

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

**Human Rights and Rule of Law**

**REMEDIES CATALOGUE**

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# 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 on remedies reflects the increased focus of the Department of Human Rights and Rule of Law on sustainable human rights. This catalogue constitutes the first step of the remedies process, and 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.<sup>1</sup>

The effect of Article 13 is to allow the competent authority both to deal with the

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<sup>1</sup> Silver v. the United Kingdom, Judgement of 25 March 1983, para 113.

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 a discretion in conforming their obligations under the provision.<sup>2</sup> As far as particular remedies are concerned, the Court, in the *Soering* case, considered judicial review proceedings to be an effective remedy in relation to the complaint concerned.<sup>3</sup>

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.<sup>4</sup>

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 submit a legal remedy is protected under Article 51 of the Kosovo Criminal Code, which foresees a punishment for anyone who prevents another person from exercising this right. Article 51 reads:

“(1) Whoever, in the performance of his working obligations, prevents another person from using his right to lodge a complaint or any other legal remedy, objection, request or representation, shall be punished by up to 1 year in prison.  
(2) If the offence referred to in paragraph 1 of this article is committed by an official person through the abuse of his official position or authority,

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<sup>2</sup> Vilvarajah and Others, Judgement of 30 October 1991, pp. 37-38.

<sup>3</sup> Judgement of 7 July 1989, pp. 27-28.

<sup>4</sup> The Leander case, Judgement of 26 March 1987, pp. 29-30

shall be punished by three months to three years in prison.”

No data is available on whether charges for a violation of Article 51 have been brought against a person in Kosovo.

### 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 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 No 7 to the ECHR - and by the domestic law.

Article 359(1) of the Law on Criminal Proceedings (FRY CPC) 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 360 of the FRY CPC 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 376(1)(1, 2) of the FRY CPC stipulates that the appeal court must always review *ex officio* if certain essential procedural guarantees of the CPC have been violated or where criminal laws have been infringed to the detriment of the accused (Article 365 of the FRY CPC).

The defendant is entitled to appeal on account of all the grounds that 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. One appeal does not exclude the other. The defence counsel must obtain the defendant's consent to appeal.

However, in the case of a juvenile defendant, the applicable domestic law (Article 487(2) of the FRY CPC) 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 the defendant.

Concerning the injured party distinction must be made between whether or not the injured party has taken over the prosecution. In the case of a public prosecution, the injured party may dispute the first instance's verdict only because of the decision of the court on the expenses of the criminal proceeding when he/she has an immediate personal interest in it. 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. Where the injured party is acting as prosecutor (Article 63(2) of the FRY CPC), he/she can lodge an appeal on all the grounds that the verdict can be disputed.

#### *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 (Article 348 of the Civil Procedure Code).

The civil court competent in the first instance is 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).

The court of second instance decides on the appeal against the judgement (*ibid.*) The second instance court is either the District Court (See Article 29-1 of the Law on Regular Courts of the Socialist Autonomous Province of Kosovo, 1978), or the Supreme Court (See Article 31 of the Law on Regular Courts of the Socialist Autonomous Province of Kosovo, 1978).

The party may apply for review against a valid judgement passed at second instance within thirty days from receiving a copy of the judgement (Article 382 of the Civil Procedure Code). The Supreme Court shall decide on review (Article 383 of the Civil Procedure Code). A request for retrial is always submitted to the court of first instance which has passed the judgement (Article 424 of the SFRY CPC).

#### *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.

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. 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 mentioned violation, then the evidence you have to be able to present in order to raise your claim, and finally the remedy to the particular violation is described.

## **II. Criminal Justice**

### **A. Police Custody**

#### **1. Unlawful detention by police**

Right to challenge the lawfulness of detention (Articles 5 ECHR & 9(4) ICCPR)

##### **Applicable Law**

- Article 192 (4) FRY CPC (pre-trial custody ordered by an investigating judge):  
“ The person who has been taken into custody may appeal the order for detention to the panel of judges (Article 23, paragraph 6) within 24 hours from the time when the order was presented.”  
- Article 196 (3) FRY CPC (pre-trial custody ordered by a law enforcement agency):  
“A person taken into custody may appeal an order for detention with the panel of judges of the competent court no later than 24 hours from the hour when he received the order.”

##### **Evidence**

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

##### **Description of Remedy**

Appeal by the arrested/detained person or/and his/her defence counsel to the first instance of competent panel of judges within 24 hours from the time the order was presented. The panel of judges must render a decision within 48 hours from the receipt of the appeal. The appeal does not stay the execution of the order by the arrested/detained person or/and his/her defence counsel against police detention decision. Can also be included in appeal against first pre-trial detention decision.

#### **2. Compensation for illegal detentions or arrests or detention which did not lead to a criminal prosecution** Article 545 FRY CPC

##### **Applicable Law**

Applicable Law  
- Article 545(1(1, 3), 2) FRY CPC:  
“(1) A person shall also be entitled to compensation for damage in the following cases:  
1) if he has been in custody, and a criminal proceeding was not instituted (...)  
3) if because of an error or illegal act by a body or agency he has been falsely arrested (...)  
(2) A person who under Article 195 of this law has been arrested without legal justification shall be entitled to compensate for damage if he was arrested without a warrant (...)”

##### **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 for 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 Co-Heads of the Administrative Department of Justice (Municipal Court Building, Prishtinë/Priština). The right to compensation shall expire three years from the day when the verdict in the first instance acquitting the defendants of the charge of dismissing the charge came into effect or the date when the decision in the first instance dismissing the proceeding came into effect, and, if it occurred when a higher court was ruling on an appeal, from the day when the decision of the higher court was received. 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 543(1, 3) FRY CPC).

The Criminal Defence Resource Centre (CDRC) has drafted a template of the claim for compensation for wrongful and/or unlawful detention.



- 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), Articles 9(2)ICCPR, 5(2) ECHR, 40(2)(b)(ii) of the Convention on the Rights of the Child)
- Applicable Law**  
- Article 159(3) FRY CPC:  
“(...) the parties may present their motions orally (...)”  
- Articles 192(4) & 196(3) FRY CPC: See paragraph 1 above
- Evidence:**  
Police records of arrest and detention, witness and arrested person statements
- Description of Remedy:**  
- Defence motion before the investigating judge.  
Included in appeal against police detention and/or against first pre-trial detention decision.  
See paragraph 1 above.
- 4. Violation of the right to be promptly brought before a judge**  
(9(3) ICCPR , 5(1c),(3) ECHR)
- Applicable Law:**  
- Article 159(3) FRY CPC:  
“(...) the parties may present their motions orally (...)”
- Evidence:**  
Police records of arrest and detention, witness and arrested person statements
- Description of Remedy:**  
- Defence motion before the investigating judge.  
Included in appeal against police detention and/or against first pre-trial detention decision.
- 5. Violation of the right to remain silent**  
UNMIK Regulation no.2001/28 On the rights of the Persons Arrested by Law Enforcement Authorities (Section 2.1.b, 2.2, 2.3, 6.1.e), Article 218(2, 3) FRY CPC
- Applicable Law:**  
- Article 159(3) FRY CPC:  
“(...) the parties may present their motions orally (...)”
- Evidence:**  
Police records of arrest and interviews, witness and arrested person statements
- Description of Remedy:**  
- Defence motion before the investigating judge.  
Included in appeal against police detention and/or against first pre-trial detention decision.
- 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**  
  
(Article 224 (1) FRY CPC, UNMIK Regulation no.2001/28 On the rights of the Persons Arrested by Law Enforcement Authorities (Section 2.1c), Principle 14 of Body of Principles)
- Applicable Law:**  
- Article 159(3) FRY CPC:  
“(...) the parties may present their motions orally (...)”
- Evidence:**  
Police records of arrest and interviews, witness and arrested person statements
- Description of Remedy:**  
- Defence motion before the investigating judge.  
Included in appeal against police detention and/or against first pre-trial detention decision.

**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 (UNMIK Regulation no. 2001/28 On the rights of the Persons Arrested by Law Enforcement Authorities (Section 3), 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 (3b, c) ECHR)

**Applicable Law:**

- Article 159(3) FRY CPC:

“(…) the parties may present their motions orally (…)”

**Evidence:**

Police records of arrest and interviews, witness and arrested person statements

**Description of Remedy:**

- Defence motion before the investigating judge.

Included in appeal against police detention and/or against first pre-trial detention decision.

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

Including family member; any appropriate person of her/his choice; Centre for Social Work if arrested person displays signs of mental illness; Liaison office, consular post, diplomatic mission of the State, competent international organisation; parents or guardian if arrested person has not reached age 18 (Article 200 FRY CPC, UNMIK Regulation no.2001/28 On the rights of the Persons Arrested by Law Enforcement Authorities (Sections 2.1e, f and 2.2.4), Rule 92 of the Standard Minimum Rules,

**Applicable Law:**

No applicable law

**Evidence:**

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

**Description of Remedy:**

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

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)

**9. Violation of the right of a detained person to be treated with humanity and respect for his/her dignity.**  
(Articles 10(1) ICCPR, 3 ECHR)

**Applicable Law:**

- Article 159(3) FRY CPC:  
“(…) the parties may present their motions orally (…)”

**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 investigating 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 remedy C.2 below, page 13.

Detainee or his defence counsel can submit a complaint against KPS or UNMIK Police officer. See complaints against law enforcement on page 20.

**10. Violation of right to a medical examination and treatment**  
(UNMIK Regulation no.2001/28 On the rights of the Persons Arrested by Law Enforcement Authorities (Sections 2.1.g; 5; 6.1.h), Principle 24 of the Body of Principles)

**Applicable Law:**

- No applicable law.

**Evidence:**

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

**Description of Remedy:**

Complaint against KPS or UNMIK police officer. See complaints against law enforcement on page 20.

**B. Extra Judicial Detention**

**1. Extra judicial detention by KFOR**  
Right to challenge the lawfulness of detention (Articles 5 ECHR & 9(4) ICCPR)

**Applicable Law**

COMKFOR Detention Directive 42  
- Article 7(k) COMKFOR Detention Directive 42:  
“Detainees may submit petitions regarding their detention”

**Evidence:**

KFOR Directive 42 form, subsequent decisions regarding detention

**Description of Remedy:**

- No Habeas Corpus mechanism on Kosovo (KFOR and SRSG executive orders)  
Petition of the detained person to KFOR. COMKFOR Detention Directive 42 specifies nothing concerning how and to whom the petition shall be addressed. Nothing is also specifically mentioned concerning who will decide about the petition. However it can be assumed that the decision about a petition should be included in the process of assessing detention requests of MNB (as described above). The MNB commander shall submit a written request through KFOR LEGAD to COMKFOR for continued/extended detention of the person. KFOR LEGAD will review each detention request and determine whether additional information is required. KFOR LEGAD chairs a Detention Review Panel whose members are designated by COMKFOR. The Panel will review the detention requests and make recommendation to COMKFOR. KFOR LEGAD shall advise COMKFOR “whether detention is legally objectionable”. This recommendation is independent of the

recommendation of the Panel. COMKFOR will review the detention request, supporting documentation and staff recommendations before rendering an “independent decision”. Not an independent body under Article 6 ECHR.

## 2. SRSB’s executive detention orders

Right to challenge the lawfulness of detention (Articles 5 ECHR & 9(4) ICCPR)

**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 Nis express case). However, the SRSB’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.”

### Evidence:

SRSB executive order

### Description of Remedy:

- No Habeas Corpus mechanism available to challenge SRSB’s executive orders.

- 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.

## 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, Articles 190(3), 191 FRY CPC)

### Applicable Law:

- Article 159(3) FRY CPC:

“(…) the parties may present their motions orally (…)”

- Article 192 (4) FRY CPC:

“ The person who has been taken into custody may appeal the order for detention to the panel of judges (Article 23, Paragraph 6) within 24 hours from the time when the order was presented.”

- Article 197(2) FRY CPC (two months of extension detention before indictment):

“The panel’s decision may be appealed (…)”

-- Article 545 (1(1, 3)) FRY CPC:

“(1) A person shall also be entitled to compensation for damage in the following cases:

1) If he has been in custody, and a criminal proceeding was not instituted, or the proceeding has been dismissed by a decision that has come in effect, or he has been acquitted of the charge by a verdict that has come into effect or the charge was dismissed. (…)

3) if because of an error or illegal act by a body or agency he has been falsely arrested or kept for a prolonged period in prison or correctional institution for serving the sentence or measure.”

### Evidence:

Police and investigative records, decision of detention 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 investigating judge.

Appeal of a decision of detention and subsequent extensions by the arrested/detained person or/and his/her defence counsel. Appeal of the investigating judge decision (extending the detention for one month after the arrest) is filed before the first instance

panel of judges. The subsequent decisions of detention (made by a panel of judges) are appealed before the appeal 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 appeal does not stay the execution of the order.

Appeal of a detention decision by a panel under Article 199(1) or (2) FRY CPC (extension of detention after indictment) does not stay the execution of the decision.

Detained person can submit a petition for compensation – See page 8 regarding compensation for unjustified detention.

**2. Violation of right to humane conditions of detention and freedom from torture during pre-trial detention**  
(Articles 201(1) FRY CPC; 7 & 10 ICCPR; 3 ECHR; 2(2) Torture Convention)

**Applicable Law:**

No applicable law.

**Evidence:**

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

**Description of Remedy:**

Complaint against KPS or UNMIK police officer. Defence motion before the investigating judge. There is no clear 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 remedy D. 4 on a motion to suppress evidence obtained through duress, page 16.

**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) Right to adequate time and facilities to prepare a defence (Articles 11(3), 67(1, 2, 3), 70(1), 168(1), 193(1, 3) FRY CPC, Articles 6(3b) ECHR, 14(3b) ICCPR) Access to counsel while detained (Article 74 FRY CPC, 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) Right to have a lawyer assigned free of charge (Article 11(1, 2), 71(1) FRY CPC; Principle 17(2) of the Body of Principles; UNMIK Circular 2000/17; Article 6(3c) ECHR, Principle 6 of the Basic Principles on the Role of Lawyers)

**Applicable Law:**

- Article 267(1, 2) FRY CPC:

“(1) The accused has the right to traverse the indictment (...)

(2)The indictment may also be traversed by defence counsel without specific authorisation of the accused, but not against his will.”

- Article 276 FRY CPC (decision on a traverse of an indictment):

“An appeal is allowed against a decision of a panel as referred to in Article 269, Paragraph 3 of this Law (...)”

**Evidence:**

Investigative records, witness and accused statements, court decisions.

**Description of Remedy:**

- Petition to investigating judge/President of court/Department of Justice

- Motion to repeat proceedings

- Included in motion to traverse indictment. The accused or his/her defence counsel should traverse the indictment within 8 days of its service before the competent first instance panel of judges. The appeal against the decision rendered in response to the traverse of the indictment is only allowed for the defence as the decision refers to the competence of the jurisdiction. (This is not a direct remedy. However, and for example, the absence of the lawyer can be argued in order for the investigation to be supplemented or conducted. Potentially, the absence of the lawyer could be used to challenge the admissibility of the statements and their validity, and, therefore can be used as an argument to request the charges to be dismissed).

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

Included in appeal to 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. See remedy D. 11, violation of the right to appeal, page 18.

Juvenile's special rights

**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's witnesses during pre-trial investigation

Anonymous and co-operative witnesses  
Right to examine the court file/Right to copies (Articles 4(2), 11, 73(1, 2), 131 (1, 2) & 173(1) FRY CPC, 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)

**Applicable Law:**

- Article 73(3) FRY CPC (suspension of Defence's access to examine evidence):  
"An appeal may be filed with the panel against a decision as referred to in Paragraph 2 of this Article (...)"  
- Article 131(3) FRY CPC (decision withholding the permission to examine and copy the record of individual criminal cases):  
"An appeal which does not stay execution of ruling is allowed against a ruling to withhold such permission."  
Articles 267(1, 2), 276, 359(1), 360 (1), 487(1) FRY CPC: Included in appeal.

**Evidence:**

Court decisions, investigative reports, witnesses and accused statements

**Description of Remedy:**

- Petition to investigating judge/President of court/Department of Justice  
- Petition for postponement of proceedings  
- Separate appeal against the decision of the investigating judge to temporarily suspend, before an indictment has been brought, the examination of certain documents or objects of physical evidence by the defence because of reasons of national defence or national security. The Appeal shall not stay execution of the decision.  
- Separate appeal against the decision withholding the permission to examine and copy the record of individual criminal cases when special reasons of national defence or national security so require. The appeal does not stay execution of the decision.  
- Included in motion to traverse indictment – See remedy C. 3, violation of the right to a lawyer at the pre-trial stage, page 13.  
- Challenge admissibility of witness pre-trial statements during main trial. This is implied notably by reference to International Human Rights standards  
Included in appeal against verdict – See remedy C. 3, page 13.  
No specific remedy against refusal to examine and present witnesses. (Article 167 FRY CPC only refers to a remedy for the prosecutor) Remedy included traverse of indictment or against verdict

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

(Section 2 UNMIK Reg. 1999/26 On the extension of periods of pre-trial detention; Articles 14, 190(2) FRY CPC, Article 5(3) ECHR; Article 9(3) ICCPR)

**Applicable Law:**

- Article 181(1) FRY CPC:  
"The parties and the injured parties may always file a complaint with the President of the Court before which proceedings are being conducted because of prolongation of proceedings and other irregularities in the course of the investigation."  
- Article 197(2) FRY CPC (two months extension of detention before indictment):  
"The panel's decision may be appealed (...)"

**Evidence:**

Decision of detention 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 investigating judge or competent first instance panel of judges –  
- Appeal of decision of detention and subsequent extensions by the arrested/detained person or/and his/her defence counsel. See remedy C. 1, illegal detention, page 12.

**6. Incommunicado detention**

Right to have access with the outside world: family; Liaison office, consular post, diplomatic

**Applicable Law:**

Article 205(4) FRY CPC:  
"The president of the Court and the investigating judge may visit all persons in custody at any time, may talk to them and may receive complaints from them."

mission of the State, 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, Articles 201(1), 203(1) & 205 FRY CPC)

**Evidence:**

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

**Description of Remedy:**

- Petition to investigating judge and/or President of the Court  
 - Complaint to Department of Justice. There is no particular legal basis for complaints to the Department of Justice but practice suggest this option.  
 - Section 1.1 UNMIK Reg. 2000/64: (amended by UNMIK Reg. 2001/34):  
 "At any stage of the criminal proceedings, the competent prosecutor, the accused or the defence counsel may submit to the Department of Justice a petition for an assignment of international judges/prosecutors and/or change of venue where this is considered necessary to ensure the independence and impartiality of the judiciary or the proper administration of justice."

## D. Trial & Retrial

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

(Article 2 FRY CPC, 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)

**Applicable Law:**

- Article 41(1) FRY CPC:  
 "The parties may also seek disqualification" (of judges)  
 - Article 42(4) FRY CPC:  
 "No appeal is permitted against a decision granting a petition for disqualification. / decision rejecting a petition for disqualification may be contested with a specific appeal; but if this decision was made after the indictment was brought, then it can be contested only by an appeal of the verdict."  
 - Article 44(1) FRY CPC:  
 "The provisions concerning disqualification of judges and lay judges shall be appropriately applied to public prosecutor (...)"  
 - Articles 359(1), 360 (1), 487(1) FRY CPC: See remedy C 4, page 13.  
 - Article 404(1.2) FRY CPC:  
 "A criminal proceeding which has been completed with an effective verdict may be repeated: (...) 2) If it is proven that the verdict came about because of a criminal act on the part of a judge, lay judge or person performing investigating actions."  
 - For disciplinary sanctions of judges, prosecutors and lay judges: UNMIK Regulation 2001/8 *On the Establishment of the Kosovo Judicial and Prosecutorial Council*; and UNMIK Administrative Direction 2001/4 *Implementing UNMIK Regulation 2000/15 on the Establishment of the Administrative Department of Justice*.

**Evidence:**

Police and investigative records, indictment, witness and accused statements, Trial's records, written verdict.

**Description of Remedy:**

- Request for assignment of international judges and prosecutors and/or change of venue submitted by the accused or his/her defence counsel to DoJ at any time in 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.  
 - Petition of disqualification of judges or prosecutors submitted by the parties before the main trial commences or immediately after they learn about the reason for disqualification. If the petition for disqualification is based on Article 39(6) FRY CPC, the petition has to be filed before the commencement of the trial (circumstances which cause doubt as to his/her impartiality) – Article 41(2) FRY CPC)  
 The petition of disqualification of a judge in a higher court may be included in an appeal or in answer to an appeal. Such petition is addressed to the President of the Court or to the immediately higher public prosecutor. Specific appeal to contest the decision rejecting the petition, but if decision made after the indictment was brought it can only be contested by an appeal of the verdict.  
 - Appeal of the verdict -See remedy C. 3, page 13.  
 - 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.  
 - 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 victims).  
(Articles 287(1), 324(3), 352(3, 4), 461, 482 FRY CPC, 6(1) ECHR, 10 of the Universal Declaration, 14(1) ICCPR)

**Applicable Law:**

- Article 288 FRY CPC:

“From the opening of the session to the end of the trial, the panel of judges may at any time, *ex officio* or on motion of the parties, but always after hearing them, exclude the public (...)”

- Article 290(2) FRY CPC:

“The decision to exclude the public may be contested only in the appeal of the verdict. “

- Articles 359(1), 360 (1), 487(1) FRY CPC. General appeal.

- Article 294(3) FRY CPC:

“The use of film or television recording is prohibited in the session. As an exception, the president of the Supreme Court of (...) the province may allow recording in a particular main trial.”

**Evidence:**

Witness and accused statements, Trial’s records, written verdict.

**Description of Remedy:**

- Parties can file motion for hearing in camera if they believe such measures are justified

- No special remedy for the violation of a public trial. Can be ground for an appeal of the verdict itself – See remedy C.3, page 13.

- Request to the President of the Supreme Court to allow the use of film or television recording

**3. Violation of the presumption of innocence**

(i.e. attributes of guilt borne by the accused: prisoner’s uniform and/or handcuffs)  
(Articles 3, 323 FRY CPC, 6/2 ECHR, 11 of the Universal Convention, 14/2 ICCPR, 40/2b(l) of the Convention of the Rights of the Child)

**Applicable Law:**

General appeal. Articles 359(1), 360 (1), 487(1) FRY CPC.

**Evidence:**

Police and investigative records, indictment, witness and accused statements, Trial records, written verdict.

**Description of Remedy:**

- Defence’s motion pending trial or retrial

No special remedy. Verdict as such has to be appealed

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

(Articles 10, 218/2-3, 316/4-5, 317 FRY CPC, 6 ECHR, 14/3g ICCPR, 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, Body of Principles)

**Applicable Law:**

General appeal, Articles 359(1), 360 (1), 487(1) FRY CPC.

**Evidence:**

Police and investigative records, indictment, witness and accused statements, 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

**5. Retroactive application of criminal laws and of**

**Applicable Law:**

- General appeal. Articles 359(1), 360 (1), 487(1) FRY CPC: See the right to appeal.



**double jeopardy**  
(14/7 & 15/1 ICCPR, 7 ECHR, 4 of Protocol 7 ECHR, 11/2 of the Universal Declaration)

- Article 404(1.5) FRY CPC:  
“A criminal proceeding which has been completed with an effective verdict may be repeated: (...)  
5) if a person has been tried more than once for the same act”.

**Evidence:**

Police and investigative records, indictment, witness and accused statements, Trial's records, written verdicts.

**Description of Remedy:**

- Defence's motion pending or during trial.  
- No specific remedy regarding retroactive application of criminal law. However, retroactive application can be grounds for appeal of the verdict  
- Petition to repeat the criminal proceeding

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

(Articles 14, 190(2, 3), 279(2), 462, 484 (1, 2) FRY CPC, 14/3c ICCPR, 5/1c, 5/3, 6/1 ECHR, 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)

**Applicable Law:**

No specific provision authorising a remedy.

**Evidence:**

Witness and accused statements, investigative records, Decision of detention and subsequent extensions, bond or real estate lien as a 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. The substance of the motion would be based on international standards, namely Article 6 ECHR.  
Appeal of decisions of 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 4/2, 11, 67(1, 3), 70(1, 2, 3, 4), 71, 74, 75(1), 281(2, 3), 284(3), 314, 315, 316(1, 3), 321, 330(3), 337(2), 338(2), 339, 355(2), 455 FRY CPC, 6/3b,c,d ECHR, 14/3d ICCPR, 40/2b(ii) of the Convention of the Rights of the Child, Basic Principles of the Role of Lawyers)

**Applicable Law:**

- Article 72(4) FRY CPC:  
“The president of the Court may dismiss an appointed defence counsel who is not performing his duties properly at the request of the accused or with his consent.”  
- Article 282 (1, 2) FRY CPC:  
“The parties (...) may request that new witnesses or expert witnesses be summoned to the main trial or that new evidence be obtained even after the main trial has been set (...) If the presiding judge of the panel rejects the motion to obtain new evidence, this motion may be made once again in the main trial.”  
- Article 285 FRY CPC:  
“The presiding judge of the panel may order postponement of the trial for important reasons, on the motion of the parties or *ex officio*.”  
- Article 309(4) FRY CPC:  
“The objections and suggestions of the parties concerning the record and corrections and additions made in the record must be noted in a section added at the end of the completed record.”  
- Articles 318(2), 327(2) FRY CPC:  
“If the presiding judge forbids the putting of a particular question or the giving of an answer, the parties may request that the issue be decided by the panel.”  
- Article 333(3) FRY CPC:  
“(…) A separate appeal is permitted against the decision on separation of records and information.” (refers to records and information from witnesses who are, under Article 227 CPC, not obliged to testify).  
- General appeal: Articles 359(1), 360 (1), 487(1) FRY CPC:  
- Article 131(3) FRY CPC (decision withholding the permission to examine and copy the record of individual criminal cases):  
“An appeal which does not stay execution of ruling is allowed against a ruling to withhold such permission.”

**Evidence:**

Police and investigative records, indictment, witness and accused statements, Trial's records, written verdict

**Description of Remedy:**

- Separate appeal against the decision withholding the permission to examine and copy the record of individual criminal cases when special reasons of national defence or national security so require. See remedy C. 4, violation of the right of the defence to examine evidence during the pre-trial stage/ right to present defence, page 13-14.
- Accused request to the president of the Court to dismiss an appointed defence counsel not performing his duties properly and to appoint another one
- 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.
- Appeal of the verdict – see remedy C. 3, violation of the right to a lawyer at the pre-trial stage, page 13.

- 8. Violation of right to be tried in one's presence**  
(including trial in absentia)  
(Articles 70/3, 295(2), 300, 316(2), 319, 320, 454(1), 482(4) FRY CPC, UNMIK Reg. 2001/1, Articles 14/3d ICCPR, 6 ECHR)

**Applicable Law:**

- Article 300(4) FRY CPC:  
"The decision to try the accused in absentia shall be made by the panel on the motion of the prosecutor. An appeal shall not stay execution of the decision."
- General appeal. Articles 359(1), 360 (1), 487(1) FRY CPC.
- Article 410(1) FRY CPC:  
"A criminal proceeding in which a person has been convicted in absentia (Article 300) and it has become possible for him to be retried in person, the proceedings shall be reopened (...)"

**Evidence:**

Police and investigative records, indictment, witness and accused statements, Trial's records, written verdicts.

**Description of Remedy:**

- Defence's motion before a trial panel.
- The defence counsel (mandatory for in absentia cases under Article 70(3) FRY CPC) can file a separate appeal against the decision to try in absentia. The appeal will not stay execution of the decision.
- Defence can file an appeal of the verdict itself. See remedy C.3, page 13.
- Convicted person (or his/her defence counsel) can file a petition for the reopening of the case within one year from the day when the convicted person learned of the verdict whereby he was convicted in absentia. Under certain circumstances the one-year time limit does apply. (Article 410(3)).

- 9. Violation of right to free interpreter and translation**  
(Articles 5, 6, 7, 8, 224(1) FRY CPC, UNMIK Reg. 2000/46, Article 6/3a,e ECHR, 14/3f ICCPR, 40/2b(vi) on the Convention of the Rights of the Child)

**Applicable Law:**

General appeal, Articles 359(1), 360 (1), 487(1) FRY CPC.

**Evidence:**

Police and investigative records, indictment, witness and accused statements, Trial's records, written verdict.

**Description of Remedy:**

- Defence's motion pending trial or retrial
- No specific legal authority prescribing a general right such motion. However, in practice the right to present motion is extensively used by the lawyers and accepted by the courts. No special remedy except for an appeal of the verdict. See remedy C. 3, page 13.

- 10. Violation of principle of separate systems for juvenile's justice**  
(Articles 454/2, 457, 458,

**Applicable Law:**

- General appeal. Articles 359(1), 360 (1), 487(1) FRY CPC.

463, 487 FRY CPC,  
40/2b of the Convention  
on the Rights of the  
Child, 14/4 ICCPR)

**Evidence:**

Police and investigative records, indictment, witness and accused statements, Trial's records, written verdicts  
- Defence's motion before a trial panel.  
- No special remedy except for an appeal of the verdict

**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.

(Articles 354/1, 356, 359,  
360, 487 FRY CPC, 2 of  
Protocol 7 ECHR, 14/5  
ICCPR)

**Applicable Law:**

No applicable law.

**Evidence:**

N/A

**Description of Remedy:**

None.

### **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 Civpol 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 Civpol 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 sections and (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 telephonically 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 – violation of the code of conduct and/or criminal law – legal remedy**

**Applicable Law:**

Criminal laws applicable in Kosovo in conjunction with the Kosovo Protection Corps 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-martialed.

### 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)

## IV. Non-Discrimination

### A. General Remedy

#### **Applicable Law:**

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)

#### **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:**

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 (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)). 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 (1) 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 when the administrative act is served or 60 days from when the act was served if the party did not receive the act (Article 23, 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, Section B.2, Wrongful denial of access to cadastral/Registry information, for a description of another use of this remedy.*

Comment: If the claimant has exhausted the internal appeals procedure (i.e. the complaint to the Chief Executive Officer), then the case may be referred to the Central Authority. However, there is currently difficulty in defining who is the Central Authority: i.e. whether it is UNMIK Departments or PISG Ministries .

### B. Claims of discriminatory practices in public employment

Includes claims of discrimination in central and municipal hiring practices brought by employees of the central

#### **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

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).

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) and then through the courts.

Section 11, UNMIK Regulation 2001/36 defines the appeal as follow:

In order to hear and determine appeals against decisions of employing authorities an Independent Oversight Board for Kosovo is to be established (Sections 7(1) 10(1), and 11(2)(a)).

The Board 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. To this end, 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).

Section 11(2)

“The Ministry shall, with the approval of the Special Representative of the Secretary-General, prescribe the rules and procedures applicable to appeals under the present section. Such rules and procedures shall provide, inter alia:

(a) That before appealing to the board, 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.”

*Note:*

*The IOB structure has not been implemented yet by the Ministry of Public Services as required under Section 9 of UNMIK Regulation 2001/36 which states that with the Government’s approval, the Ministry of Public Services shall “set out the rules and procedures to be followed by the Board, including rules and procedures applicable to appeals pursuant to section 11 of the present regulation.” In the case of employment discrimination, it is thus questionable what remedy civil servants have in the first instance other than an appeal to a court of competent jurisdiction.*

Until the IOB is established, or, once it is established and after it is exhausted, a claim of discrimination can be filed with the Supreme Court (Article 31, Law on Regular Courts) if a claimant appeals a claim of discrimination in employment after a decision against the claimant. The deadline for initiating an administrative lawsuit is 30 days from when the administrative act is served or 60 days from when the act was served if the party did not receive the act (Article 23, Law on Administrative Disputes).

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. Claims of discrimination in municipal hiring practices.**

**Applicable Law:**

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)

Brought by persons seeking employment in the Municipal Administration.

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 A, General Remedy, Description of Remedy.

**D. Claims by civil servants against a discriminatory decision if a Disciplinary Board**

**Applicable Law:**

UNMIK Administrative Direction 2003/2 Implementing UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, Section 33

**Evidence:**

To be determined (See Section 33.7, UNMIK Administrative Direction 2003/2 )

**Description of Remedy:**

The Appeals Board may hear civil servants appeals against a decision of the Disciplinary Board; and management's inclusion of inaccurate or discriminatory material in his or her personnel record, and discrimination or harassment.

**E. 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.

**Applicable Law:**

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)

**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 A, General Remedy, Description of Remedy.

**F. Claims of discrimination in access to education by education officials**

**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  
Section 4, Article 9.4.2, UNMIK Regulation 2001/9, On a Constitutional Framework for Provisional Self-Government in Kosovo.

School attendance is compulsory from six to fifteen years (Section 1(1) of 2000/51)

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

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 Number 21.2001).

Under the Department of Education and Science Administrative Instruction 21/2001, Section 2(2), Education staff may be disciplined according to this instruction upon any of the following grounds: 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.

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

The procedure is described Administrative Instruction, 21/2001, Sections 4(1-2). Section 4(1) states that 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, the School Director must investigate the complaint and give the Teacher the right to reply to the allegation(s) made.

Section 4(2) states that 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, the School Director 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 make a written request for an Appeal Hearing against the Disciplinary Action within 10 days after receipt of such notification.

A review panel shall conduct the Appeal Hearing, and within 7 days after the appeal Hearing, the Review Panel must issue a written decision to the Teacher

Section 5(1):

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 SEO's personal attention, a Review Panel shall be established in order to conduct the investigation.

Section 7(2)

Where the procedures set out in the instruction have been followed and there has been conduct requiring Disciplinary Action, a range of disciplinary penalties may be imposed depending on the severity of the conduct

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 (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 act was served if the party did not receive the act (Article 23, Law on Administrative Disputes).

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)

### **G. Claims of 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**

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  
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 No. 2002/19, Sec. 33.3 (b) states that “the MEST and municipalities shall ensure that: (b) Staff are protected against direct or indirect discrimination on any real or presumed ground such as sex, race, sexual orientation, physical or other impairment, marital status, colour, language, religion, political or other opinion, national, ethnic or social origin, association with a national community, property, birth, or other status.”

UNMIK Regulation No. 2002/19, Sec. 33.4 states that “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.”

Thus, an appeal of a sanction could be filed with the Supreme Court (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 act was served if the party did not receive the act (Article 23, Law on Administrative Disputes).

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)

### **H. Claims of discrimination on access to healthcare**

#### **Applicable Law:**

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)

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)] No particular law or UNMIK Regulation or Administrative Direction contains a clear administrative remedy in the first instance for discrimination in access to healthcare.

#### **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 A, General Remedy, Description of Remedy.

## I. Claims of discrimination in access to social welfare

### **Applicable Law:**

Articles 78 – 82, Joint Interim Administrative Structure (JIAS) Social Assistance Scheme Manual dated 1 November 2000

Article 78

“An applicant who contends that an official determination made by the designated authority is incorrect and wishes to appeal the determination, must do so in writing....”

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)

### **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 appeal should be made in writing to the Director of the Centre for Social Work (CSW) within 14 days of the applicant receiving the decision letter from the CSW containing information whether the applicant fulfils the criteria for category 1 or 2. The complaint will be reviewed and responded to in writing within 30 days of receiving the written complaint. The written reply should only address the issues included in the written complaint.

In the written reply the CSW director or his/her designated representative should only address the issues included in the written complaint. There are two types of answer to any complaint which are as follows:

- ? Appeal rejected on the basis that the family clearly does not meet the criteria. The response should detail exactly which criteria they do not meet, as an explanation of the decision.
- ? Appeal accepted as the information and documentation in the written appeal means the original decision was incorrect. The response should indicate what new information and proof has led to the change in decision.

In case the claimant remains dissatisfied with the result of the director response to the initial appeal, s/he can may request a review of the of the Director's decision by the Institute of Social Policy (ISP).

The request must be made within 14 days. The ISP must review the appeal and inform the claimant within 30 days of the ISP decision. The decision should contain one of the two types of responses outlined above. (Positive decision – with explanation what has led to the change of the decision or negative decision with indication which criteria s/he did not meet.)

In addition to the remedies mentioned above, the claimant can address a verbal complaint to the Director of CSW. (This remedy is informal – none of the CSW internal documents mention it). If the complaint is justified, the person who discriminated against the claimant will receive an oral warning. If the situation occurs again, a written warning may be given. This warning will be send to the ISP and could result in termination of employment.

The remedy for appeal of an “Article 80” decision is defined in Section 35, UNMIK Regulation 2000/45. See A, General Remedy, Description of Remedy.

*Note: According to information provided by the CSW Directors, the Ministry of Labour and Social Welfare sent a draft of a Code of Conduct for comments to the Directors. The document contains a description of potential remedies which might be available in case of a complaint of discriminatory treatment by the CSW staff.*

## **V. Victims of Crime**

### **A. Legal Remedies available to injured parties**

#### **1. Victim of crime/Injured party – private prosecution**

**Note:** The majority of criminal acts prescribed by the Criminal Code of Kosovo are automatically prosecuted by the competent public prosecutor. In cases where the sentence foreseen is less than 5 years imprisonment the injured party has to file a private complaint. Also, cases where the public prosecutor finds there are no grounds to undertake prosecution, he has the duty to inform the injured party about this. In these cases the injured party can undertake the criminal proceeding as a private prosecutor.

#### **Applicable law:**

Article 17(3) FRY CPC,

“If the Public prosecutor finds that there are no grounds to institute or to prolong criminal proceedings, his/her place as prosecutor may be taken by the injured party under the conditions defined by this law.”

#### **Evidence:**

No specific type of evidence required. Note: The private prosecutor and the injured party have the same access to documents, records and articles as a public prosecutor would have. (Article 59(3) FRY CPC)

#### **Description of Remedy:**

##### *Private complaint*

A charge in a private prosecution shall be filed within 3 months from the date when the person authorised to file a private complaint has learned of the crime and the perpetrator. (Article 52(1) FRY CPC)

##### *Private prosecution when public prosecutor withdraws prosecution*

If the public prosecutor finds that there are no grounds for public prosecution he must inform the injured party within 8 days of his decision and that the injured party is entitled to undertake the prosecution himself. The injured party has eight days from the receipt of the notification to undertake or to resume prosecution. The injured party can 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 at the time he or she informs the injured party about his or her decision deliver instruction as to what steps the injured party has to take to exercise his or her right to private prosecution. (Article 60 FRY CPC)

The injured party as a private prosecutor shall have the same rights as a public prosecutor, except for rights which a public prosecutor enjoys as an officer of the government. (Article 63 FRY CPC)

The injured party can appeal the verdict with respect to the court’s decision concerning the costs of criminal proceedings. If he has acted as a private prosecutor he can appeal the verdict on all grounds on which the verdict may be contested, even if the public prosecutor has taken over the case during the trial. Such appeal should be filed within 15 days from the date when a copy of the verdict was delivered (Article 359 and 360 FRY CPC).

If the injured party is a minor or person entirely deprived of the ability to transact business, their legal representative is authorised to make all statements and take all steps which the injured party is authorised to take. An injured party who has reached age 16 is authorised to make statements and initiate proceedings (Article 64 FRY CPC).

The injured party/private prosecutor 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 (Article 359(1) FRY CPC). An appeal filed on time shall stay execution of the verdict (Article 359(2) FRY CPC).

#### **2. Victim of a crime/injured party, damaged or lost property.**

#### **Applicable law:**

An injured party has the right to make a claim under property law in criminal proceedings if this claim has arisen because of the committing of a crime (Article 103-1 SFRY CPC). The victim can also file a claim under property law in civil proceedings in front of the civil court.



Filing a claim under property law before a criminal or civil court. (Articles 103-114, FRY CPC)

**Evidence:**

The law does not state the nature of the evidence. Under Article 107 FRY CPC the court has an *ex officio* duty to investigate if property damage has occurred in relation to the crime.

**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 103(1) FRY CPC). If it is foreseeable that a property claim would prolong the proceedings the court shall limit its evidence gathering to that data whose verification would later be impossible or difficult (Article 107(2) FRY CPC).

The petition shall be submitted no later than at the end of the trial before the court in the first instance (Article 105(2) FRY CPC). The person submitting the claim must state his claim specifically and submit evidence (Article 105-3 SFRY CPC)

The criminal court competent in the first instance will be either the Municipal Court or the District Court depending on the maximum penalty faced by the accused. (See Articles 26(2) and 29(2) of the Law on Regular Courts of the Socialist Autonomous Province of Kosovo, (Official Gazette SAPK 21/78)).

If a victim of a crime has not filed a claim under Article 103 FRY CPC before the indictment is brought, he or she shall be informed that he or she may file such claim up to the end of the trial (Article 105(4) FRY CPC).

If a claim is dismissed or the defendant acquitted in the criminal trial the court shall instruct the injured party that he may take civil action to pursue his claim. 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(2) 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 and 383 of the Civil Procedure Code).

**3. Security of the injured party**

Protective measures during criminal proceedings

**Applicable Law:**

UNMIK Regulation 2001/20 on the Protection of Injured Parties and Witnesses in Criminal Proceedings, Section 2.1.

“At any stage of the proceeding the Public prosecutor, the private prosecutor, defence counsel, injured party or witness may file a written petition with the court for a protective measure or an order for anonymity where there is a serious risk to an injured party, witness or their family member.”

(...) and *the protective measure is necessary to prevent the serious risk* to the above mentioned persons

**Evidence:**

Declaration of factual allegations (Section 2.2). Police records, testimony of the injured party or the witness.

**Description of Remedy:**

The injured party may file a written petition with the court (the competence belongs to the examining judge during the investigation or if the trial has been set, to the president of the panel of judges) for a protective measure or an order of anonymity.

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. (Section 2.3)

The court may order such protective measures as it considers necessary. Section 3 contains a non-exhaustive list of possible protection measures.

Where measures provided 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. (Section 4).

“The decision on anonymity and the use of methods to prevent revelation of identity to the public, witnesses, injured parties, defence attorneys and the accused may be contested only in an appeal of the verdict.” (Section 4.5).

#### 4. Victim of minor offenses

##### **Applicable Law**

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

Article 65:

“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.*

##### **Description of Remedy:**

The request for initiation of the offence procedure can be submitted in writing by authorised bodies and damaged persons to the relevant court within one year from the day when the offence was committed (Art. 27(1), 96(1), 134).

The claimant has the right to submit request for initiation of the offence procedure, submit evidence, make proposals and express legal-property claim for compensation of damage or recovery of things [...] (Art. 94(1-2)). Announcements shall be submitted in writing, or given orally into minutes (Art. 96(1)). If the submission is not understandable or does not contain all what is necessary to make possible acting according to it, the submitter shall be call to correct, amend within a certain time limit, which cannot exceed 15 days (Art. 96(3)).

The decision on the offence shall define who shall bear the expenses, in what amount, and what time limit which cannot be shorter than 15 days nor longer than 30 days (art. 111)/ 3 months in case of compensation of a property claim (art. 122).

The accused person may however be released from the obligation to compensate either completely or only partly the procedure expenses if by his/her payment would be affected his/her support or persons who are supported by her/him (art. 113).

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

## B. Special remedies available for victims of trafficking

### 1. Victims of trafficking – assistance UNMIK Regulation 2001/4, on the Prohibition of Trafficking

##### **Applicable Law:**

UNMIK Regulation 2001/4, Section 10(1)

“Upon the request of a person who provides to the Victim Assistance Coordinator reasonable grounds for belief that she or he is a victim of trafficking, the following services shall be provided to that person, subject to availability of resources provided in

in Persons in Kosovo

accordance with section 9.2:

- (a) free interpreting services in the language of their choice;
- (b) free legal counsel in relation to trafficking issues (criminal or civil);
- (c) temporary safe housing, psychological, medical and social welfare assistance as may be necessary to provide for their needs; and
- (d) such other services as shall be specified in an administrative direction.”

**Evidence:**

Not specified in the regulation. The Victim Assistance Coordinator would rely on the testimony of the victim, police records if any, and other information it might possess.

**Description of Remedy:**

“Law enforcement officers shall advise persons who are suspected victims of trafficking at the earliest available opportunity of their right to request the services and facilities set out in the present section and shall contact the appropriate persons to arrange the requested assistance.” (Section 10.3).

*No appeals procedure provided for in the regulation in case assistance is denied.*

Currently, the Victim Assistance Coordinator scheme has not been established.

**2. Victim of trafficking – repatriation**  
OSCE and the International Organisation of Migration

**Applicable Law:**

None. Procedure described in Standard Operating Procedure (SOPs) on trafficked victims (see below).

**Evidence:**

Not specified in UNMIK Regulation 2001/4 on the prohibition of victims of trafficking. As with the Victim Assistance Coordinator, the International Organisation of Migration (IOM) would rely on testimony of the victim, police records if any, and other information it might possess.

**Description of Remedy:**

*Standard Operating Procedure (SOPs) on trafficked victims*

The Standard Operating Procedure (SOPs) were initiated upon the initiative of IOM, UNMIK Police, OSCE and an NGO running the shelter for victims of trafficking with the purpose to establish a referral system among all agencies to efficiently provide assistance to victims of trafficking. Although the SOPs are not legally binding documents, they determine the primary role and responsibility of each participating agency in the process of assisting victims. According to the SOPs, as soon as the Police is in contact with a potential victim of trafficking, they are to contact an OSCE trafficking focal point who conducts a full interview with the victim to establish if s/he is a victim of trafficking. If the person is identified as such, s/he is referred to IOM. The latter interviews her/him a second time, and if the person is willing to be repatriated, IOM provides her/him with the necessary assistance: medical, psychological and legal in case the person is willing to testify in court, safe housing for 2 - 3 weeks time to prepare the travel documents. By accepting the IOM's assistance, the victim accepts to be part of a reintegration assistance program in her country of origin. Upon request of the victim, the IOM could decide to delay her/his repatriation for a short time if he or she is willing to testify in court. This delay would only be a short one, one week or so, as the shelter is only for short-term stays.

No appeals procedure is foreseen by the law or the SOPs if the OSCE and/or the IOM determine that the person in question is not a trafficking victim.

**3. Victim of trafficking - claim for restitution/ compensation**

**Applicable Law:**

UNMIK Regulation 2001/4, Section 6.3

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:**

The victim can file a claim as injured party with the criminal court which prosecutes the crime if this would not prolong those proceedings (Art. 103-1 SFRY CPC). The claim has to be submitted prior to the end of the trial (Art. 105-2 SFRY CPC) and includes 3 areas of restitution: compensation, recovery of possessions, annulment of a particular legal transaction (Art. 103-2 SFRY CPC).

The victim may as well file a claim in a civil proceeding.

The decision on the claim is made in the final judgement convicting the accused. However, even with a conviction the court may decide only on compensation of a part of the claim if sufficient evidence has not been collected (Art. 108 SFRY CPC), or may also not decide on the claim for compensation. In this case, the injured party will be informed that s/he needs to pursue the case in a civil action. In cases where the accused is not convicted or the case is dismissed for other reasons, the injured party will be informed that s/he needs to pursue the claim in a civil court.

## VI. 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. 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: "...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.

1. **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).
2. **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 remedy in accordance with the Code:

- a. 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.
- b. If the parties disagree with the judgement of the Court of first instance, an appeal may be lodged within 15 days of receiving the judgement, unless otherwise determined in the Code. The appeal should be filed with the Court of first instance. See Article 343-357 for requirements of an appeal.
- c. 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 judgement and file it at the Court of first instance (Articles 360, 382, 383, 388, Code). See Article 383, Code, for restriction on review.

#### a) through 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 according to applicable law (Article 23.1(b), UNMIK Regulation 2002/21).

**Description of Remedy:**

Remedies available are through the civil procedure. See 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), See also Law on Non-Contested Procedure (Official Gazette SAPK, No. 42/86) Articles 29, 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

**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.

**Description of Remedy:**

Remedies available are through the civil procedure. See 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 an opportunity to claim compensatory damages, which may be sought through the civil procedure (Article 52, Code)

**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.

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

**Applicable Law:**

See also specifically:

*Adverse possession/illegal occupation:*

Articles 28-30, 32, 46, Law on Basic Property Relations

*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:* Must provide evidence that the conditions of acquisition through adverse possession have not been met (i.e. *e contrario* to Arts. 28-30, 32, 46, Law on Basic Property Relations)

*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 through the civil procedure. See 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).

*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 unauthorised construction (general principle)**

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

**Applicable Law:**

See also specifically:

Article 24-26, 70-81, Law on Basic Property Relations (Official Gazette SFRY, No. 6/80)

Article 42(2), Law on Basic Property Relations also provides for claims of compensatory damages.

**Evidence:**

See Section A.1(a), Wrongful Deprivation of Property Rights, Evidence

Specific to this violation, among 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 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), 26(2).

**c) through wrongful application of easements**

**Applicable Law:**

See also specifically:

Articles 49-60, Law on Basic Property Relations

**Evidence:**

See Section 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 A.1, Wrongful Deprivation of Property Rights, Description of Remedy above.

## B. 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 (required supplementary legislation has still not been promulgated to allow it to be established).

Once the registry is established, all transfers must be recorded in it to have full legal effect (Section 7, UNMIK Regulation 2002/22).

#### **Applicable Law:**

Section 3-6, 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  
 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 review of a decision by the Municipal Cadastre Office (MCO)*

- a. A request must be filed with the relevant MCO for a review of the refusal decision within 30 days of written notification by the MCO of this refusal (Section 4.1, UNMIK Regulation 2002/22). The MCO will make a decision within 15 days of receiving the request.
- 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. No deadline for the KCA response is provided. (Section 6.1, UNMIK Regulation 2002/12).
- c. A complaint can then 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 decision being served, or 60 days if the party did not receive it (Article 23, 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)

##### *Request for amendment to the register*

- a. If wishing to contest the registration of immovable property rights, a request may be filed 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 request for



- an amendment (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)

*Please note: As it is currently written this remedy is not clearly defined.*

**2. Wrongful denial of access to cadastral/Registry information**

Provincial or municipal authority fails to release measurement and cadastral information such as copies of plans, descriptions, 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.

See Article 10(2), Law on Measurement and Land Cadastre (Official Gazette SAPK, No. 12/80) and Section 7.2, UNMIK Regulation 2002/22.

**Applicable Law:**

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)  
 Municipal Statutes or Instructions may provide remedies.

**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:**

Remedies provided may be detailed in Municipal Statutes/Instructions, however, at minimum, UNMIK Regulation 2000/45 and applicable law provides for the following remedy:

- e. A written complaint must be filed to the CEO 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).
- f. If the claimant disagrees with the decision, a complaint then can be filed with the central authority (Section 35(3)). 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, but it may be the KCA. The central authority must respond within one (1) month (Section 35(4), UNMIK Regulation 2000/45).
- g. 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 when the administrative act is served or 60 days from when the act was served if the party did not receive the act (Article 23, Law on Administrative Disputes).
- h. 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 IV, Non-discrimination, Section 1, General Remedy, Applicable Law and Description of Remedy for another application of this remedy..*

**3. Erroneous measurement and classification of land**

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

**Applicable Law:**

Article 54-57, Law on Measurement and Land Cadastre (Official Gazette SAPK, No. 12/80)  
 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:**

A written objection to the data presented, highlighting the reasons for the objection with appropriate proofs, such as soil tests, alternate measurements (Article 56(1), Law on Measurement and Land Cadastre) is required. Evidentiary standards provided in Articles 159-201, Law on Administrative Procedures.

**Description of Remedy:**

- a. An objection must be filed with the Commission for data display within the provincial geodesy body (unclear what body this currently is) within eight (8) days of the announcement of the result (Article 56, Law on Measurement and Land Cadastre). The body must issue its decision within one (1) month of receiving the proper petition (Article 218, Law on Administrative Procedures).
- b. If the Commission decides in writing not to take the objection into consideration or does not issue the decision within one (1) month, then a complaint can be submitted within 15 days of receiving the decision (deadline unclear if decision not issued, see Article 248, Law on Administrative Procedures) to the provincial geodesy body (Article 218, 230, Law on Measurement and Land Cadastre; Article 56-7, Law on Measurement and Land Cadastre). The provincial geodesy authority must issue its decision within two (2) months (Article 247, Law on Administrative Procedures)
- c. A complaint can then 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 when the administrative act is served or 60 days from when the act was served if the party did not receive the act (Article 23, 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)

**4. Damage caused by geodesy measurement**

**Applicable Law:**

Article 28(4), Law on Measurement and Land Cadastre (Official Gazette SAPK, No. 12/80)  
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 request that the appropriate authority visit the scene. The Claimant should produce documents establishing the monetary value of the damage. Evidentiary standards provided in Articles 159-201, Law on Administrative Procedures.

**Description of Remedy:**

Remedy is sought through administrative procedures applicable to administrative acts. See Section B.2, Wrongful denial of access to cadastral/Registry information, Description of Remedy above. Please note that the central level authority is that responsible for geodesy measurement, and remains unclear (maybe the Ministry for Environmental and Spatial Planning).

The application for compensation should be made to the body/organisation which inflicted the alleged damage (Article 28(4), Law on Measurement and Cadastre; Article 5, 49-52, Law on Administrative Procedures)

**5. Inappropriate assessment of fines**

Fines mainly for the following offences:  
failure to comply with provision to facilitate measurements, maintenance or land cadastres; failure to

**Applicable Law:**

Articles 28(3), 31(2), 62(1), 64, Law on Measurement and Land Cadastre (Official Gazette SAPK, No. 12/80)  
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:**

notify the relevant municipal authorities of changes on land or object in the land and mark visibly where changes have occurred. See Articles 99-100, Law on Measurement and Land Cadastre.

Documentary evidence that the reasons for the application of the fine do not exist or procedure was not appropriately followed must be provided, as outlined in Article 28(3), 31(2), 62(1), 64, Law on Measurement and Land Cadastre,. Evidentiary standards provided in Articles 159-201, Law on Administrative Procedures.

**Description of Remedy:**

Remedy is sought through administrative procedures. See Section B.2, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

Please note that the central level authority is that responsible for the body accessing the fines, and remains unclear (maybe the Ministry for Environmental and Spatial Planning). If not a municipal body accessing the fine, then the claim should be brought to the relevant body (Law on Administrative Procedures).

**6. Failure to notify the property rights holder of changes to cadastre records undertaken by a municipal authority**

Under Article 61-68, Law on Measurement and Land Cadastre the municipal administrative body competent for geodesy is to notify the land user of changes.

**Applicable Law:**

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:**

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:**

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

**C. Property transfer, including expropriation**

This section describes remedies to 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.

**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:**

Includes transfers done by third parties without legal standing.

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

**Applicable Law:**

See also specifically:  
Articles 19-22, 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.

See A.1, Wrongful deprivation of property rights, Evidence.

**Description of Remedy:**

Remedies are available through the civil court. See Section 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 (1) year from the day s/he became aware the real property was sold, or within three (3) years from the day the contract was concluded. Or, if the contract was not concluded in accordance with the Law on Transfer of Real Property and is in possession of the buyer, then the remedy must be sought within one (1) year from when s/he was aware of the sale (Article 26, 26a).

*Please 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)

**Evidence:**

Provide evidence the inheritance was not done according to 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 Section

A.1, Wrongful Deprivation of Property Rights, Description of Remedy.

**3. Expropriation--  
Wrongful deprivation  
of property rights**

**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 provided 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 service of the administrative act, or 60 days if the party did not receive it (Article 23, Law on Administrative Disputes).
- b. 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)

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

**Description of Remedy:**

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

**c) Based on a wrongful “Decision on Expropriation” by the competent municipal body**

*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).

**Applicable Law:**

Article 15-17, 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 Section 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 Section 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:**

Article 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).

*Annulment of Expropriation:*

Remedy available through administrative procedures. Filing a claim with the first instance administrative body which issued the "Decision" (Article 21(8), Law on Expropriation). See Section B.2, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

The following time limits apply.

- a. If the user of expropriation did not undertake necessary works, the claim must be filed within three (3) years of the date when the "Decision" took effect (Article 21(4)(6), Law on Expropriation).
- b. If the expropriatee and the user of expropriation require annulment, or if the rights of the expropriatee are violated, then the claim must be filed within five (5) years of the date when the "Decision" took effect (Article 21(5), 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 Section 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 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

**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)

compensation issues. 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 Section 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 the court finds necessary to set compensation, including calling experts (Article 142, Law on Expropriation). Criterion for amount of compensation are established in Article 28-48, Law on Expropriation.

**Description of Remedy:**

- a. If 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 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.

*Please note:* If the public defender 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 defender 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 Section 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 the 15 days of receiving the final decision of 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 Section C. 3(d), Expropriation--Wrongful Deprivation of Property Rights based on a failure to meet the conditions, Description of Remedy

**D. 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 A. 2(b), Wrongful Disturbance of Property Rights through unauthorised construction, Applicable Law.

**Evidence:**

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

**Description of Remedy:**

See 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  
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 Section F.2, Applicable Law, for non-residential property.

**Evidence:**

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

- a. Provided all documentation required within the appropriate timeframes, or provide a reasonable justification why not;
- b. Complied 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 minimum, Remedy is sought through administrative procedures applicable to municipal administrative acts. See Section B.2, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

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

**3. Wrongful application of sanctions (including removal or demolition) for violating terms and conditions of issued 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 Section D.2, Wrongful denial of construction permit, Description of Remedy.

**4. 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 Section B.2, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

**E. 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 written submissions, including the Claim 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, public housing enterprise and allocation right holders. HPD/CC has a pamphlet further outlining the types of evidence acceptable.

Section 21.1, UNMIK Regulation 2000/60

"The Commission may be guided but is not bound by the rules of evidence applied in local courts in Kosovo. The Commission may consider any reliable evidence, which it considers relevant to the claim, including evidence presented by the Directorate concerning the reliability of any public record."

### **Description of Remedy:**

- a. File 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 be submitted by the natural person falling under the claim category, a family member, or a legally authorised representative. [When filing all relevant documentation should be presented, and an interview by a Claims Registration Officer will be conducted.]
- b. All interested parties identified in the claim form will be notified of the claim and given 14 days to indicate their intention to participate. If responding, a copy of the claim will be given to responding party who 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, then the HPD will attempt to settle claims amicably (Section 10.1). If unable to do so, then the HPD will refer any such claim to the HPCC (Section 10.4) [Rejection of a claim by HPD may be appealed to HPCC (Section 10.4)]
- 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). The request must be submitted to the HPD (Section 14.1). No further appeal is provided (Section 2.7, UNMIK Regulation 1999/23).

*Please 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 E. 1(a), Wrongful Deprivation of Residential Property Rights, Evidence section.

**Description of Remedy:**

See E. 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, such a further claim must be made within 30 days of learning of the Directorate's order but not one (1) year from the date of the order.

*Please 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 or HPCC of a claim or request for reconsideration.**

**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 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 in adjudicating the claim, or (b) a 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:

- a. *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). 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).
- b. *Rejection of a Request for Reconsideration:* No further appeal provided (Section 25.2, UNMIK Regulation 2000/60; Section 2.7, UNMIK Regulation 1999/23)

**d) specifically of occupancy rights, to a socially owned**

**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)

**apartment by an entity other than HPCC or consent of the HPD or occupancy right holder.**

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 E. 1(a), Wrongful Deprivation of Property Rights, Evidence section.

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.

**Description of Remedy:**

File a complaint with the HPCC through the HPD. According to Section 6, UNMIK Regulation 2000/60, 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.

According to Section 5, 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 settle of a HPCC claim.

**e) specifically of occupancy rights, following a divorce.**

**Applicable Law:**

Article 16 and 16(a), Law on Housing Relations (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)); or
- b. the former spouses could not agree on who will move into which apartment in case of exchange for two dwelling units (Art 16(2)); or
- c. the former spouse who vacated the apartment did not received proper compensation (Art 16a(2)); or
- d. the circumstances were not properly taken into consideration when deciding which spouse would remain the occupancy right holder (Art 16(4)); or
- e. the former spouse who ceased to be the occupancy right holder did not vacate the apartment (Art 16a(2)).

**Description of Remedy:**

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

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

**f) specifically**

**Applicable Law:**

**occupancy rights, following death of the occupancy right holder.**

Arts 17-8, Law on Housing Relations (Official Gazette SAPK, 11/83, 29/86, 42/86) [LHR]  
 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 Section A.1(a), Wrongful Deprivation of Property Rights, Evidence

**Description of Remedy:**

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

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

**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 *e contrario* criteria. See Section 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 A.1, Wrongful Deprivation of Property Rights, Description of Remedy.

**h) due to refusal to register a sale in a**

**Applicable Law:**

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

**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 registered the sale (Section 4, UNMIK Regulation 2001/17).

**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).

Allowed reasons for refusal are outlined in Section 3, 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.

**Description of Remedy:**

The remedy is to be undertaken according to Section 6-7, UNMIK Regulation 2001/17.

- a. File a request in writing to the Municipal Administrator to reconsider his/her decision made under Section 3. 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 (3) 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.

*Please 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 filed. The matter is currently discussed at the central level to provide municipalities with a more precise procedure.

**Applicable Law:**

See 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 A.1, Wrongful Deprivation of Property Rights.

**Description of Remedy:**

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

**i) after 24 March 1999 (or 13 October 1999 for informal transactions), for claims of deprivation not falling into one of the above categories**

**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**

**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 E. 1(a), Wrongful Deprivation of Residential Property Rights, Evidence section.

**occupation]**

Also known as HPCC  
"Category C" claims.

**Description of Remedy:**

See 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.

*Please 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) 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 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 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

Chapter 1-3, HPD Directive No. 2000/1, On the Execution of the Allocation Scheme

**Evidence:**

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

Complaints and reconsideration of an HPD administrative decision must be based upon (a) legally relevant evidence, which was not previously considered, or (b) a ground that a material error in the application of the HPD mandate.

**Description of Remedy:**

Remedies are outlined in HPD Directive No. 2000/1:

- a. A complaint must be submitted to the HPD office which 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:**

- a. 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 (1) year from the date of the issuance of the decision (Section 14.2, UNMIK Regulation 2000/60).
- b. No further appeal is possible (See Section 2.7, UNMIK Regulation 1999/23)

**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 A.2 for applicable law related to disturbance of property rights

**Evidence:**

See 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.

**Applicable Law:**

See 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 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.

**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)

e) through damage caused while under HPD administration

f) through damage of residential real property, boundary disputes, trespass or other related issues outside the competence of HPD/CC.

3. Wrongful application of fines and disputes over rental payments involving socially owned apartments.

Article 26, 29, 31, Law on Regular Courts (Official Gazette SAPK, No. 21/78)

Article 27(3): "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. 47/86)

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 met the requirements of:

*Rental Payments:* Article 27, 40, 62, Law on Housing Relations. See also 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 Common Property:* See Section C.5(a), Expropriation—Compensation Issues, Description of Remedy.

*Municipally Accessed Fines:* Remedy is sought through administrative procedures applicable to municipal administrative acts. See Section B.2, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

**F. 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)

Art. 54(6): "...If the participant in a public tender consider that procedure was violated or

that the selection was not done according to requirements mentioned in announcement 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 the procedure was violated, as established *e contrario* from 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)) despite the fact that none of the required criteria are met (Art 60).
- (b) the organisation of a tender was not announced properly (Art 54(1), Art 56)
- (c) the most favourable offer was not determined within 30 days from the day the tender was opened (Art 58(5)).
- (d) the construction of the object was not given to the most favourable offer (Art 54(2), Art 58(4)) or to an offer done properly (Art 58(1))
- (e) the organisation selected to carry out the work is not an organisation of associated labour registered for exercising such an activity (Art 7(2))
- (f) the requirements to be met to participate to the tender are discriminatory (Art 54(4), Art 55)
- (g) the participants were not informed in time of their failure (Art 54(5))
- (h) the investor did not explain to the participants the reasons of the selection (Art 54(5), Art 58(5))
- (i) the tender should not have been declared unsuccessful as some offers fulfilled the requirements (Art 59)
- (j) the participants were not informed that the tender was not successful within 15 days from the day the offers were opened.(Art 59(3))

**Description of Remedy:**

The remedy available is unclear. Article 54(6) states that the investor determines the body through which to seek the remedy. No provision could be found to determine what are the possible bodies.

*However*, it appears reasonable to presume that a claim may be lodged within the civil procedure. See 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 Section B.2, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

**2. Wrongful denial of construction permission of invest/commercial object**

See Section D.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 Section D.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)
- b) all the requirements were fulfilled (Art 46 (1), Art 7(1))
- c) the decision was not made within the foreseen time limit of 5 days from the day of filling the request (Art 42(1))
- d) the technical documentation required was issued abroad but correspond with national provisions and is translated and controlled (Art 48)
- e) the construction of invests object is foreseen in medium development plan (Art 13(1))
- 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)).

Further evidentiary standards provided in Articles 159-201, Law on General Administrative Procedures.

**Description of Remedy:**

Remedies are provided through administrative procedure. See Section B.2, 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, *e contrario*, that:

- a) the requirements are met and the technical control should have concluded that the object was suitable for utilisation (Art 82)
- b) the technical control started after the expiration of the 15 days from the day of request (Art 82)
- c) the administrative authority did not issue the permission for utilisation within 15 days from the day of receiving the conclusions of the technical control (Art 83(1));
- d) the objects adjusted for preliminary and preparatory works were removed (Art 83(2)).

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

**Description of Remedy:**

Remedy is provided through administrative procedure. Yet, it is unclear what would currently be the administrative provincial authority to which the appeal should be lodged. See Section B.2, 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);
- b) the investor removed the objects adjusted in preliminary and preparatory works (Art 83(2));
- c) the investor fulfilled requirements outlined in the object permission and other provisions (Art 83(2)); and other conditions outlined in Articles 10, 42, 43, 87.

**Description of Remedy:**

Remedy is provided through administrative appeals. Yet, it is unclear what would currently be the administrative provincial authority to which the appeal should be lodged. See Section B.2, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

*Specifically please note:* Article 84, Law on Construction of Facilities for Investment/Commercial Purposes 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). Further evidentiary standards provided in Articles 159-201, Law on Administrative Procedures.

**Description of Remedy:**

Remedy is sought through administrative procedures applicable to municipal or other administrative acts. See Section B.2, Wrongful denial of access to cadastral/Registry information, Description of Remedy above.

**G. 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 Regulation 2002/12 and 2002/13. Please refer to above sections for other issues, such as permits, etc.

Please note that this area is evolving, and the structures are currently being established. Procedures may change. Specifically, issues of transfer of property owned by socially-owned enterprises is not addressed, as the policies and procedures of KTA have not been clarified.

**1. Wrongful decision or action by the Kosovo Trust Agency affecting property or other rights**

**Applicable Law:**

Section 9.3, 18, 24.2-3, 30, UNMIK Regulation 2002/12, On the Establishment of the Kosovo Trust Agency (KTA)

**Restriction:**

Under Section 10.5,

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.

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 through the Special Chamber.

**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 directive, 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 to request such a remedy is provided 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 it accepts claims (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 adoption (Section 9, UNMIK Regulation 2002/13).
- c. A decision rendered by the Special Chamber is final and binding (Section 9/7, UNMIK Regulation 2002/13). No appeal is provided.
- d. 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 to the Special Chamber, unless determined otherwise by the Special Chamber (Section 4.3, UNMIK Regulation 2002/13).

*Please note:* Counterclaims to a suit filed by the KTA can be lodged within the time limits established by applicable law ("applicable law" here refers to the Rules of Procedure, not yet promulgated). Section 30/2, UNMIK Regulation 2002/12 does not apply. (Section 6.3, UNMIK Regulation 2002/13).

**2. Wrongful deprivation or disturbance of property or other rights by an enterprise under the authority of KTA, but not through a decision or action of KTA.**

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

**Applicable Law:**

Section 7.3, 18.2, 28, 29, 30, UNMIK Regulation 2002/12, On The Establishment of the Kosovo Trust Agency

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

**Evidence:**

When applying to competent court other than the Special Chamber, relevant rules of evidence for the court preside. See A.2, Wrongful Disturbance of Property Rights, Evidence.

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:**

(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).

- 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 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

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

**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 G.1, Wrongful Decision or Action by KTA, Description of Remedies for the procedure of the Special Chamber.

## H. Forests

This section describes outlines remedies for overarching potential violations.

### 1. Wrongful deprivation or disruption of property rights through the establishment of forest boundaries.

Law on Forests, (Official Gazette of SAPK, No. 10/87). Special body ordered by the municipality to establish forest boundaries (Article 70) issues a decision that violated property rights.

**Applicable Law:**

Article 70-1, Law on Forests (refined text) (Official Gazette of SAPK, No. 10/87)

Article 71(1): "Persons who consider that by the decision for the establishment of boundaries in the forests their right is violated, can initiate a procedure in a competent court within 30 days after expiration of the time limit in article 70 paragraph 3 of this 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) (Article 161, Law on Non-contested Procedure does not appear to apply)

**Evidence**

See A.1, Wrongful Deprivation 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.

Under Article 70-1, Law on Forests, the procedure must be initiated within 30 days after the period for public review has expired.

**2. Wrongful decision of a forest inspector interferes with property rights**

Law on Forests, (Official Gazette of SAPK, No. 10/87).

**Applicable Law:**

Article 102, 104, Law on Forests (refined text) (Official Gazette of SAPK, No. 10/87)

Article 104:

“Against the decision of the forest inspector a complaint can be lodged within 15 days. The complaint against the decision of the inspector doesn’t retain execution of the decision.

The forest inspector, against whose decision a complaint has been lodged, can, on the grounded request of the complaint submitter, postpone execution of the decision, if the execution of the decision could cause considerable damage whole consequences could be hard to remove.”

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)

Note: If forestry inspection falls under the municipal competence, then Section 35, UNMIK Regulation 2000/45, On Self-Government of Municipalities and Relevant Municipal Instructions are applicable.

**Evidence**

Documents relevant to the claim. Evidentiary standards provided in Article 232, Law on Administrative Procedures.

**Description of Remedy:**

Remedy is provided through administrative procedures. However, it is unclear to which body the claim is to be submitted. According to Article 102, the “Provincial administrative body in charge of the forestry” is responsible for the proper conduct of the forest inspection service, indicating that the inspection service falls under the central authority. The claim then should be filed with the provincial administrative body.

- 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 appeal decision, 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 when the administrative act is served or 60 days from when the act was served if the party did not receive the act (Article 23, 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 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.