



SAP TRACKING MECHANISM FOR KOSOVO

(First meeting, Pristina, 13 March 2003)

Questionnaire on democratisation and political reform issues¹ - STM 0101

1. General

1.1. Please provide a general description of the state of play of alignment with relevant international and European democratic standards including the UN Charter, the European Convention on Human Rights and EU Charter on Fundamental Rights. *More detail can be provided under the specific subject-headings below [Lead: O/SRSG – OPA and OLA Also: Pillar III, Ombudsman as appropriate]*

1.2. Please provide a general description of the state of play of implementation of the SRGSG's Benchmarks (except the one on economic issues). **[Lead: O/SRSG – OPA/planning unit]**

2. Governance

Separation of powers²

2.1. Do courts have the power to ensure that government and all public authorities act in a manner consistent with the Constitution and the law? **[Lead: Pillar I Also: O/SRSG-OLA, Pillar III and Ombudsman as appropriate]**

2.2. How is the separation of powers between the government, administration and judiciary monitored and ensured? **[Lead: Pillar I Also: O/SRSG-OLA, Pillar III and Ombudsman as appropriate]**

2.3. Please describe the relationship between the Ombudsperson and the government, administration and judiciary? **[Lead: Pillar I Also: O/SRSG-OLA, Pillar III and Ombudsman as appropriate]**

Representative and Accountable Government and public services

¹ These questions are not exhaustive but are merely intended to structure the discussion on this particular occasion. The overall set of conditions set out in the Council Conclusions of 29 April 1997, as assessed in the SAP Reports, remain valid. In all cases, implementation is as important as theory.

² More detailed discussion of the judicial system will take place at a later meeting under "Justice and Home Affairs"

2.4. Describe any ethical rules applying to government and public service, and their implementation in practice. **[Lead: Pillar II Also: O/SRSG-OLA, Pillar I, PISG-MPS, Ombudsman as appropriate]**

2.5. What is the weight of the Ombudsperson's rulings and recommendations - are public authorities required to conform? Are there any public authorities which are outside the Ombudsperson's remit and if so what are the democratic / human rights safeguards in those cases? **[Lead: Pillar II Also: O/SRSG-OLA, Pillar I, PISG-MPS, Ombudsman as appropriate]**

2.6. Civilian accountability of military forces (KFOR), police forces (KPS), and emergency preparedness forces (KPC), including budgetary and judicial aspects. **[Lead: O/SRSG Also: Pillar I, KFOR]**

2.7. Describe the system of local self-government and any relevant legislation. Describe policy and implementation practice and any plans regarding decentralisation. **[Lead: Pillar II Also: O/SRSG-OLA, Pillar I, PISG-MPS, Ombudsman as appropriate]**

Elections and Referenda

2.8. What are the laws and other regulations governing the organisation of elections and referenda (e.g. electoral constituencies, electoral lists, Central Election Commission, Electoral Code, financing of political parties, complaints procedures)? **[Lead: Pillar III]**

2.9. What are the rules governing the conduct of elections and referenda (including media coverage, monitoring etc)? **[Lead: Pillar III]**

2.10. Which bodies are responsible for these issues? What is the relationship between, or independence of, all such bodies? **[Lead: Pillar III]**

2.11. Are there any specific rules on minority representation? **[Lead: Pillar III]**

Also: Pillar II Community Affairs]

2.12. Have any weaknesses been identified by monitoring organisations (ODIHR or Council of Europe)? If so, what specific steps have been taken to address these and what is the precise timetable envisaged for the remaining steps? **[Lead: Pillar III]**

Functioning of parliament

2.13. Have any difficulties been identified in the functioning of parliament or specific committees? What steps have been taken to address these? **[Lead: Pillar III Also: O/SRSG, PISG – Parliament, OPM]**

Public administration

2.14. Description of the organisation and management of the entire public administration, including local government, (structure, staffing, resources), with organisational charts. **[Lead: Pillar II Also: PISG – OPM, MPS, other, as appropriate]**

2.15. Describe the staff profile (if possible provide statistics on numbers, composition by sex / age / education status, length of service) **[Lead: Pillar II Also: PISG – OPM, MPS, other, as appropriate]**

2.16. Human Resource Management: Are there clearly defined job descriptions, recruitment procedures and development policies, training , performance monitoring? Safety issues in the workplace? **[Lead: PISG-O/PM – further distribution as appropriate]**

2.17. Are there strategies and procedures in place regarding ethics - to ensure that all staff observe the rule of law and perform duties in a fair, impartial, honest, trustworthy, polite and professional manner? Is this taken into account in recruitment and subsequent training? Are family connections declared, and what is the policy on nepotism? **[Lead: PISG-MPS – further distribution as appropriate]**

2.18. How is employee misconduct defined, identified, and what sanctions apply (internal or external)? Are systems and procedures applied (regularly and randomly) in such a way as to minimise opportunity for staff fraud? Is there a system for mutual exchange of information with courts, prosecuting and enforcement agencies about customs employees suspected or convicted of criminal offences? Is there a system to receive information from the public about fraud / misconduct by employees? To whom is the public administration accountable, and how ? **[Lead: PISG-MPS – further distribution as appropriate]**

3. Fundamental democratic principles : Human rights and rule of law

In each case, please detail how existing laws or practices will, if necessary, be modified in order to align with the European Convention on Human Rights and other international standards.

3.1. How could human rights be better enforced? What is your strategy in this **regard, and timing / benchmark measurements?** **[Lead: Pillar III Also: O/SRSG-OPA-planning unit in consultation with OPA for benchmarks]**

3.2. Is respect shown for rule of law - by government, individual politicians and the population? How could this be better ensured? What is your strategy in this **regard, and timing / benchmark measurements?** **[Lead: Pillar III Also: O/SRSG-OPA-planning unit in consultation with OPA for benchmarks]**

3.3. What is the involvement of representatives of civil society, human rights organisations, the judiciary, the media and non-government groupings in this field? **[Lead: Pillar III Also: O/SRSG-OPA-planning unit in consultation with OPA for benchmarks]**

3.4. Are there awareness-raising strategies?

Freedom of expression:

3.5. How is freedom of speech guaranteed in practice? Are there any limits and for what reasons? **[Lead: Pillar III – IMC]**

3.6. How is religious pluralism ensured in practice? Are there any limits, and for **what** reasons? **[Lead: Pillar III – IMC]**

3.7. Are there means to take action against hate speech? **[Lead: Pillar III – IMC]**

3.8. Are there specific limits on the freedom of expression of public employees? **[Lead: Pillar III – IMC]**

3.9. What is the situation regarding the independence of media? Do public officials demonstrate understanding of the role of the independent media e.g. in scrutinising their actions? Have any journalists been subject to police questioning or to any form of harrassment or intimidation since June 1999? **[Lead: Pillar III – IMC]**

3.10. What steps have been taken towards public broadcasting? Does the state media / public broadcaster currently demonstrate pro-government bias in its reporting of issues? If so, which, and what measures do you propose? **[Lead: Pillar III – IMC]**

Academic freedom:

3.11. How is academic freedom guaranteed and how are these guarantees implemented in practice? **[Lead: PISG-O/PM-MEST]**

3.12. In order to meet the Council of Europe's requirements, please provide translations of the section of primary and secondary school textbooks (even if still only in draft form) covering the last 20 years of the history of the province and region. **[Lead: PISG-O/PM-MEST]**

Right of assembly, demonstration, association

3.13. How is the right of assembly and demonstration guaranteed in practice? **[Lead: Pillar III Also: PISG-O/PM-MFE for fiscal exemptions, others as appropriate]**

3.14. What laws govern associations (including of police and judges), political parties, citizens' groupings and trade unions? How are these rights be implemented in practice? Is there a strategy with a view to ratification of the European Social Charter? **[Lead: Pillar III Also: PISG-O/PM-MFE for fiscal exemptions, others as appropriate]**

3.15. Are there any fiscal exemptions for NGOs? **[Lead: Pillar III Also: PISG-O/PM-MFE for fiscal exemptions, others as appropriate]**

3.16. What about the operation of NGOs from other parts of the country or from third countries, operating in Kosovo? Any restrictions? Any treatment different to local NGOs? **[PISG-O/PM-further distribution as appropriate]**

Right to property:

3.17. How are property rights identified and enforced and how well does this work in practice? Any obstacles e.g. problems with the cadastral registers? What action is being taken in this regard? **[Lead: O/SRSG-OLA Also: PISG-O/PM-MPS for cadastral registers; HPD for property rights adjudication mechanisms and expropriations]**

3.18. Are there any laws restricting property rights? What are the justifications and how does this operate in practice? **[Lead: O/SRSG-OLA Also: PISG-O/PM-MPS for**

cadastral registers; HPD for property rights adjudication mechanisms and expropriations]

3.19. Is there a strategy regarding restitution of unlawful expropriations made pre 1999, and how does this operate in practice? **[Lead: O/SRSG-OLA Also: PISG-O/PM-MPS for cadastral registers; HPD for property rights adjudication mechanisms and expropriations]**

3.20. Is there a strategy regarding expropriation since 1999? What justifications and how does this operate in practice? **[Lead: O/SRSG-OLA Also: PISG-O/PM-MPS for cadastral registers; HPD for property rights adjudication mechanisms and expropriations]**

Access to courts / right to fair trial / equality before the law :

Note: Wider judicial issues in general will be dealt with separately under a future questionnaire on Justice and Home Affairs.

3.21. How are rights guaranteed in practice? Do the principles of *in dubio pro reo* and *nulla poena sine lege* apply? **[Lead: Pillar I]**

3.22. Have international organisations made recommendations in regard to the judicial or penitentiary system? If so, how are these being implemented in practice? **[Lead: Pillar I]**

Torture / forced labour:

3.23. Is torture or forced labour prohibited? How is this guaranteed in practice? **[Lead: Pillar I]**

4. Compliance with international legal obligations

4.1. Describe the overall state of cooperation with the International Criminal Tribunal for former Yugoslavia. **[Lead: Pillar I for ICTY, O/SRSG-OPA and OLA for SCR 1244 implementation]**

4.2. Describe the overall state of implementation of UNSCR 1244 and any related documents **[Lead: Pillar I for ICTY, O/SRSG-OPA and OLA for SCR 1244 implementation]**

5. Respect for and protection of minorities

5.1. Under current legislation, how are minorities (ethnic, religious, sexual or other) defined? Are there different categories? **[Lead: Pillar II Also: O/SRSG-ORC, Pillar III, Ombudsman, as appropriate]**

5.2. Describe laws on non-discrimination and how these would operate in practice. **[Lead: Pillar II Also: O/SRSG-ORC, Pillar III, Ombudsman, as appropriate]**

5.3. What legal instruments define the rights of minorities? What are these rights? Are there any plans for general constitutional guarantees of minority rights? Are there any plans for affirmative / positive discrimination in this regard? Are there awareness-raising strategies regarding minority rights, both for minority groupings and the wider population

(including police, judiciary, media)? **[Lead: Pillar II Also: O/SRSG-ORC, Pillar III, Ombudsman, as appropriate]**

5.4. How can these rights be asserted, in practice? Are there any particular problems (e.g. access, language, impartiality)? How are these being dealt with? **[Lead: Pillar II Also: O/SRSG-ORC, Pillar III, Ombudsman, as appropriate]**

5.5. What is the overall situation of minorities (including statistics)? Do they experience particular problems (e.g. harassment, freedom of movement)? **[Lead: Pillar II Also: O/SRSG-ORC, Pillar III, Ombudsman, as appropriate]**

5.6. Does the Ombudsman have specific competencies regarding minority issues? **[Lead: Pillar II Also: O/SRSG-ORC, Pillar III, Ombudsman, as appropriate]**

5.7. Are minority groups involved in public debates on issues of human rights? **[Lead: Pillar II Also: O/SRSG-ORC, Pillar III, Ombudsman, as appropriate]**

5.8. Are there consultation mechanisms with representatives of minority groupings? For instance during the legislative process? **[Lead: Pillar II Also: O/SRSG-ORC, Pillar III, Ombudsman, as appropriate]**

5.9. Do ethnic/linguistic minorities have the right to use their own language before courts, public authorities, and public services (e.g. health care and educational institutions)? How is this guaranteed in practice?? If there are **problems**, **how do you** plan to resolve them? **[Lead: Pillar II Also: O/SRSG-ORC, Pillar III, Ombudsman, as appropriate]**

5.10. What is the state of integration of various minorities? Is there a policy in this regard? **[Lead: Pillar II Also: O/SRSG-ORC, Pillar III, Ombudsman, as appropriate]**

5.11. What changes have been introduced to align with the Council of Europe's Framework Convention on the Protection of Ethnic Minorities? Describe progress in reporting under that Convention? **[Lead: Pillar II Also: O/SRSG-ORC, Pillar III, Ombudsman, as appropriate]**

5.12. What changes have been introduced to enable alignment with the European Charter on Regional or Minority languages? Describe progress. **[Lead: Pillar II Also: O/SRSG-ORC, Pillar III, Ombudsman, as appropriate]**

Refugees and internally displaced persons

5.13. Number of refugees and internally displaced persons, and their present status. **[Lead: O/SRSG-ORC]**

5.14. What are the rights of refugees and internally displaced persons, in theory and in practice? **[Lead: O/SRSG-ORC]**

5.15. What agreements or Conventions are being aligned to? **[Lead: O/SRSG-ORC]**

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