

Section 4 (g), the ADL.

Evidence:

Proof of direct or indirect discrimination (including cases of harassment, victimisation and segregation) based on sex, gender, age, marital status, language, mental or physical disability, sexual orientation, political affiliation or conviction, ethnic origin, nationality, religion or belief, race, social origin, property, birth or any other status in the field of education.

Description of Remedy:

Under the ADL, a person who alleges that he/she was discriminated directly or indirectly concerning his/her access to education may file a claim with a higher administrative body and/or competent court, which have jurisdiction over the concrete issue covered by the claim.
For detailed description see Chapter IV, Non- Discrimination, B, Anti – Discrimination Law.

K. Claims against arbitrary sanctions by teachers and education staff

UNMIK Regulation No. 2002/19 on the Promulgation of a Law adopted by the Assembly of Kosovo on Primary and Secondary Education in Kosovo, Section 33.3 (b) and 33.4.

Applicable Law:

Section 33 (4) UNMIK Regulation No. 2002/19 on the Promulgation of a Law Adopted by the Assembly of Kosovo on Primary and Secondary Education in Kosovo
"Teachers and other staff of educational institutions shall have the right to challenge any decision or action of a municipality or the MEST in relation to them before a court of competent jurisdiction."
(MEST stands for Ministry of Education, Science and Technology)

Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Article 7, Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Proof that a request was made to the appropriate authority and not complied with, such as a letter of request or refusal from the administrative body. Evidential standards provided in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

In case the decision or action is taken by a municipal authority, see Chapter IV, Non-discrimination, A.I, General Remedy, Description of Remedy.

In case the decision is taken by the MEST, the complainant may file an appeal with the Supreme Court (Article 7, Law on Administrative Disputes).

L. Claims of discrimination regarding access to healthcare

Applicable Law:

Section 21 of the Kosovo Health Law (KHL)
"The rights and obligations of the citizens for health care will be regulated by the special normative act."

Sections 118- 120 of the Kosovo Health Law

Note: at the time of the issuance of this Catalogue, the KHL has not been promulgated.

Currently a Law on Patients Rights is being drafted. This act once promulgated would develop the existing remedies further.

Evidence:

General evidentiary rules provided by the Civil Code and the Provisional Criminal Procedure Code will apply.
With regard to administrative sanctions, evidentiary standards provided in Articles 159-201, Law on Administrative Procedures should apply

Description of remedy:

Under the KHL, a written notice may be submitted to a health care institution or part of it in the following cases: essential violation of the code of medical ethics; essential violation of norms from technical safety and medical aspect; mistakes during the process of treatment and non-implementation of the needed health care procedures; non-compliance with necessary preconditions in order to provide health care and miss-conduct with citizens (Section 118.1 KHL).

If, despite the written notice, the health care institution does not address the irregularities/violations, the health care institution and its Director could be subjected to a punitive payment (Section 118.2 and Section 119.1 KHL).

If, despite the above-mentioned measures, the irregularities/violations persist, the health care institution shall be imposed measures of direct administration by the founder (Section118.3 KHL).

The Ministry of Health is responsible to impose termination of the working relationship as a disciplinary penalty.

Note*: It is not clear who is entitled to submit the written notice to the health care institution under Section 118.1 of the KHL. One possible interpretation could be that the persons affected by the described misconduct could submit the notice. No specific deadlines for response of the health care officials are provided. It is not clear whether the Ministry of Health will issue any secondary legislative act in order to clarify these provisions.*

Punishments with fines are provided for health institutions and health care officials in cases of administrative offences. (For detailed description of the offences see Chapter XXIII, Section 119 KHL.)

A citizen or authorized body may initiate civil or penal procedure against a health care Institution and/or a health worker in case a diagnostic or therapeutic procedure is undertaken without patient's or his/her authorised representative's consent, or in case death or permanent disability is caused due to organizational or professional mistakes or provisions related to pregnancy termination have been violated (Section 120, KHL).

M. Claims of discrimination regarding access to healthcare under the Kosovo Health Law

Applicable Law:

Section 35, UNMIK Regulation 2000/45, On Self-government of Municipalities
Relevant Municipal Instructions
Section 23, UNMIK Regulation 2000/45 on Self-Government of Municipalities in Kosovo
Chapter 9, Section 4, Article 9.4.2, UNMIK Regulation 2001/9, On a Constitutional Framework for Provisional Self-Government in Kosovo.
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

UNMIK Regulation 2000/10 On the Establishment of the Administrative Department of Health and Social Welfare and UNMIK Regulation 2000/45 On the Self-Government of Municipalities in Kosovo (provides for the devolution of authority regarding Primary Health Care, as opposed to hospitals).

Evidence:

Proof that a request was made to the appropriate authority and not complied with, such as a letter of request or refusal from the administrative body. Evidential standards provided in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

See Chapter IV, Non-discrimination, A.1, General Remedy, Description of Remedy.

N. Claims of discrimination regarding access to healthcare under the ADL

Applicable Law:

Section 4 (e), the ADL

Evidence:

Proof of direct or indirect discrimination (including cases of harassment, victimisation and segregation) based on sex, gender, age, marital status, language, mental or physical disability, sexual orientation, political affiliation or conviction, ethnic origin, nationality, religion or belief, race, social origin, property, birth or any other status with regard to healthcare.

Description of remedy:

Under the ADL, a person who alleges that he/she was discriminated directly or indirectly concerning his/her access to healthcare may file a claim with a higher administrative body and/or competent court, which have jurisdiction over the concrete issue covered by the claim.
For detailed description see Chapter IV, Non- Discrimination, B, Anti – Discrimination Law.

O. Claims of discrimination in access to social welfare

Applicable Law:

Section 11, UNMIK Regulation 2003/28, On the Promulgation of the Law Adopted by the Assembly of Kosovo on the Social Assistance Scheme in Kosovo in pertinent parts:
"11.1 An applicant who contends that an official decision made by the designated authority is incorrect may submit an appeal […]"
11.2 An applicant who remains dissatisfied with an official decision made by a designated authority […] may address a further appeal in writing to an Appeals Commission […]
11.3 An applicant directly affected by a decision made by the Doctor's Commission […] or the Appeals Commission stipulated in sub-section 11.2 shall have the right to have such decision reviewed in a competent court."

Section 35, UNMIK Regulation 2000/45, On Self-government of Municipalities
Relevant Municipal Instructions
Chapter 9, Section 4, Article 9.4.2, UNMIK Regulation 2001/9, On a Constitutional Framework for Provisional Self-Government in Kosovo.
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Proof that a request was made to the appropriate authority and not complied with, such as a letter of request or refusal from the administrative body. Evidential standards provided in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

An applicant who contends that an official decision made by the Centre for Social Work (CSW) is incorrect may submit an appeal in writing to the Director of the CSW where the application for social assistance was originally filed. Such appeals shall be submitted no later than fourteen days after the appellant receives notification of the decision. The Director shall review the appeal and notify the appellant in writing of their decision no later than twenty-one days after receiving the appeal.

An applicant who remains dissatisfied with the official decision made by the Director may address a further appeal in writing to an Appeals Commission to be appointed by the Ministry, which acts under the authority of the Ministry of Labour and Social Welfare. Such appeals shall be submitted no later than fourteen (14) days after the appellant receives notification of the appeal decision. The Appeals Commission shall review the appeal and notify the appellant in writing of his/her decision no later than twenty-one (21) days after receiving the appeal.

An applicant directly affected by a decision made by the Doctor's Commission (following a review of the medical condition of a family member claiming to be permanently disabled) or the Appeals Commission shall have the right to have such decision reviewed in a competent court. The competent court is not specified in the Regulation, but it appears that the Administrative Chamber of the Supreme Court will have jurisdiction over such cases.

P. Claims of discrimination in access to social welfare under the ADL

Applicable Law:

Section 4 (e), (f), and (i), the ADL

Evidence:

Proof of direct or indirect discrimination (including cases of harassment, victimisation and segregation) based on sex, gender, age, martial status, language, mental or physical disability, sexual orientation, political affiliation or conviction, ethnic origin, nationality, religion or belief, race, social origin, property, birth or any other status with regard to social protection, social security and humanitarian assistance.

Description of remedy:

Under the ADL, a person who alleges that he/she was discriminated directly or indirectly concerning his/her access to social assistance and/or social protection may file a claim with a higher administrative body and/or competent court, which have jurisdiction over the concrete issue covered by the claim. For detailed description see Chapter IV, Non-Discrimination, B, Anti – Discrimination Law.

IV. Victims of Crime

A. Legal Remedies available to injured parties

1. Victim of crime/Injured party– prosecution upon a motion, subsidiary or private prosecution

Note: The majority of criminal acts prescribed by the Provisional Criminal Code of Kosovo are prosecuted by the public prosecutor, who conducts prosecution of persons charged with committing criminal offences which are prosecuted *ex officio.* There are also certain categories of crimes that are prosecuted by the public prosecutor following a motion of the injured party.
Furthermore, the Kosovo Provisional Criminal Procedure Code foresees that the injured party can also undertake a subsidiary prosecution or a private prosecution.
(Articles 6, 62, 151 PCPC)

Applicable law:

Article 53 PCPC:
"Under the conditions provided for by the present Code, the injured party can file a motion for a prosecution or undertake a private prosecution or subsidiary prosecution."

Evidence:

No specific type of evidence required. Note: The private prosecutor and the subsidiary prosecutor have the same access to documents, records and articles as a public prosecutor would have. (Article 61 PCPC)

Description of Remedy:

Prosecution upon a motion
For certain criminal offences, when provided for by criminal law, the public prosecutor shall initiate criminal proceedings only upon the motion of the injured party. The motion for prosecution must be filed with the public prosecutor's office within 3 months from the date when the injured party has learned of the criminal offence and of the perpetrator. Ones such motion has been filed, the offence shall be considered as prosecuted ex officio (Articles 6, 54 (1), 55 (1) PCPC).

Subsidiary prosecution
The term "subsidiary prosecutor" refers to the injured party who, in the case where the public prosecutor finds there are no grounds to initiate or continue criminal proceedings, undertakes prosecution of those criminal offences which are prosecuted ex officio.
If the public prosecutor finds that there are no grounds for public prosecution he must inform the injured party within eight days of his decision and instruct the injured party that he/she is entitled to undertake prosecution as a subsidiary prosecutor. The injured party has eight days from the receipt of the notification to undertake or to resume prosecution, or, if the public prosecutor withdraws the indictment during the main trial, the injured party should declare his/her will immediately. The injured party may continue the case under the initial indictment or file a new one. If an injured party has not been informed about the prosecutor's decision to withdraw from prosecution he or she may declare before the competent court that he or she will resume the prosecution. Such statement has to be presented no later than three months after the prosecutor's decision to suspend the prosecution or reject the charges. The public prosecutor shall also deliver instruction as to what actions the injured party has to take to exercise his or her right to subsidiary prosecution (Articles 62, 224, 326 PCPC).

The injured party as a subsidiary prosecutor shall have the same rights as a public prosecutor, except those belonging to the public prosecutor as a public official. Notwithstanding the above, up until the end of the main trial the public prosecutor has the right to take the prosecution over from the subsidiary prosecutor (Article 65 PCPC).

Private prosecution
The term "private prosecutor" refers to an injured party who conducts the prosecution of certain less serious criminal offences for which the criminal law requires a private charge. If the criminal law requires that criminal proceedings are initiated based on a private prosecution, the private charge must be filed with the competent court within 3 months from the date when the authorised person has learned of the criminal offence and of the perpetrator (Articles 54 (1), 55 (1) PCPC).

If the injured party as a subsidiary or private prosecutor is a child or a person incapable of performing legal acts, his or her legal representative is authorised to file a private charge

or initiate subsidiary prosecution and to make all statements and take all steps which the injured party is authorised to take under the PCPC. An injured party who has reached the age of 16 is authorised to make statements and take steps in proceedings on his or her own (Articles 56, 66 PCPC).

The subsidiary prosecutor, the private prosecutor or the injured party may file an appeal against a verdict rendered in the first instance within 15 days from the date when the copy of the verdict was delivered (Articles 398 (1), 399 (1) PCPC). If it is filed in due time the appeal shall stay the execution of the judgement. (Article 398 (2) PCPC). The judgment may be challenged on all the grounds which are foreseen in Article 402 PCPC.

However, the injured party, if not acting as subsidiary or private prosecutor, may challenge a judgement only with respect to the court's decision on the punitive sanctions for criminal offences committed against life or body, against sexual integrity or against the security of public traffic and on the costs of criminal proceedings (Article 399 (3) PCPC).

2. Victims of crime/Injured party; damaged or lost property

Filing a claim under property law before a criminal or civil court. (Articles 107-118 PCPC)

Applicable law:

Article 108 (1) PCPC
An injured party has the right to make a property claim in criminal proceedings if authorised to pursue that claim in civil litigation. The victim can also file a separate property claim under property law in civil proceedings in front of a civil court.

Evidence:

General evidentiary rules apply. The court has an *ex officio* duty to collect evidence and conduct investigation necessary to making a decision if property damage has occurred in relation to the crime.
(Article 111 (1) PCPC)

Description of the remedy:

Before a criminal court:
A claim for reimbursement of damage to a property, recovery of objects or annulment of particular legal transactions, arising as a result of criminal offence, can be filed in the criminal proceedings, provided it will not considerably prolong the proceedings (Article 107 PCPC). If it is foreseeable that a property claim would considerably prolong the proceedings the court shall limit its actions to gathering data the verification of which later would be impossible or difficult (Article 111(2) PCPC).

The motion may be filed no later than the end of the main trial before the court of first instance. The person authorised to file the motion must state his or her claim specifically and submit evidence (Article 109 (2, 3) Kosovo PCPC).

The criminal court competent in the first instance will be either the Municipal Court or the District Court. The Municipal Court will have jurisdiction to adjudicate at first instance criminal offences punishable by a fine or by imprisonment of up to five years; the District Court will have jurisdiction to adjudicate criminal offences punishable by imprisonment of at least five years or by long-term imprisonment; and criminal offences for which the law has prescribed the jurisdiction of the district court (Article 21 PCPC).

In a judgement pronouncing the accused guilty the court may award the injured party the entire property claim or may award part of the property claim and refer him or her to civil litigation for the reminder. If the data collected in the criminal proceedings do not provide a reliable basis for either a complete or a partial award, the court shall instruct the injured party that he or she may pursue the entire property claim in civil litigation. If the court renders a judgement acquitting the accused of the charge or rejecting the charge or if it renders a ruling to dismiss criminal proceedings, it shall instruct the injured party that he or she may pursue the property claim in civil litigation (Article 112 (2, 3) PCPC).

Before a civil court:
The civil court competent in first instance is either the Municipal Court or the District Court

depending on the amount of the claim under property law (See Articles 26 (6) and 29(2) of the Law on Regular Courts of the Socialist Autonomous Province of Kosovo, Official Gazette SAPK 21/78).

The injured party can appeal against a judgement of the court of first instance within fifteen days from receiving a copy of the judgement (Article 348 Civil Procedure Code Official Gazette 4/77), or apply for review against a valid judgement passed in second instance within thirty days from receiving a copy of the judgement (Article 382 Civil Procedure Code).

3. Security of the injured party

Protective measures during criminal proceedings. (Article 169 (1,4) PCPC)

Applicable Law:

Article 169 (1) PCPC
"At any stage of the proceeding the (…) injured party or witness may file a written petition with a judge for a protective measure or an order for anonymity if there is a serious risk to an injured party, witness or his or her family member."

Article 169 (4) PCPC
"The judge may make an order for a protective measure for an injured party or witness where he or she determines that:
1) There exists a serious risk to the injured party, witness or his or her family member; and
2) The protective measure is necessary to prevent serious risk to the injured party, witness or his or her family member."

Evidence:

The declaration of factual allegations. Police records, testimony of the injured party or the witness. (Article 169 (2, 3) PCPC)

Description of Remedy:

The injured party may file a written petition with the court (the competence belongs to the pre-trail judge or the presiding judge) for a protective measure or an order of anonymity.

Protective measures
The court will grant the request if it determines that there exists a serious risk to the injured party, witness or their family member; and the protective measure is necessary to prevent serious risk to the injured party or witness or their family member (Article 169 (4) PCPC).

The term "serious risk" means a warranted fear of danger to the life, physical or mental health or property of the injured party, witness or a family member of an injured party or witness as an anticipated consequence of the injured party or witness giving evidence during an examination or testimony in court (Article 168 (1) PCPC).

The term "family member" means the spouse, extra-marital partner, a blood relation in a direct line, an adoptive parent, an adopted child, a brother, a sister or a foster parent (Article 168 (2) PCPC).

The court may order such protective measures as it considers necessary. Article 170 PCPC contains a non-exhaustive list of possible protection measures such as: omitting or expunging names, addresses, place of work, profession or any other data or information that could be used to identify the injured party or witness; non-disclosure of any records identifying the injured party or witness, etc.

Order of anonymity
Where such measures are insufficient to guarantee the protection of an injured party, the court may in exceptional circumstances order that the injured party shall remain anonymous to the accused and the defence counsel (Article 172 (1) PCPC).

Before making an order for anonymity, the court shall conduct a hearing, in a closed session, at which the injured party and other persons deemed necessary shall be examined. The court will issue such order only if it finds that the complete anonymity is

necessary to prevent the serious risk; the testimony of the injured party is relevant to a material issue in the case so as to make it unfair to compel the prosecution to proceed without it; the credibility of the injured party has been fully investigated and disclosed to the judge; and the need for anonymity to provide justice outweighs the interest of the defendant on knowing the identity of the injured party in the conduct of the defence (Article 172 (2, 3) PCPC).

4. Victims of minor offenses

Articles 27, 65, 68, 87, 94, 96, 111, 113, 122, 210-12 Law on Minor Offences (LMO) (Official Gazette SAPK, No. 23/79)

Applicable Law:

Article 65 LMO:
"The offence procedure shall be initiated upon the demand of an authorised organ or a damaged party."

Evidence:

No specific evidence required.

Note: Evidence in the Minor Offences procedure shall be limited only to facts which are important for establishing the material (factual) truth (Articles 66, 68 (2) LMO).

Description of Remedy:

Offence procedure
The request for initiation of the offence procedure can be submitted in writing or giving orally into minutes by authorised bodies and damaged persons to the minor offences court within one year from the day when the offence was committed (Articles 27 (1), 30 (1), 96 (1), 134 LMO).

Such request shall contain the name and address of the accused person as well as the amount of damage which is allegedly caused.

In addition the request should contain a factual description of the alleged offence including time, place, and other circumstances necessary for the offence to be more precisely determined, a legal qualification of the offence, and a proposal regarding evidence which should be disclosed. If the request does not contain all necessary data, it shall be returned to the submitter for completion within a determined time limit which shall not exceed 15 days. Non-compliance shall be considered as a waiver of the request. (Article 135 LMO)

The term "damaged person" means a person whose integrity or property rights are damaged or threatened by an offence (Article 94 (1) LMO).

The damaged person has the right to submit a request for initiation of the offence procedure, submit evidence, make proposals and file a claim for compensation of damage or recovery of things (Article 94 (1, 2) LMO). Submissions shall be made in writing, or given orally into minutes (Article 96 (1) LMO). If the submission is not understandable or does not contain all required elements, the submitter shall be called to correct or complete it within a certain time limit, which shall not exceed 15 days (Article 96 (3) LMO).

Against the first instance decision on an offence, an appeal can be lodged to the higher court for minor offences (Article 210(1) LMO). The appeal shall be lodged within 8 days from the day of the oral announcement of the decision (Article 211 LMO). The appeal delays execution of the decision, except in cases when it is otherwise prescribed by this law (Article 212 LMO).

Extraordinary legal remedy
The request submitter can also request the repetition of the offence procedure which ended by a legally valid decision within one year from the day of legal validity of the offence decision. The request for repetition shall be decided by the same court which has made the decision in the first instance (Articles 230, 231, 232 (1) LMO).

The procedure can be repeated if the decision has been based on a false document or

statement of a witness or an expert, a criminal offence committed by the judge or some other official person who has participated in the procedure, the punished person has already been punished for the same activity before a decision on the offence has been made or if new facts are revealed or new evidence is submitted which could have led to a different decision if they had been known in the previous procedure (Article 228 LMO).

Property claim in minor offence proceeding
A claim for reimbursement of damage to property, or for recovery of property taken away from him/her, arising as a result of a minor offence, can be submitted in the offence proceedings. The claim may be filed no later than the end of the main trial. The claim shall be decided in the offence procedure, provided it will not prolong the proceedings (Article 118, 119 LMO).

In the decision the court shall determine a time limit within which the sentenced person shall compensate the damage or restore the property. The time limit shall not be shorter than 15 days or longer than 3 months (Article 122 LMO).

If the offence procedure data do not provide a reliable basis to satisfy the claim, the court shall instruct the submitter that he or she may pursue the property claim in civil litigation. The same applies if the offence procedure is interrupted (Article 121 (1, 2) LMO).

Property claim before a civil court:
The civil court competent in first instance is either the Municipal Court or the District Court depending on the amount of the claim under property law (See Articles 26 (6) and 29(2) of the Law on Regular Courts, Official Gazette SAPK 21/78).

The injured party can appeal against a judgment of the court of first instance within fifteen days from receiving a copy of the judgment (Article 348 Civil Procedure Code Official Gazette 4/77), or apply for review against a valid judgment passed in second instance within thirty days from receiving a copy of the judgment (Article 382 Civil Procedure Code).

5. Victims of domestic violence/Protection Orders

Applicable Law:

Section 8.1 UNMIK Regulation 2003/12 on Protection Against Domestic Violence states:
"8.1 The court shall issue a protection order to order one or more of the measures provided for in section 2.1, if it determines that:
(a) There are grounds to believe that the respondent has committed or threatened to commit an act of domestic violence; and
(b) The issuance of the protection order is necessary to protect the safety, health or well-being of the protected party or a person who has a domestic relationship with the protected party and who is to be protected by the protection order."

Evidence:

Medical records, witnesses to the act of domestic violence, police report, etc.

Description of Remedy:

Domestic Violence is defined as any of the following acts committed in the context of a "domestic relationship": inflicting bodily injury, non-consensual sexual acts or sexual exploitation, causing the other person to fear for his or her physical, emotional or economic well-being, kidnapping, causing property damage, unlawfully limiting the freedom of movement of the other person, forcibly entering the property of the other person, forcibly removing the other person from a common residence, prohibiting the other person from entering or leaving a common residence, or engaging in a pattern of conduct with the intent to degrade the other person (Section 1.2 UNMIK Regulation 2003/12). A domestic relationship exists when two persons are engaged, married, co-habiting, sharing a primary household in common and related by blood, marriage, or adoption or are in a guardian relationship (Section 1.1 UNMIK Regulation 2003/12).There are three different types of protection orders outlined in the Regulation.

Protection Orders
A victim of domestic violence or his/her legal representative can file for a Protection Order (PO). The petition can be filed in writing or orally (Section 6.3 UNMIK Regulation 2003/12) with the municipal court which has jurisdiction over the municipality where the petitioner permanently or temporarily resides (Section 5.1 UNMIK Regulation 2003/12) and the court has to issue a decision on the order within 15 (fifteen) days (Section 7.1 UNMIK Regulation 2003/12). The court can order the following measures to protect the victim:

"(a) Prohibit the respondent from committing or threatening to commit any act of domestic violence against the protected party and/or a person with whom the protected party has a domestic relationship;
(b) Prohibit the respondent from harassing, annoying, contacting, or otherwise directly or indirectly communicating with the protected party;
(c) Prohibit the respondent from approaching within a specified distance of the protected party;
(d) Prohibit the respondent from being at the place of work of the protected party or at another specified locality;
(e) Limit the access of the respondent to the child of the protected party on such conditions as may be appropriate;
(f) Prohibit the respondent from entering or remaining in the temporary or permanent residence of the protected party, or a portion thereof, regardless of respondent's ownership or occupancy rights;
(g) Order an authorized person to accompany the protected party or the respondent to the residence of the protected party and supervise the removal of personal property belonging to that person or another specified person;
(h) Order the seizure of weapons;[…]
(j) Order the respondent to pay the rent or mortgage on the temporary or permanent residence of the protected party;[…]
(k) Order the return of the child of the protected party to the protected party;
(l) Grant temporary custody of the child of the protected party to the protected party; […]
(p)or order any other measure that is necessary to protect the safety, health or well-being of the protected party and/or a person with whom the protected party has a domestic relationship."
(Section 2.1 UNMIK Regulation 2003/12)

A petitioner or respondent can appeal against a decision for a PO within eight (8) days of the issuance of such decision (Section 11 UNMIK Regulation 2003/12).

Emergency Protection Orders
Emergency Protection Orders (EPO) offer a quicker but more temporary remedy for victims of domestic violence. The differences in the petitioning procedure and requirements are described below.

In addition to the victim or his/her legal representative the following persons can also file for an EPO: a person in a domestic relationship with the protected party, a representative of the Centre for Social Work, a Victim Advocate if the protected party consents, or a person with direct knowledge of an act or acts of domestic violence against the protected party (Section 6.2 UNMIK Regulation 2003/12).

To issue an EPO the court must find, in addition to the requirements for issuing a PO, that the respondent poses an immediate or imminent threat to the safety, health or well-being of the protected party (Section 10.1(b) UNMIK Regulation 2003/12). The court must decide on an EPO within twenty-four (24) hours of the filing of the petition (Section 9.1 UNMIK Regulation 2003/12). An EPO can contain measures listed in Section 2.1 (a) to (h) of UNMIK Regulation 2003/12.

Interim Emergency Protection Orders
Interim Emergency Protection Orders (IEPO) are issued by the on-call or acting Regional Domestic Violence Commander of UNMIK Police, outside of the working hours of the court (Section 13.2 UNMIK Regulation 2003/12). IEPOs can be requested by the same persons who can file for an EPO, but the request is to be submitted to the law enforcement authorities (the police) (Section 13.1 UNMIK Regulation 2003/12). There is no specified deadline for the Regional Domestic Violence Commander to issue an IEPO. However the measures are meant as an immediate temporary solution outside of the working hours of the court and thus an immediate decision should be expected. Only measures outlined in Section 2.1 (a) to (c) UNMIK Regulation 2003/12 can be granted by an IEPO (Section 13.2 UNMIK Regulation 2003/12). The order expires at the end of the next day that the court is in operation (Section 13.3(b) UNMIK Regulation 2003/12). To issue an IEPO the Regional Domestic Violence Commander must find that the same conditions exist for as for an EPO as outlined above (Section 13.2 UNMIK Regulation 2003/12).

B. Special remedies available for victims.

1. Victims of trafficking – assistance

Right to have an authorized representative from the initiation of the criminal proceedings if proceedings are conducted for trafficking in persons or criminal offences against sexual integrity.
Article 82 PCPC

Right to free interpreting services and legal counsel in relation to trafficking issues; right to temporary safe housing, psychological, medical and social welfare assistance
Section 10 (1), UNMIK Regulation 2001/4 on the Prohibition of Trafficking in Persons in Kosovo

Applicable Law:

No specific provisions available

Evidence:

Not specified. The Victim Assistance Coordinator would rely on the testimony of the victim, police records if any, and other information he/she might possess.
General rules of evidence applicable under the PCPC.

Description of Remedy:

To date, the Victim Assistance Coordinator scheme that is mandated by Regulation 2001/4 to provide for the described rights has not been established.

No appeals procedure is provided for in case assistance is denied.

2. Victims of trafficking - claim for restitution/ compensation

Section 6(3) UNMIK Regulation 2001/4

Applicable Law:

Section 6 (3), UNMIK Regulation 2001/4
"A reparation fund for victims of trafficking shall be established by administrative direction and shall be authorised to receive funds from, *inter alia,* the confiscation of property pursuant to Section 6 (1)."

Evidence:

Not specified in the Regulation.

Description of Remedy:

To date, a reparation fund for victims of trafficking has not been established.

3. Victims general (the injured party's rights)

The competent authority conducting the criminal proceedings shall at all stages of the proceedings consider the reasonable needs of the injured parties, especially of children, […] and victims of sexual or gender based violence
Article 78 PCPC

Applicable law:

No specific provision available

Description of Remedy:

No appeals procedure is provided in the PCPC in case of non compliance of the competent authority

B. Property Issues

A. General Property Issues

This section describes remedies related to general violations of property rights, applicable to both residential and non-residential/commercial properties. This section does not include damages to cultural objects. For specific categories of property, refer to appropriate sections.

1. Wrongful deprivation of property rights

General principles related to deprivation of property.

See other sections for remedies related to specific categories of property.

Applicable Law:

Articles 37, 70-81, Law on Basic Property Relations (Official Gazette SFRY, No. 6/80)
Articles 52, 56, 106, 185, 348, 350-57, 360, 382, 383, 388, Code of Civil Procedures (Official Gazette 4/77-1478, 36/80-1182, 69/82-1596)
Articles 29, 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)
See also Law on Non-Contested Procedure (Official Gazette SAPK, No. 42/86) when applicable.

Evidence:

Possession list and other documents proving the owner's property rights and that the property is *de facto* under the power of the defending party (Article 37(2), Law on Basic Property Relations).

Article 106(3), Code of Civil Procedure: "…the party must state the facts on which the claim is grounded, as well as the evidence, where needed." No further guidance is provided in the law.

Description of Remedy:

Two remedies are available to the claimant: self-help and judicial remedies through the civil court.

Self-help is allowed if the danger is immediate and self-help is necessary and proportionate to the circumstances (Article 76, Law on Basic Property Relations).

Judicial remedy is available within the civil procedure either in the form of:

- *judicial protection from interference* (Article 77, Law on Basic Property Relations), which expires 30 days from the date the holder learned of the disturbance but not later than one year from when the disturbance occurred; or
- *judicial protection of possession on basis of right of possession* (Article 81, Law on Basic Property Relations). No statutory limitations on this remedy exist (Article 37(2), Law on Basic Property Relations) unless specifically provided for in the law.

To initiate the judicial remedy in accordance with the Code of Civil Procedure (Code):
A complaint must be filed in writing to the competent court of first instance identifying the principle issues, facts and grounds of the claim (Article 56, 106, 185, Code). Please note that some claims may fall under non-contested procedure.
If the parties disagree with the judgment of the Court of first instance, an appeal may be lodged within 15 days of receiving the judgment, unless otherwise determined in the

Code. The appeal should be filed with the Court of first instance, see Article 348-357 of the Code as to the requirements for bringing an appeal.

Once the Court of second instance has received and decided upon the appeal, the parties can request a review of this decision by the Supreme Court within 30 days of receiving the judgment. The request of review by the Supreme Court should be filed at the Court of first instance (Articles 360, 382, 383, 388, Code). See Article 383 of the Code, for restrictions on review.

a) wrongful termination of a mortgage

Applicable Law:

See also specifically:

Article 18, 23, UNMIK Regulation 2002/21, On the Promulgation of the Law Adopted by the Assembly of Kosovo on Mortgages

Evidence:

Documentary evidence that the claimant did not fail to comply with the conditions identified by the mortgagor must be provided (Article 23.1(a), UNMIK Regulation 2002/21) or the tender and sale were not completed in accordance with the applicable law (Article 23.1(b), UNMIK Regulation 2002/21).

Description of Remedy:

Remedies available are through the civil procedure. See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy above.

Under Article 23.2, UNMIK Regulation 2002/21, the claimant must apply to the court within 30 days from the date of the sale agreement established under Article 21 of the regulation.

2. Wrongful disturbance of property rights

General principles related to disturbance, see directly below and other sections for remedies related to specific categories of property

Applicable Law:

Articles 42, 70-81, Law on Basic Property Relations (Official Gazette SFRY, No. 6/80)
Articles 52, 56, 106, 185, 348, 350-57, 360, 382, 383, 388, Code of Civil Procedures (Official Gazette 4/77-1478, 36/80-1182, 69/82-1596)
Articles 29, 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)
See also Law on Non-Contested Procedure (Official Gazette SAPK, No. 42/86)
See also, amongst others, Chapter XXIII, UNMIK Regulation 2003/25 On the Provisional Criminal Code of Kosovo, when applicable
UNMIK Regulation 2003/26 On the Provisional Criminal Procedure Code of Kosovo
Law on Minor Offences (Official Gazette SAPK, No. 23/79)
(See also Chapter V, Victims of Crime, A.2, Victims of crime/Injured party; damaged or lost property and A.4, Victims of minor offenses, Applicable Law.)

Forest or Forest land
Article 28.2, 28.3 UNMIK Regulation 2003/6, On the Promulgation of the Law Adopted by the Assembly of Kosovo on Forests in Kosovo

Evidence:

Possession list and other documents proving the owner's property rights and that the wrongful disturbance of the property has occurred.

Article 106(3), Code: "…the party must state the facts on which the claim is grounded, as well as the evidence, where needed." No further guidance is provided in the law.

See also Chapter V, Victims of Crime, A.2, Victims of crime/Injured party; damaged or lost property and A.4, Victims of minor offenses, Evidence, when applicable.

Description of Remedy:

Remedies available are through the civil procedure. See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy above.

In addition, Article 42(2), Law on Basic Property Relations, provides the property right holder with an opportunity to claim compensatory damages, which may be sought through

the civil procedure (Article 52, Code)

When qualifying as a criminal offence, a criminal procedure or minor offence procedure can be initiated.

When a property rights disturbance results from an offence a criminal procedure or minor offence procedure can be initiated. See Chapter V, Victims of Crime, A.2, Victims of crime/Injured party; damaged or lost property and A.4, Victims of minor offenses.

a) through illegal occupation/trespass

Note: The ability to seek remedy for illegal occupation expires once the conditions for acquisition of property rights through adverse possession are met. Includes specific provisions for 'privatised' socially-owned property.

In addition, disputes of trespass exclude that of right to possession, negligence or damages.

Applicable Law:

Adverse possession/illegal occupation:
Articles 28-30, 32, 46, Law on Basic Property Relations
Section 4, UNMIK Regulation 2003/13, On the Transformation of the Right of Use to Socially-owned Property
Article 259, UNMIK Regulation 2003/25 On the Provisional Criminal Code of Kosovo
UNMIK Regulation 2003/26, On the Provisional Criminal Procedure Code of Kosovo
Law on Minor Offences (Official Gazette SAPK, No. 23/79)

Trespass:
Articles 348-445, Code of Civil Procedure

Boundary disputes:
Articles 161-171, Law on Non -contested Procedures

Evidence:

Article 106(3), Code: "…the party must state the facts on which the claim is grounded, as well as the evidence, where needed." No further guidance is provided in the law.

Illegal Occupation: For a civil case, the owner/user must provide evidence that the conditions of acquisition through adverse possession have not been met (i.e. *a contrario* to Arts. 28-30, 32, 46, Law on Basic Property Relations). For a criminal case, please provide evidence as required by Part II, UNMIK Regulation 2003/26.

Boundary disputes: Data related to the owners and users of adjoining parcels of law and for parcels of land from the land record or other public land record should be provided (Article 163(2), Law on Non-Contested Procedure)

Description of Remedy:

Remedies available are primarily through the civil procedure, and criminal procedure when applicable. See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy above. Specific time limits, however, may apply.

Illegal Occupation: The remedy must be sought prior to illegal occupation transforming to acquisition through adverse possession (Article 28-30, 32, 46, Law on Basic Property Relations). Remedies through the criminal procedure also are available. Please refer to UNMIK Regulation 2003/26 or the Law on Minor Offences, as appropriate.

Trespass: A claim must be filed within 30 days from the day when the property right holder learned of the trespass and trespasser but no later than one year from when the trespass occurred.

b) through damage to property

This refers to damage

Applicable Law:

Articles 271, 291(1,3,5), 292, UNMIK Regulation 2003/25, On the Provisional Criminal Code of Kosovo
UNMIK Regulation 2003/26 On the Provisional Criminal Procedure Code of Kosovo

done to immovable property which would qualify as a criminal offence.

Articles 118-122, Law on Minor Offences (Official Gazette SAPK, No. 23/79)

Evidence:

Provide evidence as required by Part II, UNMIK Regulation 2003/26.

Description of Remedy:

The claimant can initiate a criminal procedure or minor offence procedure, as appropriate.

See also Chapter V, Victims of Crime, A.2, Victims of crime/Injured party; damaged or lost property and A.4, Victims of minor offenses, Description of Remedy.

c) through unauthorised construction (general principle)

See Section C for remedies related to specific issues of construction.

Applicable Law:

See also specifically:
Article 24-26, 42(2), 70-81, Law on Basic Property Relations (Official Gazette SFRY, No. 6/80)
Relevant portions of UNMIK Regulation 2003/30, On the Promulgation of the Law Adopted by the Assembly of Kosovo on Spatial Planning
Article 294, UNMIK Regulation 2003/25, On the Provisional Criminal Code of Kosovo
UNMIK Regulation 2003/26, On the Provisional Criminal Procedure Code of Kosovo
Law on Minor Offences (Official Gazette SAPK, No. 23/79)

Evidence:

See Chapter VI, Property Issues, A.1(a), Wrongful Deprivation of Property Rights, Evidence

Specific to this violation, *inter alia* the following must be proved:

a. Whether or not the person building was conscious that the property right may have been held by another;
b. Whether or not the property right holder was aware that another was building on his/her property;
c. Whether or not the building built is worth more than the land.

Description of Remedy:

Remedies available are through the civil procedure. See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy above.

Specific time frames in which to undertake remedies for categories of unauthorised construction are outlined in Article 23(2), 24(2), 25(5) and 26(2).

When unauthorised construction constitutes a criminal offence a criminal procedure or minor offence procedure can be initiated. See Chapter V, Victims of Crime, A.2, Victims of crime/Injured party; damaged or lost property, Description of Remedy, and A.4, Victims of minor offences, Description of Remedy.

d) through wrongful application of easements

Applicable Law:

See also specifically:
Articles 49-60, Law on Basic Property Relations

Evidence:

See Chapter VI, Property Issues, E.1(a), Wrongful Deprivation of Property Rights, Evidence

Specific to this violation, it must be proved that the easement did not meet the conditions

outlined in Articles 50-53, 58, Law on Basic Property Relations.

Description of Remedy:

Remedies available are through the civil procedure. See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy above.

C. Immovable Property Registry/ Cadastre

This section describes remedies related violations stemming from the registration, classification, and measurement of land. Such elements directly impact the nature and effect of property rights.

This area of property law still remains in flux due to the continual revising of the legal framework and to the practical impediments to full realisation of it.

1. Wrongful refusal to register immovable property rights, including mortgage right

To have full legal effect, immovable property rights must be registered appropriately. Transfers of rights have full legal effect only once they are registered (Section 3 and 7, UNMIK Regulation 2002/22, On the Promulgation of the Law Adopted by the Assembly of Kosovo on the Establishment of an Immovable Property Rights Register).

Applicable Law:

Section 4-6, UNMIK Regulation 2002/22, On the Promulgation of the Law Adopted by the Assembly of Kosovo on the Establishment of an Immovable Property Rights Register
Section 1, UNMIK Regulation 2003/27 On the Promulgation of the Law Adopted by the Assembly of Kosovo On Amendments and Additions to Law No. 2002/5 On the Establishment of an Immovable Property Rights Register
Article 7-8, UNMIK Regulation 2002/21, On the Promulgation of the Law Adopted by the Assembly of Kosovo on Mortgages
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Valid and complete documentation must be provided, such as verified contracts of sale that the claimant has the right to the immovable property (Section 3.4, UNMIK Regulation 2002/22). Evidentiary standards provided in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

Two remedies are available to the claimant: request for review of a decision and/or request for amendment to the register.

Request for reconsideration and review of a decision of the Municipal Cadastre Office (MCO)

a. A request must be filed with the relevant MCO for reconsideration of the refusal to register the change in the Register within 30 days of written notification by the MCO of the refusal (Section 4.1, UNMIK Regulation 2002/22). The MCO will make a decision within 15 days of receiving the request (Section 4.2 UNMIK Regulation 2002/22).
b. If the MCO does not reverse its refusal, a request for review of its decision can be filed with the KCA within 30 days of the receipt of the written notification of the refusal. No deadline is prescribed within which the KCA must furnish its decision.
c. After the KCA makes its decision a complaint can be filed at the Supreme Court against the decision of the MCO (Article 31, Law on Regular Courts). The deadline for initiating an administrative lawsuit is 30 days from the delivery of the decision or in case it was not received the deadline is 60 days from the day when the administrative act was served to the party in whose favour it was enacted (Article 24 of Law on Administrative Disputes).
d. A further appeal or request for extraordinary review of a court decision can be lodged

against a decision in an administrative lawsuit (Article 19-20, 45-50, Law on Administrative Disputes). Either must be submitted to the competent court within 30 days of the delivery of the disputed decision (Article 46, Law on Administrative Disputes).

Request for amendment to the register

a. Any person wishing to contest the registration of immovable property rights, may file a request with the MCO to supplement the registry with an observation/remark protesting the registration as having no legal basis or violating his/her property rights (Section 5.1, UNMIK 2002/22).
b. The same requirements and procedures for registration of rights apply to requests for an amendment to the register (Section 5.3, UNMIK Regulation 2002/22)
c. To be placed in the Registry, a competent court, HPD, or other competent body must render a decision (Section 5.4, UNMIK Regulation 2002/22)

2. Wrongful refusal to register changes in the Cadastre

The Cadastre is distinct from the immovable property rights registry. It registers primarily the technical data related to immovable property. It is also under the administrative control of the KCA. (Sections 8-11 UNMIK Regulation 2004/4 On the Promulgation of the Law on Cadastre adopted by the Assembly of Kosovo)

Applicable Law:

Sections 19-20, UNMIK Regulation 2004/4 On the Promulgation of the Law on Cadastre adopted by the Assembly of Kosovo
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Valid and complete documents including proof of property right and any required studies or data (see Section 9-13, UNMIK Regulation 2004/4). Evidentiary standards provided in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

a. A request must be filed with the relevant MCO for a review of the decision refusing to register a change in the Cadastre within 30 days of written notification by the MCO of this refusal (Section 19.1, UNMIK Regulation 2004/4). The MCO will make a decision within 30 days of receiving the request (Section 19.2, UNMIK Regulation 2004/4).
b. If the MCO does not reverse its refusal, a request for review of its decision can be filed with the Kosovo Cadastral Agency (KCA) within 30 days of receipt of the written refusal. (Section 20.1, UNMIK Regulation 2004/4). The KCA must review the MCO's decision within 30 days from the date of receiving the request (Section 20.2, UNMIK Regulation 2004/4).
c. A complaint can then be filed at the Supreme Court against the decision of the MCO (Section 20.3, UNMIK Regulation 2004/4 and Article 31, Law on Regular Courts). The deadline for initiating an administrative lawsuit is 30 days from the delivery of the decision or in case it was not received the deadline is 60 days from the day when the administrative act was served to the party in whose favour it was enacted (Article 23-24 of Law on Administrative Disputes).
d. A further appeal or request for extraordinary review of a court decision can be lodged against a decision in an administrative lawsuit (Article 19-20, 45-50, Law on Administrative Disputes). Either must be submitted to the competent court within 30 days of the delivery of the disputed decision (Article 46, Law on Administrative Disputes).

3. Wrongful denial of access to cadastral/Register information

Applicable Law:

Section 3 and 7, UNMIK Regulation 2002/22, On the Promulgation of the Law Adopted by the Assembly of Kosovo on the Establishment of an Immovable Property Rights Register,

The cadastre and the register are public documents. Section 3, UNMIK Regulation 2002/22, On the Promulgation of the Law Adopted by the Assembly of Kosovo on the Establishment of an Immovable Property Rights Register and Section 22, UNMIK Regulation 2004/4 On the Promulgation of the Law on Cadastre adopted by the Assembly of Kosovo

Central or municipal authority fails to release measurement and cadastral information such as copies of plans, descriptions, and examples of conditions, etc.

Denial of release can affect property rights when such documents are needed for transfer or other use of property for which such documents are necessary.

as amended by UNMIK Regulation 2003/27, On the Promulgation of the Law Adopted by the Assembly of Kosovo on Amendments and Additions to Law No. 2002/5 On the Establishment of an Immovable Property Rights Register
Sections 22 and 30, UNMIK Regulation 2004/4 On the Promulgation of the Law on Cadastre adopted by the Assembly of Kosovo
Chapter 4, Article 9.4.2, UNMIK Regulation 2001/9, On a Constitutional Framework for Provisional Self-Government in Kosovo
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Proof that a request was made to the appropriate authority and not complied with, such as a letter of request or refusal from the administrative body. Evidentiary standards provided in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

Under UNMIK Regulations 2002/22 and 2004/4, MCOs are under the administrative and supervisory authority of KCA and not the municipal government so neither Municipal Instructions, Statutes nor Section 35, UNMIK Regulation 2000/45 are applicable.

For wrongful denial of access to cadastral information, it appears that Section 30, UNMIK Regulation 2004/4 may apply, though it is unclear if and how parties can activate this provision. This provision empowers a KCA inspector to supervise the implementation of the law, including Section 22 which guarantees access to data for all and recommend action and recommend remedial action to be taken. KCA then can order the implementation of this recommendation. An appeal against KCA's order can be submitted to the Ministry of Public Services within 30 days from when the decision is received.

Other remedies are not specifically outlined, but the general remedies provided in the Law on Administrative Procedures and Law on Administrative Disputes would be applicable.

a. In this case, it appears that the appeal should be filed with the MCO who should pass it to the KCA, as the second-instance body (Article 238, Law on Administrative Procedures). The KCA should respond to the appeal within two months from the date of delivery (Article 246, Law on Administrative Procedures).
b. A complaint can then be filed at the Supreme Court against the decision of the MCO (Section 20.3, UNMIK Regulation 2004/4 and Article 31, Law on Regular Courts). The deadline for initiating an administrative lawsuit is 30 days from the delivery of the decision or in case it was not received the deadline is 60 days from the day when the administrative act was served to the party in whose favour it was enacted (Article 23-24 of Law on Administrative Disputes).
c. A further appeal or request for extraordinary review of a court decision can be lodged against a decision in an administrative lawsuit (Article 19-20, 45-50, Law on Administrative Disputes). Either must be submitted to the competent court within 30 days of the delivery of the disputed decision (Article 46, Law on Administrative Disputes).

See also Chapter IV, Non-Discrimination, A.I, General Remedy.

4. Erroneous measurement and classification of land in the Cadastre

Measurements and classifications are done for new or transferred parcels and to reconstruct data (Sections 14, 29, UNMIK Regulation 2004/4, On the

Applicable Law:

Section 21, UNMIK Regulation 2004/4, On the Promulgation of the Law on Cadastre adopted by the Assembly of Kosovo
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Reconstructed Data
Section 29(4)-(6) UNMIK Regulation 2004/4, On the Promulgation of the Law on Cadastre adopted by the Assembly of Kosovo

Promulgation of the Law on Cadastre adopted by the Assembly of Kosovo)

Existing Data
Sections 32(3), UNMIK Regulation 2004/4, On the Promulgation of the Law on Cadastre adopted by the Assembly of Kosovo

Land user disagrees with the results of measurement and classification by the appropriate authority.

Evidence:

A written objection to the data presented, highlighting the reasons for the objection with appropriate proofs, such as soil tests, alternate measurements is required. Evidentiary standards provided in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

General
There is no specific remedy to challenge a measurement in general, except a general provision that a correction of information that is manifestly incorrect can be made immediate if it is obvious that it is not to the detriment of any right holder. If it may be to the detriment of a right holder, then s/he shall be given an opportunity of hearing if he is known.

It is not clear who can approach the MCO to initiate such a correction, but it does appear to allow the property right holder in question to approach. For a property right holder who is affected by the correction, it is not clear what is meant by "hearing", but the claimant should refer to the Law on Administrative Procedures. See Chapter VI, Property Issues, B.3, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

N.B. Under international human rights standards, reasonable efforts to identify the affected property rights holder must be made for the correction to move forward.

Reconstructed Data
a. An objection must be filed with the appointed municipal commission responsible for the implementation of the reconstruction of the Cadastre during the 60 day period over which the edition of the reconstructed cadastral zone is on public display (Section 29.5 UNMIK Regulation 2004/4).
b. The Commission will hold a hearing and hear evidence from the party who has filed the objection. If an agreement cannot be reached at the hearing, the commission will determine a solution. Upon implementation of that solution, KCA shall then determine that the cadastral zone is reconstructed (Section 29.5 UNMIK Regulation 2004/4).
c. If the contesting property right holder has not signed an agreement, an appeal can then be filed at the Supreme Court against the decision of the KCA (Section 29.6, UNMIK Regulation 2004/4 and Article 31, Law on Regular Courts). The deadline for initiating an administrative lawsuit is 30 days from the delivery of the decision or in case it was not received the deadline is 60 days from the day when the administrative act was served to the party in whose favour it was enacted (Article 24 of Law on Administrative Disputes).
d. A further appeal or request for extraordinary review of a court decision can be lodged against a decision in an administrative lawsuit (Article 19-20, 45-50, Law on Administrative Disputes). Either must be submitted to the competent court within 30 days of the delivery of the disputed decision (Article 46, Law on Administrative Disputes).

Existing Data
a. A request to review an entry based on the present available cadastral data can be filed with the KCA. No deadline is prescribed within which the KCA must furnish its decision, but it should be within two months from the date of delivery (Article 246, Law on Administrative Procedures).
b. A further appeal can be made to the Ministry of Public Services within 15 days from the date the decision was issued (Section 32.3, UNMIK Regulation 2004/4).
c. A complaint can then be filed at the Supreme Court against the decision of the MCO (Section 20.3, UNMIK Regulation 2004/4 and Article 31, Law on Regular Courts). The deadline for initiating an administrative lawsuit is 30 days from the delivery of the decision or in case it was not received the deadline is 60 days from the day when the administrative act was served to the party in whose favour it was enacted (Article 24 of Law on Administrative Disputes).

d. A further appeal or request for extraordinary review of a court decision can be lodged against a decision in an administrative lawsuit (Article 19-20, 45-50, Law on Administrative Disputes). Either must be submitted to the competent court within 30 days of the delivery of the disputed decision (Article 46, Law on Administrative Disputes).

5. Damage caused by measurement

Applicable Law:

Section 27, UNMIK Regulation 2004/4 On the Promulgation of the Law on Cadastre adopted by the Assembly of Kosovo
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Proof that damage was incurred, and was incurred during the measurement exercise by the relevant body/organisation must be provided. The Claimant can offer as evidence pictures of the land in question, testimony of witnesses and a request that the appropriate authority visits the scene. The Claimant should produce documents establishing the monetary value of the damage. Evidentiary standards are set out in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

If the injured party wishes to obtain compensation for the damage, s/he shall present a claim to this effect before the cadastral procedure is concluded or cancelled (Section 27.1 UNMIK Regulation 2004/4).

Remedy is sought through administrative procedures applicable to administrative acts. See Chapter VI, Property Issues, B.3, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

The application for compensation should be made to the body/organisation which inflicted the alleged damage (Article 5, 49-52, Law on Administrative Procedures).

6. Inappropriate assessment of fines

Fines mainly for the following offences: failure to comply with provision to facilitate measurements, maintenance or land cadastres; failure to notify the relevant municipal authorities of changes on land or object in the land and mark visibly where changes have occurred. See Section 31.1 and 31.2 UNMIK Regulation 2004/4

Applicable Law:

Section 31, UNMIK Regulation 2004/4, On the Promulgation of the Law on Cadastre adopted by the Assembly of Kosovo.
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Evidentiary standards provided in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

Remedy is sought through administrative procedures. See Chapter VI, Property Issues, B.3, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

7. Failure to notify the property rights holder of changes to cadastre records undertaken by the MCO.

Under Section 21, UNMIK Regulation 2004/4, the MCO is to notify the land user of changes and provide a hearing when appropriate.

Applicable Law:

Section 21, UNMIK Regulation 2004/4, On the Promulgation of the Law on Cadastre adopted by the Assembly of Kosovo.
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Documentary evidence that changes have occurred without notification must be provided. Evidentiary standards provided in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

There is no specific remedy to challenge a measurement in general, except a general provision that a correction of information that is manifestly incorrect can be made immediate if it is obvious that it is not to the detriment of any right holder. If it may be to the detriment of a right holder, then s/he shall be given an opportunity of hearing if he is known.

It is not clear who can approach the MCO to initiate such a correction, but it does appear to allow the property right holder in question to approach. For a property right holder who is affected by the correction, it is not clear what is meant by "hearing", but the claimant should refer to the Law on Administrative Procedures. See Chapter VI, Property Issues, B.3, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

N.B. Under international human rights standards, reasonable efforts to identify the affected property rights holder must be made for the correction to move forward.

D. Property transfer, including expropriation

This section describes remedies for violations related to transfer of property.

Transfers involving all socially owned property are excluded, as the newly established Kosovo Trust Agency has not yet clearly defined the remaining applicable legal framework.

1. Wrongful deprivation of property rights through illegal transfer of real property

Excluding through inheritance procedures and transfers involving socially owned property.

Includes transfers done by third parties without legal standing**.**

Applicable Law:

Relevant portions of Law on Contracts and Torts (Official Gazette SFRY, No. 29/1978, 39/1985, 45/1989, 31/1993)
Articles 37, 70-81, Law on Basic Property Relations (Official Gazette SFRY, No. 6/80)
Articles 52, 56, 106, 185, 348, 350-57, 360, 382, 383, 388, Code of Civil Procedures (Official Gazette 4/77-1478, 36/80-1182, 69/82-1596),
Law on Real Estate Sale (Official Gazette SFRY, No. 43/81-3050)

Evidence:

Evidence the transfer was not done according to law must be provided and may include a possession list and other documents proving the claimant's property rights.

Article 106(3), Code: "…the party must state the facts on which the claim is grounded, as well as the evidence, where needed." No further guidance is provided in the law.

Description of Remedy:

Remedies available are through the civil procedure. See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy.

a) due to failure to comply with preferential right of first refusal

Under the Law on Transfer of Real Property, when a private ownership right over agricultural land, construction land, apartments and apartment buildings and business premises, is being transferred, it must first be offered to designated preferential right holders (Articles 19-22, Law on Transfer of Real Property).

Applicable Law:

See also specifically:
Articles 26-26a, Law on Transfer of Real Property (Official Gazette SAPK, No. 45/81, 29/86)

Evidence:

Provide proof that an offer to the preferential right holder has been made in accordance with Article 19-22, Law on Transfer of Real Property (LTRP).

See Chapter VI, Property Issues, A.1, Wrongful deprivation of property rights, Evidence.

Description of Remedy:

Remedies are available through the civil court. See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy.

Specifically, the preferential right holder may bring legal action to annul the contract and for the property to be sold to him/her under the same conditions within one year from the day when s/he became aware that the real property was sold, or within three years from the day when the contract was concluded. If however the contract was not concluded in accordance with the Law on Transfer of Real Property and the property is in possession of the buyer, then the remedy must be sought within one year from when the preferential right holder became aware of the sale (Article 26, 26a LTRP).

Note: *The extent to which this remedy is still available or applicable remains uncertain. The present UNMIK structure has not maintained many of the municipal and economic structures established under the former regime's communist system and referred to in this law. Additionally, it is highly likely that many of these procedures either have been abolished by privatisation laws passed by the former regime during the 1990's, or simply rendered moot by subsequent practice.*

2. Wrongful deprivation of property rights though wrongful inheritance decision

Applicable Law:

Article 19-20, 26, 94-137, Law on Non-Contested Procedures (Official Gazette SAPK, No. 42/86)
Articles 37, 70-81, Law on Basic Property Relations (Official Gazette SFRY, No. 6/80)
Articles 56, 106, 185, 348, 350-57, 360, 382, 383, 388, Code of Civil Procedures (Official Gazette 4/77-1478, 36/80-1182, 69/82-1596)
Articles 7, Law on Real Estate Sale (Official Gazette SFRY, No. 43/81-3050)
Articles 204-207, Law on Inheritance (Official Gazette SAPK, No. 31/74)

Evidence:

Provide evidence that the inheritance was not effected in accordance with the law (Articles cited above, Law on Non-Contested Procedure)

Article 106(3), Code: "…the party must state the facts on which the claim is grounded, as well as the evidence, where needed." No further guidance is provided in the law.

Description of Remedy:

Remedies are available through the contested procedure in the civil court. See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy.

3. Expropriation-- Wrongful deprivation of property rights

Please note that under Section 9, UNMIK Regulation 2003/13, expropriation of a leasehold over socially-owned property as defined by Section 2, or of socially-owned property itself\ shall be governed by the same provisions as those for real property.

a) Based on an inappropriate "Determination of the Common Interest"

Applicable Law:

Article 2-3d, 22-24, Law on Expropriation (Official Gazette SAPK, No. 21/78, 46/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Proof that an expropriation is not in the common interest and not necessary for the construction of objects in the common interest must be provided (Article 2, Law on Expropriation). Basic evidentiary standards are prescribed in Articles 27, Law on Administrative Disputes.

Description of Remedy:

Remedies are to be sought through an administrative lawsuit (Article 3d, Law on Expropriation).

a. A complaint can be filed at the Supreme Court against the decision of the Municipal Authorities (Article 31, Law on Regular Courts). The deadline for initiating an administrative lawsuit is 30 days from the delivery of the decision or in case it was not received the deadline is 60 days from the day when the administrative act was served to the party in whose favour it was enacted (Article 24 of Law on Administrative Disputes).
b. A further appeal or request for extraordinary review of a court's decision can be lodged against a decision in an administrative lawsuit (Article 19-20, 45-50, Law on Administrative Disputes) Either must be submitted to the competent court within 30 days of delivery of the disputed decision (Article 46, Law on Administrative Disputes)

An appeal does not suspend the procedure of expropriation.
However, if a "Determination of Common Interest" is overturned, then the subsequent "Decision on Expropriation" is overruled as well (Article 3d, Law on Expropriation).

b) Based on a wrongful "Decision" permitting preparatory work

Applicable Law:

Article 7-10, Law on Expropriation (Official Gazette SAPK, No. 21/78, 46/86)
Section 35, UNMIK Regulation 2000/45, On Self-government of Municipalities
Relevant Municipal Instructions
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Proof that a decision is not lawful in needed. Evidentiary standards are prescribed in Articles 159-201, Law on General Administrative Procedures.

Description of Remedy:

Remedy is sought through administrative procedures applicable to municipal administrative acts. Remedies provided may be detailed in Municipal Statutes/Instructions, however, at minimum, UNMIK Regulation 2000/45 and applicable law provides for the following remedy:

a. A written complaint must be filed to the CEO within one month of the decision. Municipalities also may have specific procedures; the onus is on the claimant to inquire. The CEO is required to respond within one month (Section 35 (1-2), UNMIK Regulation 2000/45).

b. If the claimant disagrees with the decision, a complaint then can be filed with the central authority (Section 35 (3) UNMIK Regulation 2000/45). Currently, all such appeals should be filed with and co-ordinated by the Directorate of Administrative Affairs, which is to distribute the appeal to the appropriate "central authority" for the substantive issue. Presently, it is unclear who the central authority is. The central authority must respond within one month (Section 35 (4), UNMIK Regulation 2000/45).

c. A claim against this second-instance decision can be filed at the Supreme Court (Article 31, Law on Regular Courts). The deadline for initiating an administrative lawsuit is 30 days from the delivery of the decision or 60 days from the day when the administrative act was served to the party in whose favour it was enacted if the party did not receive it (Article 24 of Law on Administrative Disputes).

d. A further appeal or request for extraordinary review of a court decision can be lodged against a decision in an administrative lawsuit (Article 19-20, 45-50, Law on Administrative Disputes) Either must be submitted to the competent court within 30 days of delivery of the disputed decision (Article 46, Law on Administrative Disputes)

c) Based on a wrongful "Decision on Expropriation" by the competent municipal body

Also note: If a "Determination of Common Interest" is overturned, then the subsequent "Decision on Expropriation" is overruled as well (Article 3 (d), Law on Expropriation).

Applicable Law:

Article 17, Law on Expropriation (Official Gazette SAPK, No. 21/78, 46/86)
Section 35, UNMIK Regulation 2000/45, On Self-government of Municipalities
Relevant Municipal Instructions
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Proof that a decision is not lawful is needed. Evidentiary standards provided in Articles 159-201, Law on General Administrative Procedures.

Description of Remedy:

Remedies are provided through administrative procedures applicable to municipal administrative acts. See Chapter VI, Property Issues, B.2, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

Please note: The Law on Expropriation states that the remedy must be submitted to the "second instance body for legal-property affairs" (Article 17, Law on Expropriation). Section 35, UNMIK Regulation 2000/45 supersedes any provision of any law in conflict with it (Chapter 12, UNMIK Regulation 2000/45). Thus, while it remains unclear what serves as this second instance, or central level body, the claim should be submitted to the CEO as outlined in Chapter VI, Property Issues, B.2.

Please also note: If a "Determination of Common Interest" is overturned, then the subsequent "Decision on Expropriation" is overruled as well (Article 3d, Law on Expropriation).

d) Based on failure to meet conditions of the "Decision of Expropriation" and/or the "Decision" itself would violate property rights

Applicable Law:

Articles 20, 21 as amended, 57, Law on Expropriation (Official Gazette SAPK, No. 21/78, 46/86)

Annulment of expropriation:
Section 35, UNMIK Regulation 2000/45, On Self-government of Municipalities
Relevant Municipal Instructions
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 56, 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Relevant to Disputes of Property Rights:
Articles 37, 70-81, Law on Basic Property Relations (Official Gazette SFRY, No. 6/80)
Articles 52, 56, 106, 185, 348, 350-57, 360, 382, 383, 388, Code of Civil Procedures (Official Gazette 4/77-1478, 36/80-1182, 69/82-1596),

Evidence:

Documentary proof that the user of the expropriation property has not fulfilled the conditions agreed that the rights of the expropriatee would be violated, is required. Evidentiary standards provided in Articles 159-201, Law on General Administrative Procedures. Article 106(3), Code: "…the party must state the facts on which the claim is grounded, as well as the evidence, where needed." No further guidance is provided in the law.

Description of Remedy:

Two remedies are provided in the applicable law. Firstly, the expropriatee can seek the annulment of the expropriation itself (i.e. withdraw the proposal for and annul the "Decision" of Expropriation") through administrative procedures. Secondly, if applicable, the expropriatee can also seek relief for property rights violated by the user of the expropriation (i.e. liability from property right disputes lies with the user of the expropriation, not the body authorizing it) (Article 21(8), Law on Expropriation).

Withdrawal or Annulment of Expropriation:
Remedy available through administrative procedures. Filing a claim with the first instance administrative body that issued the "Decision" (Article 21(8), Law on Expropriation) See Chapter VI, Property Issues, B.2, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

The following time limits apply.

a) The user of the expropriated property may only withdraw completely or partially from the proposal of expropriation if the "Decision" has not yet taken effect (Article 21(1), Law on Expropriation).
b) A claim for full or partial annulment must be submitted within five years of the date when the "Decision took effect. This time limit applies if the expropriatee and the user of expropriation require annulment, or if the rights of the

expropriatee are violated. (Article 21(5), Law on Expropriation)

c) If the user of expropriation did not undertake necessary works, the claim must be filed within three years of the date when the "Decision" took effect (Article 21(4) , Law on Expropriation).
d) If a complex of lands is expropriated and the user of the expropriation has not performed significant works in preparing and arranging lands, then the claim must be filed within five years of the date when the "Decision" took effect (Article 21(6), Law on Expropriation).

Related to Interference with Property Rights:
Remedy is to be sought through the civil courts (Article 21(8), Law on Expropriation). See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy.

e) Based on wrongful application of the special procedure for natural disasters and emergencies

Applicable Law:

Article 22-27, Law on Expropriation (Official Gazette SAPK, No. 21/78, 46/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Proof that:

a. The property does not fall under the region assigned by the appropriate central Kosovo authorities for the special procedure; and/or (Article 22-23, Law on Expropriation)
b. The decision is not justified by the necessity to eliminate the consequences caused by the accidents leading to the special procedure (Article 22, Law on Expropriation) is required.

Basic evidentiary standards are provided in Articles 27, Law on Administrative Disputes.

Description of Remedy:

Remedies are to be sought through an administrative lawsuit (Article 3d, 24, 27, Law on Expropriation). See Chapter VI, Property Issues, C. 3(a), Expropriation—Wrongful Deprivation of Property Rights, Description of Remedy.

According to Article 24(2) and 27(3), Law on Expropriation, an appeal does not prevent execution of the decision.

4. Expropriation—Wrongful disturbance of property rights

a) While undertaking preparatory work (normal or for emergencies)

See below for compensation issues.

Applicable Law:

Articles 7-11, Law on Expropriation (Official Gazette SAPK, No. 21/78, 46/86)
Section 35, UNMIK Regulation 2000/45, On Self-government of Municipalities
Relevant Municipal Instructions
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Provision of documentary proof that:
a. the work is not necessary for the purposes assigned (Article 7, 9, Law on Expropriation);
b. preparatory work includes construction or other similar work (Article 9(3))

Evidentiary standards are provided in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

Remedy is sought through administrative procedures applicable to administrative acts. See Chapter VI, Property Issues, B.2, Wrongful denial of access to cadastral/Registry information, Description of Remedy above

5. Expropriation—Compensation Issues

a) Inappropriate decision, or failure to agree on a "Determination of Compensation" for disturbance and/or deprivation of property rights

Applicable Law:

Article 28-48, 51-54 as amended, Law on Expropriation (Official Gazette SAPK, No. 21/78, 46/86)
Article 19, 21, 138-146, Law on Non-Contested Procedures (Official Gazette SAPK, No. 42/86)
Articles 56, 106, 185, 348, 350-57, 360, 382, 383, 388, Code of Civil Procedures (Official Gazette 4/77-1478, 36/80-1182, 69/82-1596)
Article 26, 29, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Provision of documentary evidence on the value of the property, or other evidence that the court finds necessary to determine the amount of compensation, including calling expert evidence (Article 142, Law on Expropriation). The criterion for amount of compensation is established in Article 28-48, Law on Expropriation.

Description of Remedy:

a. If an agreement on compensation cannot be reached within three (3) months from the day when the "Decision on Expropriation" is final, the municipal body responsible for legal-property affairs must deliver all acts to the competent municipal court to determine the amount of compensation. The expropriatee or user of expropriation may also apply directly to the competent municipal court if the municipal body does not act (Article 52, Law on Expropriation). The remedy is undertaken in non-contested procedure (Article 138, Law on Non-Contested Procedure).
b. An appeal against the first-instance decision suspends the decision, unless otherwise provided in law, and must be filed within 15 days from the date the decision was delivered. If the court of first instance (Municipal Court) does not amend or repeal its own decision based upon the appeal, then it shall deliver the appeal to the court of second instance (District Court, Article 29, Law on Regular Courts). (Article 19-21, Law on Non-Contested Procedures)
c. A review (extra-ordinary legal remedy) of the second-instance decision can be filed at the Supreme Court within 30 days of the delivery of the decision (Article 382-3, Code). Review does not delay execution of the final judgement of the second instance.

Note: *If a public lawyer considers that the administrative determination damages the social community, a complaint may be submitted to the competent court within 15 days of receiving the agreement on compensation, or within 6 months of the agreement. The complaint stops the payment of compensation (Article 51, Law on Expropriation). Alternatively, the public lawyer can submit a complaint against a court determination of*

compensation for the same reasons within 30 days of receiving the agreement (Article 53, Law on Expropriation). It remains unclear if these provisions remain applicable.

b) Failure to compensate as agreed in "Determination of Compensation"

Applicable Law:

Article 55, Law on Expropriation (Official Gazette SAPK, No. 21/78, 46/86)
See Chapter VI, Property Issues, C.3(d), Expropriation-Wrongful Deprivation of Property Rights based on a failure to meet the conditions, Applicable Law.

Evidence:

Provide evidence that compensation was not provided within 15 days of receiving the final decision on compensation and/or the proper interest required. See Section C. 3(d), Wrongful Deprivation of Property Rights based on a failure to meet the conditions, Applicable Law.

Description of Remedy:

See Chapter VI, Property Issues, C.3(d),Expropriation-Wrongful Deprivation of Property Rights based on a failure to meet the conditions, Description of Remedy

D. Environmental Protection

This section details general remedies related to wrongful interference in property rights stemming from environmental protection measures.

1. Wrongful interference or deprivation of property rights through Excessive or Critical Environmental Strain

If a public authority either caused Excessive or Critical Environmental Strain or was the owner of property on which this occurred, the public authority can be held liable for the environmental damage or strain. Such environmental damage or strain can interfere or deprive property right holders of full enjoyment of their rights if it prevents them from freely using or disposing of their property.

Applicable Law:

UNMIK Regulation 2003/9, On the Promulgation of the Law Adopted by the Assembly of Kosovo on Environmental Protection
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 29 and 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)
Chapter XXIV, UNMIK Regulation 2003/25, On the Provisional Criminal Code of Kosovo
UNMIK Regulation 2003/26 On the Provisional Criminal Procedure Code of Kosovo
Law on Minor Offences (Official Gazette SAPK, No. 23/79)
See also Chapter VI, Property Issues, A.1, Wrongful deprivation of property rights, Applicable Law

Evidence:

Provide documentary evidence that negligent or intentional acts or omissions of the public authority caused an Excessive or Critical Environmental Strain or Damage (Article 19 (1), UNMIK Regulation 2003/9). For administrative proceedings, see evidentiary standards provided in Articles 159-201, Law on Administrative Procedures. For court proceedings, see Article 106(3), Code of Civil Procedure.

Description of Remedy:

Administrative and judicial remedies are available (Article 5 (l), UNMIK Regulation 2003/9). Polluters or exploiters are liable for any damages and responsible for paying the costs of reducing or abating the Excessive or Critical Environmental Strain (Article 5(g), UNMIK Regulation 2003/9).

Administrative remedies can be accessed through the Environmental Inspectors, who issue decisions, inform relevant actors, and help initiate other actions, including the assessment of penalties (Articles 47, UNMIK Regulation 2003/9). When it is proved that such an infringement has occurred, the public authority shall be required to undertake reasonable measure to return the area to a safe condition or, if activities are ongoing, to undertake reasonable measures to ensure these activates comply with the law.

Judicial remedies can be sought through the civil and criminal procedure. See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy for civil procedure. For criminal procedures, see Chapter V, Victims of Crime, A.2, Victims of crime/Injured party; damaged or lost property and A.4, Victims of minor offenses.

2. Wrongful interference or deprivation of property rights through environmental protection measures

This remedy is applicable If environmental protection measures are ordered

Applicable Law:

UNMIK Regulation 2003/9, On the Promulgation of the Law Adopted by the Assembly of Kosovo on Environmental Protection
See also Chapter VI, Property Issues, A.1, Wrongful deprivation of property rights, Applicable Law

Evidence:

which interfere or deprive a property rights holder of full enjoyment of their rights and are unreasonable or disproportionate to the requirements to achieve effective environmental protection.	Prove that the environmental protection measures which interfere with property rights are unreasonable or disproportionate to environmental protection needs. See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy.
	Description of Remedy: *General undue infringement of property rights by environmental protection measures* Remedy can be sought through the civil court. See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy. *Remedial protection measures ordered unduly infringe on property rights* If a property right holder has been found in violation of environmental protection standards and is required to present the Minister with a plan outlining remedial environmental protection measures, but disagrees with modifications to the plan which the Minister has made, may challenge them in the civil court (Article 19(3), UNMIK Regulation 2003/9). See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy.
	Applicable Law:
3. Wrongful infringement of property rights through a decision of Environmental Inspectors	Article 3, 42-47, UNMIK Regulation 2003/9, On the Promulgation of the Law Adopted by the Assembly of Kosovo on Environmental Protection UNMIK Regulation 2000/45, On Self-Government of Municipalities in Kosovo Applicable Municipal Instructions Law on Administrative Procedures (Official Gazette SFRY, No. 47/86) Law on Administrative Disputes (Official Gazette SFRY, No. 4/77) Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78
	Evidence: Provide proof that the decision is unreasonable, groundless, or arbitrary. See evidentiary standards provided in Articles 159-201, Law on Administrative Procedure
	Description of Remedy: *Decision of a Municipal Environmental Inspector* a. A complaint against a decision of a Municipal Environmental Inspector can be filed within one month of the decision with the CEO (Article 3, 47(2), UNMIK Regulation 2003/9 and Section 35(1), UNMIK Regulation 2000/45). Municipalities also may have specific procedures; the onus is on the claimant to inquire. The CEO is required to respond within one month (Section 35(1-2), UNMIK Regulation 2000/45). b. If the claimant disagrees with the decision, a complaint then can be filed with the Ministry on Environment and Spatial Planning (Article 47 (3), UNMIK Regulation 2003/9 and Section 35(3), UNMIK Regulation 2000/45). The Ministry must respond within one month (Section 35(4), UNMIK Regulation 2000/45). c. A claim against the Ministry decision can be filed at the Supreme Court (Article 47(4), UNMIK Regulation 2003/9 and Article 31, Law on Regular Courts). The deadline for initiating an administrative lawsuit is 30 days from when the administrative act is served or 60 days from when the administrative act was served to the party in whose favour it was enacted if the party did not receive it (Article 24, Law on Administrative Disputes). d. A further appeal or request for extraordinary review of a court decision can be lodged against a decision in an administrative lawsuit (Article 19-20, 45-50, Law on Administrative Disputes) Either must be submitted to the competent court within 30 days of delivery of the disputed decision (Article 46, Law on Administrative Disputes) *Decision of a central-level Environmental Inspector* Remedy can be sought through the procedure described immediately above, but starting from point b, filing with the Ministry on Environment and Spatial Planning.

4. Wrongful denial of Environmental Consent

An Environmental Consent is required when an Environmental Impact Assessment is required for a planned construction. It is an authorisation issued by the Ministry on Environment and Spatial Planning allowing construction on the property in question, when an Environmental Impact Assessment is favourable to the planned construction (Article 2, 20-1, UNMIK Regulation 2003/9)

For details on when an Environmental Impact Assessment is required, see Article 20, UNMIK Regulation 2003/9)

Applicable Law:

Article 20-1, UNMIK Regulation 2003/9, On the Promulgation of the Law Adopted by the Assembly of Kosovo on Environmental Protection
See also Chapter VI, Property Issues, A.1, Wrongful deprivation of property rights, Applicable Law

Evidence:

Prove that the denial was arbitrary, capricious, made for illicit purpose, or not based on sound science or applicable environmental standards (Article 21.4, UNMIK Regulation 2003/9) Or prove that the Environmental Consent was not required because an Environmental Impact Assessment was not required (Article 20, UNMIK Regulation 2003/9 for requirements).

Description of Remedy:

Remedy can be sought through the civil courts (Article 21.4, UNMIK Regulation 2003/9). See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy.

5. Wrongful denial of Environmental Permit

An Environmental (Operational) Permit is required for the operation of constructed facilities, installations and machinery that have been subject to an Environmental Impact Assessment (Article 2, 22, UNMIK Regulation 2003/9).

Applicable Law:

Article 22, UNMIK Regulation 2003/9, On the Promulgation of the Law Adopted by the Assembly of Kosovo on Environmental Protection
See also Chapter VI, Property Issues, A.1, Wrongful deprivation of property rights, Applicable Law

Evidence:

Prove that the denial was unfounded and that the objects do not pollute or endanger the environment. Or prove that the Environmental Permit was not required because an Environmental Impact Assessment was not required (Article 20, UNMIK Regulation 2003/9 for requirements).

Description of Remedy:

Remedies are available through the civil courts (Article 5(l), UNMIK Regulation 2003/9). See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy.

6. Wrongful denial of Environmental Authorisation

Applicable Law:

Article 23, UNMIK Regulation 2003/9, On the Promulgation of the Law Adopted by the Assembly of Kosovo on Environmental Protection
See also Chapter VI, Property Issues, A.1, Wrongful deprivation of property rights, Applicable Law

Evidence:

Prove that the denial was unfounded. Or prove that the Environmental Authorisation was not required because an Environmental Impact Assessment was not required (see Article 20, UNMIK Regulation 2003/9 for requirements).

Description of Remedy:

Remedies are available through the civil courts (Article 5(l), UNMIK Regulation 2003/9). See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy.

E. Spatial Planning

This section details general remedies related to the drafting and implementation of spatial plans.

1. Wrongful interference or deprivation of property rights through a decision approving municipal spatial plans.

Three types of municipal spatial plans are drafted—municipal development plans, urban development plans, and urban regulatory plans.

Applicable Law:

UNMIK Regulation 2003/30, On the Promulgation of the Law Adopted by the Assembly of Kosovo on Spatial Planning
See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Applicable Law.

Evidence:

See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Evidence.

Description of Remedy:

Municipal spatial plans are approved by the Municipal Assembly and therefore subject to judicial review. See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy.

Note: UNMIK Regulation 2003/30 gives the Ministry of Environment and Spatial Planning responsibilities to review, monitor and harmonise the municipal planning process and ensure compliance with planning procedures (Article 5). It is not clear, however, if the Ministry could provide relief for violations of property or associated rights.

F. Construction on Land

This section describes remedies for construction related issues applicable to both residential and non-residential/commercial property. For remedies specific to categories of property, please see the relevant section.

1. Unauthorised construction by a person or entity which is not the property rights holder (general principles)

Applicable Law:

See Chapter VI, Property Issues, A. 2(b), Wrongful Disturbance of Property Rights through unauthorised construction, Applicable Law.

Evidence:

See Chapter VI, Property Issues, A. 2(b), Wrongful Disturbance of Property Rights through unauthorised construction, Evidence.

Description of Remedy:

See Chapter VI, Property Issues, A. 2(b), Wrongful Disturbance of Property Rights through unauthorised construction, Description of Remedy.

2. Wrongful denial of construction permit or legalization of construction (general principles)

Applicable Law:

Section 4, 6, UNMIK Regulation 2000/53, On Construction in Kosovo
Relevant portions of UNMIK Regulation 2003/30, On the Promulgation of the Law Adopted by the Assembly of Kosovo on Spatial Planning
Section 35, UNMIK Regulation 2000/45, On Self-government of Municipalities
Relevant Municipal Instructions
Section 4, Article 9.4.2, UNMIK Regulation 2001/9, On a Constitutional Framework for Provisional Self-Government in Kosovo.
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)
Other applicable laws include those in force for urban planning and development, including Law on Construction of Annexes to Buildings and Conversion of Common Premises into Apartments (Official Gazette SAPK, No. 14/88).
See also Chapter VI, Property Issues, F.2, Applicable Law, for non-residential property.

Evidence:

Must prove that requirements to obtain the permit have been met. Prove that:

a. all documentation required within the appropriate timeframes has been provided, or provide a reasonable justification for failure to comply;
b. there has been compliance with substantive requirements such as urban plans, technical, safety and environmental requirements and other requirements as determined within the relevant Municipal instructions.

Evidentiary standards provided in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

Many remedies are provided in Municipal Instructions. However, at a minimum, a remedy

is sought through administrative procedures applicable to municipal administrative acts. See Chapter VI, Property Issues, B.3, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

Seeking a remedy does not suspend enforcement of a sanction (Section 6 (3) UNMIK Regulation 2000/53)

3. Wrongful denial of urban permit

Under UNMIK Regulation 2003/30, an urban permit is issued to authorise construction on a plot. A construction permit is that authorising the technical specifications of a construction structure itself.

Applicable Law:

Articles 24, 26, 27, UNMIK Regulation 2003/30 , On the Promulgation of the Law Adopted by the Assembly of Kosovo on Spatial Planning
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Prove that the requirements for the issuance of the permit has been met, specifically that:

a. all documentation required has been provided within the appropriate timeframes, or provide a reasonable justification for failure to comply;
b. there has been compliance with substantive requirements such as urban plans, technical, safety and environmental requirements and other requirements as determined within the relevant Municipal instructions.

Description of Remedy:

a. A complaint can be filed with the Ministry of Environment and Spatial Planning within 15 days of receiving the decision (Article 27.3, UNMIK Regulation 2003/30), or if the decision is not passed within one month from when the request was filed (Article 218, Law on Administrative Procedures). The Ministry should issue a decision within 30 days from the date of the appeal (Article 27.3, UNMIK Regulation 2003/30).
b. A complaint can be filed at the Supreme Court against the decision of the Municipal Authorities (Article 31, Law on Regular Courts). The deadline for initiating an administrative lawsuit is 30 days from the delivery of the administrative act, or 60 days from the day when the administrative act was served to the party in whose favour it was enacted if the party did not receive it (Article 24, Law on Administrative Disputes).
c. A further appeal or request for extraordinary review of a court's decision can be lodged against a decision in an administrative lawsuit (Article 19-20, 45-50, Law on Administrative Disputes). Either must be submitted to the competent court within 30 days of delivery of the disputed decision (Article 46, Law on Administrative Disputes).

4. Wrongful application of sanctions (including removal or demolition) for violating terms and conditions of issued construction permit

Applicable Law:

Section 5, UNMIK Regulation 2000/53, On Construction in Kosovo,
as well as applicable law outlined directly above.

Evidence:

Prove that the sanction is unlawful or unjustified, i.e. that one has not violated the terms of the permit. Evidentiary standards provided in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

See Chapter VI, Property Issues, F.2, Wrongful denial of construction permit, Description of Remedy.

5. Wrongful determination of risk to public health, safety or security engendering actions interfering with property rights

Applicable Law:

Section 7, UNMIK Regulation 2000/53, On Construction in Kosovo
As well as applicable law outlined directly above.

Evidence:

Prove that the sanction is unlawful or unjustified, i.e. that one has not violated the terms of the permit. Evidentiary standards provided in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

Remedy is sought through administrative procedures applicable to municipal administrative acts. See Chapter VI, Property Issues, B.2, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

G. Residential Property Issues

This section describes remedies specific to residential property, please refer to above sections for other issues.

Please note that remedies which conflict or are not clearly applicable in light of UNMIK Regulations 1999/23 and 2000/60 are omitted from this section. Until HPCC delegates otherwise, the remedies outlined in these regulations are in its exclusive jurisdiction.

In addition, remedies related to housing reconstruction assistance are not included in this section due to their quasi-legal and fluid nature at this time.

1. Wrongful deprivation of residential real property rights (including occupancy rights)

a) between 23 March 1989 and 24 March 1999, as a result of legislation which is discriminatory in its application or intent.

Also known as HPCC "Category A" claims

Applicable Law:

Section 1.2 (a), 2.5, 2.7 UNMIK Regulation 1999/23, On the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission (HPD/CC)

Section 2.2, 3, 4, 7-10, 14, 19-22, 25, UNMIK Regulation 2000/60, On Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission

Evidence:

Evidence, unless specifically requested, is to be in the form of written submissions, including the Claims Form, documentary evidence (Sections 8.1-2, 19.1-3, UNMIK Regulation 2000/60). Originals or verified copies of documents should be presented. Sources of evidence include: courts, cadastre, municipal bodies and public housing enterprise and allocation right holders. HPD/CC has a pamphlet further outlining the types of evidence acceptable.

HPCC may be guided but is not bound by the rules of evidence applied in local courts in Kosovo. HPCC may consider any reliable evidence, which it considers relevant to the claim, including evidence presented by HPD concerning the reliability of any public record." (Section 21.1, UNMIK Regulation 2000/60)

Description of Remedy:

Note: This remedy is no longer available to new claimants as the deadline for

submission of claims passed on 1 July 2003.

a. Claimant must have filed a claim with the HPCC through the relevant office of the HPD prior to the 1 June 2003 deadline. (The deadline was extended in November 2002.) The claim must have been submitted by the natural person falling under the claims category, a family member, or a legally authorised representative. [When filing the claim all relevant documentation should be presented and an interview by a Claims Registration Officer will be conducted.]
b. All interested parties identified in the claims form will be notified of the claim and given 14 days to indicate their intention to participate. A responding party will receive a copy of the claim and s/he will have 30 days to respond to the claim. The claimant or other relevant parties have 30 days to respond to any matter raised in the reply. Deadlines may be extended or dispensed with at the discretion of HPD.
c. If not rejected in writing by the HPD as falling manifestly outside the HPCC's jurisdiction, the HPD will attempt to settle claims amicably (Section 10.1, UNMIK Regulation 2000/60). If unable to do so, then the HPD will refer any such claim to the HPCC (Section 10.4, UNMIK Regulation 2000/60) [Rejection of a claim by HPD may be appealed to HPCC (Section 10.4, UNMIK Regulation 2000/60)]
d. If a party disagrees with a HPCC decision, s/he has 30 days from notification of the decision to submit a request for reconsideration (Section 25, UNMIK Regulation 2000/60). The request must be submitted to the HPD (Section 14.1, UNMIK Regulation 2000/60). No further appeal is provided (Section 2.7, UNMIK Regulation 1999/23).

Note: HPCC retains exclusive jurisdiction over such claims until such time as it delegates authority back to the regular courts (Section 2.5, UNMIK Regulation 1999/23)

b) between 23 March 1989 and 13 October 1999, for those who entered into informal transactions of residential property on the basis of free will of the parties but were unlawful under existing law.

Also known as HPCC "Category B" claims.

Applicable Law:

Section 1.2(b), 2.5, 2.7 UNMIK Regulation 1999/23, On the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission (HPD/CC)

Section 2.3-4, 3, 7-11, 14,19-22, 25 UNMIK Regulation 2000/60
On Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission

Evidence:

See Chapter VI, Property Issues, E. 1(a), Wrongful Deprivation of Residential Property Rights, Evidence section.

Description of Remedy:

The remedies below are no longer available to new claimants as the deadline for submission of claims passed on 1 July 2003

See Chapter VI, Property Issues, G. 1(a), Wrongful Deprivation of Residential Property Rights, Description of Remedy.

In addition to the remedy described above, "Category B" may enjoy an additional option if the claim is uncontested and the HPD is satisfied there is sufficient evidence that the claimant acquired the property right through an informal transaction (Section 11, UNMIK Regulation 2000/60). If the HPD is satisfied, it may order the registration of the informal transaction in the appropriate public record.

Such an order, however, is not a binding decision on property rights and does not prejudice the right of any person to make a further claim to the HPD under Section 1.2, UNMIK Regulation 1999/23. However, any such further claim must be made within 30 days of learning of the Directorate's order but not later than one year from the date of the order.

Note: HPCC retains exclusive jurisdiction over such claims until such time as it delegates authority back to the regular courts. (Section 2.5, UNMIK Regulation 1999/23)

c) through a rejection by HPD of a claim for being manifestly outside HPCC's jurisdiction rejection of a request for reconsideration of a HPCC decision.

Applicable Law:

Section 1.2, 2.5, 2.7 UNMIK Regulation 1999/23, On the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission (HPD/CC)

Section 2, 3, 5-10, 14, 25 UNMIK Regulation 2000/60, On Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission

Evidence:

See Chapter VI, Property Issues, E. 1(a), Wrongful Deprivation of Property Rights, Evidence section.

Reconsideration of an HPCC decision [or HPD rejection] must be based upon (a) legally relevant evidence, which was not considered during the adjudication the claim, or (b) the ground that a material error in the application of UNMIK Regulation 2000/60 occurred.

Description of Remedy:

Remedies available depend on the type of rejection:

Rejection of a Claim by HPD
If HPD rejects a claim, finding that it manifestly falls outside of the HPCC's jurisdiction (Section 10.3, UNMIK Regulation 2000/60), then the claimant can file for reconsideration to the HPCC through the HPD (Section 10.4, UNMIK Regulation 2000/60). No time limit for filing the request appears to be established in Section 10, but it appears that the time limit established in Section 14.1 applies to HPD rejections--30 days from notification of the rejection decision. The decision on reconsideration is final and binding. (Section 2.7, UNMIK Regulation 1999/23).

Rejection of a Request for Reconsideration
No remedy is available (Section 25.2, UNMIK Regulation 2000/60; Section 2.7, UNMIK Regulation 1999/23)

d) through interference with occupancy rights to a socially owned apartment by an entity other than HPCC or without the consent of the HPD or occupancy right holder.

While other applicable laws, such as the Law on Housing Relations, have provisions relating to this violation, the remedy for wrongful termination lies with HPCC (Section 5,6, UNMIK Regulation 2000/60). This does not prevent the competent court from determining the substantive issues, only the enforceability of the remedy itself.

Applicable Law:

Section 1.2, 2.5, 2.7 UNMIK Regulation 1999/23, On the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission (HPD/CC)

Section 2.2, 3, 5-11, 14,19-22, 25 UNMIK Regulation 2000/60
On Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission

Evidence:

See Chapter VI, Property Issues, E. 1(a), Wrongful Deprivation of Property Rights, Evidence section.

Description of Remedy:

File a complaint with the HPCC through the HPD. No occupancy right to a socially owned apartment can be terminated without either the consent of the occupancy right holder, HPD, or an order of the HPCC. The procedure and time limits are not outlined (Section 6, UNMIK Regulation 2000/60).

A person who purchased an apartment from the allocation right holder in accordance with the Law on Housing after 23 March 1989 may not transfer the apartment to another person unless it is part of an amicable settlement of an HPCC claim (Section 5 UNMIK

Regulation 2000/60).

e) specifically of occupancy rights, following a divorce.

Applicable Law:

Article 16 and 16(a), Law on Housing Relations (LHR) (Official Gazette SAPK, 11/83, 29/86, 42/86)
Articles 37, 70-81, Law on Basic Property Relations (Official Gazette SFRY, No. 6/80)
Articles 56, 106, 185, 348, 350-57, 360, 382, 383, 388, Code of Civil Procedures (Official Gazette 4/77-1478, 36/80-1182, 69/82-1596)
Articles 154-160, Law on Non-contested Procedures (Official Gazette SAPK, No. 42/86) (extra-judiciary procedure)
Article 26, 29, 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Note: Sections 5-6, UNMIK Regulation 2000/60 do not appear to be applicable, except when the termination is implemented.

Evidence:

Provide proof that:
a) one of the former spouses exchanged the apartment without the agreement of the other spouse (Art 16 (2) LHR); or
b) the former spouses could not agree on who would move into which apartment in case of exchange for two dwelling units (Art 16 (2) LHR); or
c) the former spouse who vacated the apartment did not received proper compensation (Art 16a (2) LHR); or
d) the circumstances were not properly taken into consideration when deciding which spouse would remain the occupancy right holder (Art 16 (4) LHR); or
e) the former spouse who ceased to be the occupancy right holder did not vacate the apartment (Art 16a (2) LHR).

Description of Remedy:

If agreement cannot be reached, then a remedy can be sought through non-contested procedures. See Chapter VI, Property Issues, C.5 (a), Expropriation—Compensation Issues, Description of Remedy.

It appears that if and when an occupancy right is to be terminated, it must meet with either the consent of the occupancy right holder, HPD, or an order of HPCC (Section 5-6, UNMIK Regulation 2000/60).

f) specifically occupancy rights, following death of the occupancy right holder.

Applicable Law:

Arts 17-8, Law on Housing Relations (Official Gazette SAPK, 11/83, 29/86, 42/86)
Article 19-20, 26, 94-137, Law on Non-Contested Procedures (Official Gazette SAPK, No. 42/86)
Articles 37, 70-81, Law on Basic Property Relations (Official Gazette SFRY, No. 6/80)
Articles 56, 106, 185, 348, 350-57, 360, 382, 383, 388, Code of Civil Procedures (Official Gazette 4/77-1478, 36/80-1182, 69/82-1596)
Article 26, 29, 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)
Note: Sections 5 -6, UNMIK Regulation 2000/60 do not appear to be applicable, unless the allocation right holder wishes to terminate the occupancy right.

Evidence:

If the allocation right holder attempts to terminate, the claimant must prove that:
a) the occupancy right holder, who is a family household member abided by the conditions outlined in Article 17(2), LHR;
b) s/he has not resolved their housing needs otherwise (Article 17(3), LHR);
c) s/he has notified the allocation right holder within 30 days that s/he was allocated the apartment for use (Article 18(5), LHR); or,
d) the allocation right holder did not file an action to terminate the rights with the

competent body within 3 months of being notified of the occupancy right holders death and no later than 3 years after his/her death (Article 18(3), LHR).

-or-

If involved in an inheritance dispute, the claimant must prove that s/he is the rightful heir to the occupancy right holder and should not have had the right terminated. See Chapter VI, Property Issues, A.1(a), Wrongful Deprivation of Property Rights, Evidence

Description of Remedy:

If agreement cannot be reached, then a remedy can be sought through non-contested procedures. Please note that a non-contested procedure can be transferred into a contested procedure (Article 125, Law on Non-Contested Procedures). See Chapter VI, Property Issues, C. 5 (a), Expropriation—Compensation Issues, Description of Remedy.

It appears that if and when an occupancy right is to be terminated, it must meet with either the consent of the occupancy right holder, HPD, or an order of HPCC (Sections 5-6, UNMIK Regulation 2000/60).

g) specifically of occupancy rights, based on a lease of a socially-owned apartment

Leases of socially-owned apartments are allowed under Section 6(c), UNMIK Regulation 2000/60.

Applicable Law:

Articles 74-78, Law on Housing Relations (Official Gazette SAPK, No. 11/83, 29/86, 42/86) appears to remain applicable.
Relevant parts of Law on Contract and Torts (Official Gazette SFRY, No. 29/1978, 39/1985, 45/1989, 31/1993)
Articles 37, 70-81, Law on Basic Property Relations (Official Gazette SFRY, No. 6/80)
Articles 56, 106, 185, 348, 350-57, 360, 382, 383, 388, Code of Civil Procedures (Official Gazette 4/77-1478, 36/80-1182, 69/82-1596)
Article 26, 29, 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Refer to Article 74-77, Law on Housing Relations for *a contrario* criteria. See Chapter VI, Property Issues, A.1(a), Wrongful Deprivation of Property Rights, Evidence

Description of Remedy:

Remedies available are outlined in Article 75-77, Law on Housing Relations, and subsequently through the civil procedure (Article 78, Law on Housing Relations). See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy.

h) due to refusal to register a sale in a Specific Geographical Area (SGA)

As determined under UNMIK Regulation 2001/17 and rendered by the UN Municipal Administrator

*If contract of sale is located in an SGA, then the competent court cannot verify the contract without proof that the UN Municipal Administrator has

Applicable Law:

Sections 3, 6-7, UNMIK Regulation 2001/17, On the Registration of Contracts for the Sale of Real Property in Specific Geographical Areas of Kosovo

Evidence:

A request for reconsideration may be supported with additional evidence or information indicating that the circumstances justifying the prior decision were assessed wrongly, or no longer exist (Section 6.1 UNMIK Regulation 2001/17).

The reasons upon which a refusal may be based are outlined in Section 3, UNMIK Regulation 2001/17, and include that a transaction was carried out under duress, the sale price was unrealistic, the source of funds are questionable, or the sale would be detrimental to the security situation of other minority owners or is related to a systematic attempt to alter the ethnic balance within the area.

registered the sale (Section 4, UNMIK Regulation 2001/17).

Description of Remedy:

a. File a request in writing to the Municipal Administrator to reconsider his/her decision made under Section 3 UNMIK Regulation 2001/17. The request must be made within 30 days of the refusal (not notification). Within 30 days of receiving the request for reconsideration, the Municipal Administrator must issue a final decision.
b. If the claimant disagrees with the rendered decision, an appeal against the decision may be lodged with a three judge panel designated by the SRSG for a judicial review (including compliance with formal requirements). The appeal must be submitted in writing within 60 days from the date on which the Municipal Administrator's decision not to register the contract becomes final. No further appeal or time frames for response provided. (Sections 6-7, UNMIK Regulation 2001/17)

Note: The regulation does not provide enough details regarding the procedure for reconsideration and the appeal procedure, for example, with whom is the appeal against a final decision should be filed. The matter is currently discussed at the central level to provide municipalities with a more precise procedure.

i) after 24 March 1999 (or 13 October 1999 for informal transactions), for claims of deprivation not falling into one of the above categories

Applicable Law:

See Chapter VI, Property Issues, A.1 for applicable law related to deprivation of property. For socially-owned apartments falling under this category, ensure that, if the property right was acquired after 13 October 1999, it does not fall foul of Section 6, UNMIK Regulation 2000/60.

Evidence:

See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights.

Description of Remedy:

Remedies available are through the civil procedure. See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy above.

2. Wrongful disturbance of residential real property rights (including occupancy rights)

a) acquired before 24 March 1999 and where the property right holders does not now enjoy possession of the property and have not voluntarily disposed of the property or the rights then acquired. [Illegal occupation]

Also known as HPCC "Category C" claims.

Applicable Law:

Section 1.2 (c), 2.5, 2.7 UNMIK Regulation 1999/23, On the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission (HPD/CC)

Section 2.5-6, 3, 4, 7-10, 14, 19-22, 23, 25, UNMIK Regulation 2000/60
On Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission

Evidence:

See Chapter VI, Property Issues, E.1 (a), Wrongful Deprivation of Residential Property Rights, Evidence section.

Description of Remedy:

The following remedy is no longer available to new claimants as the deadline for submission of claims passed on 1 July 2003.

See Chapter VI, Property Issues, E.1 (a), Wrongful Deprivation of Residential Property Rights, Description of Remedy.

In addition to the remedy described above, any uncontested "Category C" claim can be considered under a summary procedure of the HPCC (Section 23, UNMIK Regulation 2000/60). If the HPCC is satisfied that there is evidence that the claimant was in uncontested possession of the property prior to 24 March 1999, then it may issue an order for recovery of possession of the property.

Note: HPCC retains exclusive jurisdiction over such claims until such time as it delegates authority back to the regular courts (Section 2.5, UNMIK Regulation 1999/23). Also, note that under Section 1.1, UNMIK Regulation 1999/23 and Section 12.2(e), UNMIK Regulation 2000/60, HPD may place a property under its administration at the request of the owner or property right holder in order to provide for the housing needs of displaced persons and refugees. This is not a remedy to interference with property rights. During administration, the rights of possession of the property right holder or the owner are held in suspension (Section 12.3, UNMIK Regulation 2000/60).

b) acquired after 24 March 1999 and where the property right holders does not now enjoy possession of the property and have not voluntarily disposed of the property or the rights then acquired.

Also known as illegal occupation of residential property.

Applicable Law:

See A.2(c) and (d) for applicable law related to trespass and illegal occupation of property. For socially-owned apartments falling under this category, ensure that, if the property right was acquired after 13 October 1999, it does not fall foul of Section 6, UNMIK Regulation 2000/60/

Evidence:

See Chapter VI, Property Issues, A.2 (c) and (d), Wrongful Disturbance of Property Rights, Trespass and Illegal Occupation.

Description of Remedy:

Remedies available are through the civil procedure. See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy above.

c) through a HPD Administrative decision on administration, eviction, and/or temporary accommodation permit

Applicable Law:

Section 1, 2.7, UNMIK Regulation 1999/23, On the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission (HPD/CC)

Section 12-14, 16, UNMIK Regulation 2000/60, On Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission

Chapters 1-3, HPD Directive No. 2000/1, On the Execution of the Allocation Scheme

Evidence:

See Chapter VI, Property Issues, E.1 (a), Wrongful Deprivation of Property Rights, Evidence section.

Complaints and reconsideration of an HPD administrative decision must be based upon (a) legally obtained relevant evidence, which was not previously considered, or (b) the ground that a material error occurred in the application of the HPD mandate.

Description of Remedy:

Remedies are outlined in Chapters 1-3 HPD Directive No. 2000/1:

a) A complaint must be submitted to the HPD office that issued the decision within 30 days of being informed of the decision. The implementation of the decision is stayed upon receipt of the complaint unless HPD determines otherwise.
b) If the HPD office does not change its decision, then the complaint must be forwarded to HPD Headquarters for consideration.
c) HPD may review its decision at any time.

d) through a decision of the HPCC in which the property rights holder is the third party.

Applicable Law:

Section 2.7, UNMIK Regulation 1999/23
On the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission (HPD/CC)

Section 14.2, UNMIK Regulation 2000/60
On Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission

"Any interested person who was *not a party to the claim*, and who can show good cause why s/he did not participate as a party to the claim, may request reconsideration of a Commission decision within 30 days of learning of the Commission's decision but not later than one (1) year from the date of the Commission's decision."

Evidence:

Claimant shall submit evidence of good reasons for not having participated to the claim and evidence of his or her interest in the decision.

Description of Remedy:

File a request for reconsideration of an HPCC decision through the HPD within 30 days of learning of the HPCC decision. The request, though, must be filed within one year from the date of the issuance of the decision (Section 14.2, UNMIK Regulation 2000/60).
If rejected no further appeal is possible (See Section 2.7, UNMIK Regulation 1999/23)

e) through damage caused while under HPD administration

Applicable Law:

Section 12.8, UNMIK Regulation 2000/60, On Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission

See Chapter VI, Property Issues, A.2 for applicable law related to disturbance of property rights

Evidence:

See Chapter VI, Property Issues, A.2, Wrongful Disturbance of Property Rights, Evidence.

Description of Remedy:

Remedies ***cannot*** be sought through HPD/CC. According to Section 12.8, UNMIK Regulation 2000/60, HPD bears no responsibility for damage to or loss of property. Remedy will have to be sought from the violator, through the civil and/or criminal procedure that is applicable.

f) through damage of residential real property, boundary disputes, trespass or other related issues outside the competence of HPD/CC.

Applicable Law:

See Chapter VI, Property Issues, A.2 for applicable law related to disturbance of property rights. For socially owned apartments falling under this category, ensure that, if the property right was acquired after 13 October 1999, it does not fall foul of Section 6, UNMIK Regulation 2000/60.

Evidence:

See Chapter VI, Property Issues, A.2, Wrongful Disturbance of Property Rights, Evidence.

Description of Remedy:

Remedies available are through the civil procedure. See A.1, Wrongful Deprivation of Property Rights, Description of Remedy above.

3. Wrongful application of fines and disputes over rental payments involving socially owned apartments.

Applicable Law:

Article 27, 40, 62, 83-4, Law on Housing Relations (Official Gazette SAPK 11/83, 29/86, 42/86).
Relevant parts of Law on Contract and Torts (Official Gazette SFRY, No. 29/1978, 39/1985, 45/1989, 31/1993)
Articles 37, 70-81, Law on Basic Property Relations (Official Gazette SFRY, No. 6/80)
Articles 56, 106, 185, 348, 350-57, 360, 382, 383, 388, Code of Civil Procedures (Official Gazette 4/77-1478, 36/80-1182, 69/82-1596)
Article 26, 29, 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Article 27(3), Law on Housing Relations: "The competent court shall decide disputes related to the rent payment and the payment of fees for the use of common premises in the building."

Disputes Related to Fees for Use of Common Property:
Article 147-153, Law on Non-Contested Procedures as well as see A.1 for applicable provisions related to disturbance of property rights.

Disputes over application of fines by municipal authority:
Section 35, UNMIK Regulation 2000/45, On Self-government of Municipalities
Relevant Municipal Instructions
Law on General Administrative Procedures (Official Gazette SFRY,No.47/8, Article 282,)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Provide documentary evidence that met the requirements of:

Rental Payments: Article 27, 40, 62, Law on Housing Relations. See also Chapter VI, Property Issues, A.2, Wrongful Disturbance of Property Rights, Evidence

Related to Fees for Use of Common Property: Provide the necessary data to establish the subject (Article 148, Law on Non-contested Procedure)

Fines: Article 83-4, Law on Housing Relations. Evidentiary standards provided in Articles 159-201, Law on General Administrative Procedures.

Description of Remedy:

Disputes Related to Rental Payments: Remedies available are through the civil procedure. See A.1, Wrongful Deprivation of Property Rights, Description of Remedy

above.

Disputes Related to Fees for Use of Common Property:
Remedies for co-owners, co-users or co-holders of the same property can be sought through non-contested procedures, as described below, and for other owners, users, or holders can be sought through contested (civil) procedure. For the latter, see Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy above

a. A claim (or petition) must be filed with the court with territorial jurisdiction where the common property is located (Article 148(3), Law on Non-Contested Procedure. The petition should name all relevant parties and state the grounds for initiating the procedure (Article 148(2), Law on Non-Contested Procedure).
b. The court will hold a session to help the parties reach an agreement. (Article 149, Law on Non-Contested Procedure) If an agreement, then the court shall take a decision (Article 150, Law on Non-Contested Procedure). However, if there is a dispute related to the who or to what extent there exists a right to the property subject to the procedure, the court will instruct the parties to initiate a contested or appropriate administrative procedure with 30 days or the petition will be considered as withdrawn (Article 151(1-2), Law on Non-Contested Procedure. If this procedure is initiated, then the non-contested procedure will be suspended until the former is completed (Article 151(2), Law on Non-contested Procedure). The court can take a temporary decision to prevent greater damage, arbitrariness, or obvious fairness against a party (Article 151(3), Law on Non-Contested Procedure).
c. An appeal against a decision must be filed within 15 days of delivery of the decision. (Article 19(1), Law on Non-Contested Procedures). An appeal will suspend the execution of the decision, unless decided otherwise by the court (Article 20(2), Law on Non-contested Procedure).
d. If not satisfied, the parties can initiate a contested procedure (Article 152, Law on Non-contested Procedure).

Municipally Accessed Fines: Remedy is sought through administrative procedures applicable to municipal administrative acts. See Chapter VI, Property Issues, B.2, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

H. Commercial/ Non-Residential Property Issues

This section describes remedies specific to commercial/non-residential property, please refer to above sections for other issues.

See Section D for construction related issues, and Section G for remedies related specifically to socially-owned non-residential property.

1. Unlawful tender procedures

Applicable Law:

Article 54, Law on Construction of Facilities for Investment/Commercial Purposes (Official Gazette, SAPK, 5/86) (LCFICP)

Art. 54 (6) LCFICP: "…If the participant in a public tender consider that procedure was violated or that the selection was not done according to requirements mentioned in annunciation for public tender, then the participant has the right in objection to the body determined by general self-managing act of investor, which duty is to review objection and for this to inform the objector."

Evidence:

Provide evidence that there was non-compliance with the procedure, as established by the Law on Construction of Facilities for Investment/Commercial Purposes:

(a) no tender was organised to cede the entity in charge of the construction work (Art 65 (2) LCFICP) despite the fact that none of the required criteria were met (Art 60 LCFICP);
(b) the organisation of a tender was not announced properly (Art 54 (1), Art 56 LCFICP);
(c) the most favourable offer was not determined within 30 days from the day the tender was opened (Art 58 (5) LCFICP);

(d) the organisation selected to carry out the work is not an organisation of associated labour, registered for exercising such an activity (Art 7 (2) LCFICP);
(e) the requirements to be met to participate to the tender are discriminatory (Art 54 (4), Art 55 LCFICP);
(f) the participants were not informed promptly about their failure (Art 54 (5) LCFICP);
(g) the investor did not explain to the participants, the reasons for the selection (Art 54 (5), Art 58 (5) LCFICP);
(h) the tender should not have been declared unsuccessful as some offers fulfilled the requirements (Art 59 LCFICP);
(i) the participants were not informed that the tender was not successful within 15 days from the day the offers were opened.(Art 59 (3) LCFICP).

Description of Remedy:

The remedy available is unclear. Article 54 (6) LCFICP states that the investor determines the body from which a remedy may be sought. However, no provision could be found to determine the possible bodies.

However, it appears reasonable to presume that a claim may be lodged within the civil procedure. See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy above. If the tender is brought through an administrative

body, then administrative procedures would apply. See Chapter VI, Property Issues, B.3, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

2. Wrongful denial of construction permission of invest/commercial object

See Chapter VI, Property Issues, F.2 for general principles.

Applicable Law:

Article 7, 13, 41, 42, 46, 48, Law on Construction of Facilities for Investment/Commercial Purposes (Official Gazette SAPK, No. 5/86)

See also Chapter VI, Property Issues, F.2, Wrongful denial of construction permit, Applicable Law

Evidence:

Provide documentary evidence that:
a) the decision was not taken by the competent body (Art 41 LCFICP);
b) all the requirements were fulfilled (Art 46 (1), Art 7(1) LCFICP);
c) the decision was not made within the foreseen time limit of 5 days from the date of filling the request (Art 42 (1) LCFICP);
d) the technical documentation required was issued abroad but corresponded with national provisions and was translated and controlled (Art 48 LCFICP);
e) the construction of invest object is foreseen in medium development plan (Art 13(1) LCFICP);
f) the construction of invest object is not foreseen in medium development plan but is necessary as the existing invest object was destroyed or exterminated (Art 13(2) LCFICP).

Further evidentiary standards provided in Articles 159-201, Law on General Administrative Procedures.

Description of Remedy:

Remedies are provided through administrative procedure. See Chapter VI, Property Issues, B.3, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

3. Wrongful denial of utilisation permission of the invest object

Utilisation permission provides certification that the construction meets the technical requirements for the construction to be safely put into use. It is issued separately and subsequently to a construction permit.

Applicable Law:

Article 81, 82, 83, 87, Law on Construction of Facilities for Investment/Commercial Purposes (Official Gazette SAPK, No. 5/86)
Section 35, UNMIK Regulation 2000/45, On Self-government of Municipalities
Relevant Municipal Instructions
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Provide documentary evidence, that:
a) the requirements are met and the technical control should have concluded that the object was suitable for utilisation (Art 82 LCFICP);
b) the technical control started after the expiration of the 15 days from the date of the request (Art 82 LCFICP);
c) the administrative authority did not issue the permission for utilisation within 15 days from the date of receiving the conclusions of the technical control (Art 83(1) LCFICP);
d) the objects adjusted for preliminary and preparatory works were removed (Art 83(2) LCFICP).

Further evidentiary standards provided in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

Remedy is provided through the administrative procedure. Yet, it is unclear what would currently be the administrative provincial authority to which the appeal should be lodged. See Chapter VI, Property Issues, B.3, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

4. Wrongful order for interruption of construction/usage and for demolition of the invest object

Applicable Law:

Article 10, 42, 43, 81, 83, 84, 87, Law on Construction of Facilities for Investment/ Commercial Purposes (Official Gazette SAPK, No. 5/86)
Section 35 and Chapter 12 , UNMIK Regulation 2000/45, On Self-government of Municipalities
Relevant Municipal Instructions
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Provide documentary evidence that:

a. there is no risk to instability of the object or risk to lives, health, traffic, or neighboring objects (Art 81 LCFICP);
b. the investor removed the objects adjusted in preliminary and preparatory works (Art 83(2) LCFICP);
c. the investor fulfilled requirements outlined in the object permission and other provisions (Art 83(2) LCFICP); and other conditions outlined in Articles 10, 42, 43, 87 LCFICP.

Description of Remedy:

Remedy is provided through administrative appeals. Yet, it is unclear what would currently be the administrative central authority to which the appeal should be lodged. See Chapter VI, Property Issues, B.3, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

Note specifically: *Article 84 LCFICP directs the claimant to lodge an appeal to the administrative provincial authority that is competent for construction matters. However, if the order is issued by a municipal authority, then Section 35, UNMIK Regulation 2000/45 supersedes any provision of any law in conflict with it (Chapter 12, UNMIK Regulation 2000/45). Thus, if the order is municipal, the procedures for municipal administrative appeals should be followed and Article 84 is not followed. It remains unclear what serves as the administrative provincial authority, or central level body.*

5. Wrongful application of fines

Applicable Law:

Article 88-99, Law on Construction of Facilities for Investment/Commercial Purposes (Official Gazette SAPK, No. 5/86)
Section 35, UNMIK Regulation 2000/45, On Self-government of Municipalities
Relevant Municipal Instructions
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Provide documentary proofs that the basis of the fine identified from the Law does not

exist (see Article 88-99 LCFICP). Further evidentiary standards provided in Articles 159-201, Law on Administrative Procedures.

Description of Remedy:

A remedy is sought through administrative procedures applicable to municipal or other administrative acts. See Chapter VI, Property Issues, B.2, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

I. Non-residential Property Controlled by Publicly-owned or Socially-owned Enterprises

This section describes remedies specific to non-residential property that fall under the jurisdiction of UNMIK Regulations 2002/12,. 2002/13 and Administrative Direction 2003/13. Please refer to above sections for other issues, such as permits, etc.

1. Wrongful decision or action by the Kosovo Trust Agency affecting property or other rights

Restriction:
Under Section 10.5, UNMIK Regulation 2002/13, no remedy requiring the rescission of a transaction or nullification of a contract (including of property rights) entered into by the KTA under UNMIK Regulation 2002/12 may be sought before the Special Chamber.

Applicable Law:

Section 9.3, 18, 24.2-3, 30, UNMIK Regulation 2002/12, On the Establishment of the Kosovo Trust Agency (KTA)
UNMIK Regulation 2002/13, On the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters
Title IV, UNMIK Administrative Direction 2002/13, Implementing UNMIK Regulation 2002/13 On the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters

Evidence:

When applying to the SRSG, provide evidence that a decision or action did not comply with UN SC Resolution 1244(1999), UNMIK Regulation 2002/12 or related regulation or administrative direction, applicable law in Kosovo, or policies and procedures of the KTA (Section 24.3, UNMIK Regulation 2002/12).

When applying to the Special Chamber, specific rules of procedures, issued under Section 7, UNMIK Regulation 2002/13, provide evidentiary requirements (Section 8, UNMIK Regulation 2002/13). Note that the Rules of Procedure have not yet been promulgated.

Description of Remedy:

Two different remedies are available:
(1) Repeal or modification by the SRSG (Section 24.3, UNMIK Regulation 2002/12). No procedure for requesting such a remedy is prescribed in the Regulation.

(2) Lawsuit to the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (Section 30, UNMIK Regulation 2002/12; Section 4, UNMIK Regulation 2002/13).

a. File a claim with the Special Chamber challenging a decision or action of KTA within nine (9) months of either the date that a claimant knew or should have known of the decision or the date on which the Special Chamber announced publicly that it accepted the claim (Section 6.1, UNMIK Regulation 2002/13). *However*, the Special Chamber cannot accept the claim unless the claimant provides evidence that at least 60 days prior to actually filing s/he had notified the Chair of the KTA Board, of his/her intention to file (Section 30.2, UNMIK Regulation 2002/12 and Section 6.2-3, UNMIK Regulation 2002/13)
b. A decision will be rendered within two (2) months of completion of the

proceedings, issued in writing, and communicated to the parties within 30 days of its adoption (Section 9, UNMIK Regulation 2002/13). A decision rendered by the Special Chamber is final and binding (Section 9/7, UNMIK Regulation 2002/13). No appeal is provided.

c. If the Special Chamber referred claims, parts or categories of claims to another court, under Section 4.2, UNMIK Regulation 2002/13, then a decision rendered on the claim can only be appealed against it to the Special Chamber, unless determined otherwise by the Special Chamber (Section 4.3, UNMIK Regulation 2002/13).
d. An appeal may be filed with the Special Chamber within two months of the service of the decision on the parties. Notice of the appeal should be served on the parties and the court against whose decision the appeal is brought. The procedure governing appeals is set out in Title IV of UNMIK Administrative Direction 2003/13, Sections 56-61.
e. The Special Chamber may either uphold, dismiss or set aside, in whole or in part, the decision of the court against whose decision the appeal is brought; amend the order made by the court or order the retrial of the claim in whole or in part before the same court, another court in Kosovo or the Special Chamber, (Section 62 UNMIK Administrative Direction 2003/13.

Please note: Counterclaims to a suit filed by the KTA can be lodged within the time limits established by the applicable law ("applicable law" here refers to the Rules of Procedure, as set out in Section 28, UNMIK Administrative Direction 2003/13).

a) wrongful exclusion from the list of employees entitled to share of the proceeds from privatisation.

Applicable Law:

Section 10, UNMIK Regulation 2003/13, On the Transformation of the Right of Use to Socially-Owned Immovable Property
Title V, UNMIK Administrative Direction Implementing UNMIK Regulation 2002/13 On the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Matters

Evidence:

Evidentiary requirements outlined in Sections 19, 20, 22.1-22.6, 23, 32, 33, and 45-48, UNMIK Administrative Direction 2003/13 (see Section 64.1, UNMIK Administrative Direction 2003/13). In addition, if a complaint alleges discrimination as the reason for exclusion, documentary evidence of the alleged discrimination must accompany the complaint (Section 10.6 (b), UNMIK Regulation 2003/13).

Description of Remedy:

A complaint by aggrieved individual(s) can be filed at the Special Chamber of the Supreme Court of Kosovo for KTA Related Matters (Special Chamber) within 20 days after the final media publication of the list of eligible employees. The Special Chamber should render and deliver a decision within 40 days of the date of the complaint's submission to the Registrar (Section 10.6 (a), UNMIK Regulation 2003/13 and Section 64, UNMIK Administrative Direction 2003/13).

Note: *All the proceeds for employees shall be distributed within 60 days of the final publication of the list of eligible employees (Section 10.6 (c), UNMIK Administrative Direction 2003/13).*

2. Wrongful deprivation or disturbance of property or other rights by an enterprise under the

Applicable Law:

Section 7.3, 18.2, 28, 29, 30, UNMIK Regulation 2002/12, On The Establishment of the Kosovo Trust Agency
Title II, UNMIK Administrative Direction 2003/13 Implementing UNMIK Regulation 2002/13 On the Establishment of a Special Chamber of the Supreme Court of Kosovo on

authority of KTA, but not through a decision or action of KTA.	Kosovo Trust Agency Related Matters Entirety of UNMIK Regulation 2002/13, On the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters	
Under UNMIK Regulation 2002/12, KTA has administrative authority over all publicly and socially-owned enterprises in Kosovo, but the liability of the KTA and the enterprises remains separated (Section 18, UNMIK Regulation 2002/12). Yet, KTA can at any time file a notice with the competent court to act as a legal representative of the Enterprise (Section 29.3).	**Evidence:** When applying to the competent court other than the Special Chamber, relevant rules of evidence before the court apply. See Chapter VI, Property Issues, A.2, Wrongful Disturbance of Property Rights, Evidence. When applying to the Special Chamber, specific rules of procedure, issued under Section 7, UNMIK Regulation 2002/13 provide evidentiary requirements (Section 8, UNMIK Regulation 2002/13 and Sections 19-54, UNMIK Administrative Direction 2003/13) **Description of Remedy:** a) File a written notice of intention to file an action to the KTA, specifying name of claimant, name of Enterprise or Corporation, basis of claim and relief sought. No legal proceeding can commence without providing proof that this has been done (Section 29.1, UNMIK Regulation 2002/12). b) Remedies then can be sought through the civil court. See E. 1(a), Wrongful Deprivation of Property, Description of Remedy. c) Under Section 4.5, UNMIK Regulation 2002/13, however, the KTA can at anytime after commencing its administration of an Enterprise or Corporation, request the Special Chamber to remove such a claim pending in any court in Kosovo and adjudicate itself. If the KTA undertakes this action, then please see Chapter VI, Property Issues, G.1, Wrongful Decision or Action by KTA, Description of Remedies for the procedure of the Special Chamber.	
3. Wrongful application of fines by KTA on Enterprises, its employees, or other persons with management or control functions	**Applicable Law:** Section 27, UNMIK Regulation 2002/12, On the Establishment of the Kosovo Trust Agency UNMIK Regulation 2002/13, On the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters UNMIK Administrative Direction 2003/13 Implementing UNMIK Regulation 2002/13 On the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters **Evidence:** No evidentiary requirements outlined. See Section 27.1, UNMIK Regulation 2002/12 outlines the justifications for and amounts of fines. When applying to the Special Chamber, specific rules of procedures, issued under Section 7, UNMIK Regulation 2002/13, provide evidentiary requirements (Section 8, UNMIK Regulation 2002/13). Note that the Rules of Procedure have not yet been promulgated. **Description of Remedy:** a) Within 30 days of being served the fine, a written appeal must be submitted to the Chairman of the KTA Board (Section 27.2, UNMIK Regulation 2002/12) b) If the KTA confirms the fine, then an appeal may be lodged with the Special Chamber. See Chapter VI, Property Issues, G.1, Wrongful Decision or Action by KTA, Description of Remedies for the procedure of the Special Chamber.	

J. Forests

This section describes remedies for overarching potential violations in relation to forests, but is not exhaustive**.**

1. Wrongful deprivation or disruption of property rights through the establishment of forest boundaries.

Applicable Law:

Article 4, UNMIK Regulation 2003/6, On the Promulgation of the Law Adopted by the Assembly of Kosovo on Forests in Kosovo
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Articles 37, 70-81, Law on Basic Property Relations (Official Gazette SFRY, No. 6/80)
Articles 52, 56, 106, 185, 348, 350-57, 360, 382, 383, 388, Code of Civil Procedures (Official Gazette 4/77-1478, 36/80-1182, 69/82-1596),
Articles 29, 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)
(Article 161, Law on Non-contested Procedure does not appear to apply)

Evidence:

Evidentiary standards are provided in Articles 159-201, Law on Administrative Procedures. See also Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Evidence for remedies through the civil procedure.

Description of Remedy:

Remedies available are through administrative procedures and the civil procedure (Article 4, UNMIK Regulation 2003/6.

a) A claim should be filed with the municipal administrative body that handles property matters (Article 4.1, UNMIK Regulation 2003/6). The body must issue its decision within one month (Article 218, Law on Administrative Procedures).
b) If the decision is not satisfactory, a claimant can ask the municipal court to review the ruling (Article 4.2, UNMIK Regulation 2003/6). See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy above.

a) through wrongful denial of or use of servitudes or temporary use of land next to forests

This section relates to temporary use of land adjacent to forests for storage or transport of materials of forest products.

Applicable Law:

Section 6, UNMIK Regulation 2003/6, On the Promulgation of the Law Adopted by the Assembly of Kosovo on Forests in Kosovo
Section 35, UNMIK Regulation 2000/45, On Self-Government of Municipalities
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Articles 37, 70-81, Law on Basic Property Relations (Official Gazette SFRY, No. 6/80)
Articles 52, 56, 106, 185, 348, 350-57, 360, 382, 383, 388, Code of Civil Procedures (Official Gazette 4/77-1478, 36/80-1182, 69/82-1596),
Articles 29, 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)
(Article 161, Law on Non-contested Procedure does not appear to apply)

Evidence:

Evidentiary standards are provided in Articles 159-201, Law on Administrative Procedures. See also Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Evidence for remedies through the civil procedure.

Description of Remedy:

Remedies are available through administrative procedures and in relation to compensation through the civil procedures.

a. A complaint regarding the right to claim a servitude and over the amount of compensation due should be submitted to the municipal body that handles property matters (Article 6.3, UNMIK Regulation 2003/6). No timeframe to file provided. The body must issue its decision within one month (Article 218, Law on Administrative Procedures).
b. A decision of the municipal body can be appealed through the administrative process established under UNMIK Regulation 2000/45 (Article 6.4, UNMIK Regulation 2003/6). See Chapter VI, Property Issues, C.3 (b), Expropriation, Description of Remedy.
c. To appeal a decision on the amount of compensation, an appeal should be filed within one month after the decision is issued at the municipal court in which the land subject to the servitude is located. See Chapter VI, Property Issues, A.1, Wrongful Deprivation of Property Rights, Description of Remedy.

2. Wrongful decision of a forest inspector interferes with property rights

Applicable Law:

UNMIK Regulation 2003/6, On the Promulgation of the Law Adopted by the Assembly of Kosovo on Forests in Kosovo
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Article 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Documents relevant to the claim. Evidentiary standards provided in Article 232, Law on Administrative Procedures.

Description of Remedy:

A remedy is provided through administrative procedures as no appeals mechanism is established within the Regulation. The Forest Service is managed by the Kosovo Forest Agency under the authority of the Ministry of Agriculture, Forestry and Rural Development. It appears that the second instance body to appeal to would be the Ministry.

a. File an objection with the appropriate first instance body (unclear what body this currently is) within 15 days from the day the decision is delivered. The first instance body can accept the appeal and pass it to the second instance, change its decision based on the appeal, or reject the appeal (Articles 234-6, Law on Administrative Procedures). The decision on the appeal must be issued within two (2) months. (Article 247, Law on Administrative Procedures) The decision is final.
b. If the claimant disagrees with the decision on appeal, then a complaint can then be filed at the Supreme Court. (Article 31, Law on Regular Courts). The deadline for initiating an administrative lawsuit is 30 days from the date the administrative act is served or 60 days from the day when the administrative act was served to the party in whose favour it was enacted if the party did not receive the act (Article 24, Law on Administrative Disputes).
c. A further appeal or request for extraordinary review of a court's decision can be lodged against a decision in an administrative lawsuit (Article 19-20, 45-50, Law on Administrative Disputes) Either must be submitted to the competent court within 30 days of delivery of the disputed decision (Article 46, Law on Administrative Disputes)

Under Article 70-1, Law on Forests, the procedure must be initiated within 30 days after the period for public review has expired.

3. Wrongful interference in enjoyment of forest resources

This is a general provision which provides redress for interference in enjoyment

Applicable Law:

Article 28.3, UNMIK Regulation 2003/6 On the Promulgation of the Law Adopted by the Assembly of Kosovo on Forests in Kosovo
Code of Civil Procedures (Official Gazette 4/77-1478, 36/80-1182, 69/82-1596), Articles 29, 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

of forest resources due to failure of governmental authorities to act as mandated under UNMIK Regulation 2003/6.	**Evidence:** Documents relevant to the claim. Evidentiary standards provided in Article 159-201, Law on Administrative Procedures. **Description of Remedy** A request can be filed with a court (level not specified) for it to issue an order requiring the responsible government authorities to fulfill their duties.

K. Property Taxes

This section provides an overview of the developing remedies in relation to property taxes, as established under UNMIK Regulation 2003/29.

1. Wrongful valuation of property or incorrect property tax bill

Applicable Law:

Section 21, UNMIK Regulation 2003/29, On Taxes on Immovable Property in Kosovo
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Code of Civil Procedures (Official Gazette 4/77-1478, 36/80-1182, 69/82-1596),
Article 29 and 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Evidentiary standards provided in Article 232, Law on Administrative Procedures and Article 106(3) Code of Civil Procedures.

Description of Remedy:

a. A request for review should be filed in writing with the Municipal Board for Tax Complaints on Immovable Property within 30 days of receiving the tax bill. The Municipal Board will notify the taxpayer of its decision within 60 days of receiving the request. Until a decision is taken, the municipality shall not use enforced collection procedures (Section 21, UNMIK Regulation 20003/29).
b. If the claimant disagrees with the decision, then a complaint can then be filed at the Supreme Court. (Section 21.7, UNMIK Regulation 2003/29 and Article 31, Law on Regular Courts). The deadline for initiating an administrative lawsuit is 30 days from the delivery of the administrative act, or 60 days from the day when the administrative act was served to the party in whose favour it was enacted if the party did not receive the act (Article 24, Law on Administrative Disputes).
c. A further appeal or request for extraordinary review of a court's decision can be lodged against a decision in an administrative lawsuit (Article 19-20, 45-50, Law on Administrative Disputes). Either must be submitted to the competent court within 30 days of delivery of the disputed decision (Article 46, Law on Administrative Disputes).

2. Wrongful application of a lien for taxes

Applicable Law:

Section 10, 16 and 21, UNMIK Regulation 2003/29, On Taxes on Immovable Property in Kosovo
UNMIK Regulation 2000/45, On Self-Government of Municipalities in Kosovo
Applicable Municipal Instructions
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Code of Civil Procedures (Official Gazette 4/77-1478, 36/80-1182, 69/82-1596),
Article 29 and 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Evidentiary standards provided in Article 232, Law on Administrative Procedures and Article 106(3) Code of Civil Procedures.

Description of Remedy:

The remedy is to appeal to "the municipality" (Section 16.3, UNMIK Regulation 2003/29) through an administrative appeal. However, it is unclear if the body within the municipality

would be the Municipal Board for Tax Complaints on Immovable Property as its mandate is limited within the law to review of the tax bill itself and not a sanction, such as a lien (Section 10.2 and 21.1, UNMIK Regulation 2003/29). In the alternative, the administrative appeals procedure should apply, as outlined in Chapter VI, Property Issues, C.3 (b), Expropriation--Wrongful deprivation of property rights based on a wrongful "Decision" permitting preparatory work, Description of Remedy. Appropriate authorities have been unable to provide clarity to date.

3. Wrongful application of sanctions or penalties, other than liens and enforcement of levies.

Penalties and sanctions which the municipality applies when tax payment is late include forfeiture of property, of the right to appeal the tax bill, and monetary penalties as well as interest. These are enforced through inspectors of the municipal Directorate of Finance and Economy (Sections 17-20, UNMIK Regulation 2003/29, On Taxes on Immovable Property in Kosovo)

Applicable Law:

Section 10, UNMIK Regulation 2003/29, On Taxes on Immovable Property in Kosovo
UNMIK Regulation 2000/45, On Self-Government of Municipalities in Kosovo
Applicable Municipal Instructions
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Code of Civil Procedures (Official Gazette 4/77-1478, 36/80-1182, 69/82-1596), Article 29 and 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Evidentiary standards provided in Article 232, Law on Administrative Procedures and Article 106(3) Code of Civil Procedures.

Description of Remedy:

The remedy is unclear. The municipality is responsible for administrative appeals to its decisions such as these (Section 10, UNMIK Regulation 2003/29). It is uncertain if the appeals body within the municipality would be the Municipal Board for Tax Complaints on Immovable Property as its mandate is limited by the law to review of the tax bill itself and not a sanction, such as penalties (Section 10.2, 21.1, UNMIK Regulation 2003/29). In the alternative, the administrative appeals procedure should apply, as outlined in Chapter VI, Property Issues, C.3 (b), Expropriation--Wrongful deprivation of property rights based on a wrongful "Decision" permitting preparatory work, Description of Remedy. Appropriate authorities have been unable to provide clarity to date.

4. Wrongful enforcement of levies

Levies are applied by municipal tax inspectors when a tax payer has failed to pay the tax bill after a final written notice (Section 17, UNMIK Regulation 2003/29, On Taxes on Immovable Property in Kosovo)

Applicable Law:

Section 10, 17, UNMIK Regulation 2003/29, On Taxes on Immovable Property in Kosovo
Section 4.1 and 7, UNMIK Regulation 2000/20, On Tax Administration and Procedures
UNMIK Regulation 2000/45, On Self-Government of Municipalities in Kosovo
Applicable Municipal Instructions
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Code of Civil Procedures (Official Gazette 4/77-1478, 36/80-1182, 69/82-1596), Article 29 and 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Evidentiary standards provided in Article 232, Law on Administrative Procedures and Article 106(3) Code of Civil Procedures.

Description of Remedy:

The remedy is unclear.

The municipality is responsible for administrative appeals to its decisions such as these (Section 10, UNMIK Regulation 2003/29). It is uncertain if the appeals body within the municipality would be the Municipal Board for Tax Complaints on Immovable Property as its mandate is limited to review of the tax bill itself and not a sanction, such as a lien

(Section 21.1, UNMIK Regulation 2003/29). If not, the administrative appeals procedure should apply, as outlined in Chapter VI, Property Issues, C.3(b), Expropriation--Wrongful deprivation of property rights based on a wrongful "Decision" permitting preparatory work, Description of Remedy. Complicating the situation further, the enforced collection rules and procedures outlined in UNMIK Regulation 2000/20 apply to the enforcement of levies (Section 17.5, UNMIK Regulation 2003/29) and it is unclear if appeals mechanisms established under UNMIK Regulation 2000/20, either under Section 7 or by the yet to be promulgated Administrative Direction would apply to wrongful enforcement of levies. Appropriate authorities have been unable to provide clarity to date.

5. Wrongful denial of property tax deferral

Deferral of payment of a property tax bill can be granted when payment would cause undue hardship to the taxpayer (Section 15, UNMIK Regulation 2003/29, On Taxes on Immovable Property in Kosovo)

Applicable Law:

Section 10, 15, UNMIK Regulation 2003/29, On Taxes on Immovable Property in Kosovo\
UNMIK Regulation 2000/45, On Self-Government of Municipalities in Kosovo
Applicable Municipal Instructions
Law on Administrative Procedures (Official Gazette SFRY, No. 47/86)
Law on Administrative Disputes (Official Gazette SFRY, No. 4/77)
Code of Civil Procedures (Official Gazette 4/77-1478, 36/80-1182, 69/82-1596),
Article 29 and 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Evidence:

Provide proof that substantial evidence of undue hardship has been presented and meets the procedural requirements laid out in the relevant administrative instruction (when issued) (Section 15, UNMIK Regulation 2003/29). Additional evidentiary standards provided in Article 232, Law on Administrative Procedures and Article 106(3) Code of Civil Procedures.

Description of Remedy:

The remedy is unclear.

The municipality is responsible for administrative appeals to its decisions such as these (Section 10, UNMIK Regulation 2003/29). It is uncertain if the appeals body within the municipality would be the Municipal Board for Tax Complaints on Immovable Property as its mandate is limited to review of the tax bill itself and not a decision on tax deferral (Section 21.1, UNMIK Regulation 2003/29). In addition, the administrative instruction laying out procedures for tax deferrals has not been issued, as is required by Section 17.1, UNMIK Regulation 2003/29 and thus it is uncertain if another appeals procedure will be established.

In general, the administrative appeals procedure should apply, as outlined in Chapter VI, Property Issues, C.3 (b), Expropriation--Wrongful deprivation of property rights based on a wrongful "Decision" permitting preparatory work, Description of Remedy. Appropriate authorities have been unable to provide clarity to date.