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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Thirty-ninth session

SUMMARY RECORD OF THE 39th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 9 November 2007, at 10 a.m.

Chairperson: Mr. TEXIER

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS (*continued*):

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE
WITH ARTICLES 16 AND 17 OF THE COVENANT (*continued*)

Combined initial and second, third and fourth periodic reports of
San Marino (E/C.12/SMR/4; E/C.12/SMR/Q/4 and Add.1 and 2;
HRI/CORE/1/Add.119)

1. *At the invitation of the Chairperson, the delegation of San Marino took a place at the Committee table.*

2. The CHAIRPERSON welcomed the delegation of San Marino and invited it to present the combined initial, second, third and fourth periodic reports of the State party.

3. Mr. GALASSI (San Marino) welcomed the opportunity for the Republic of San Marino to report on the implementation of the International Covenant on Economic, Social and Cultural Rights, to which his country had been a party since 1986. He was sure that the dialogue with the Committee would be very fruitful.

Articles 1 to 5 of the Covenant

4. Mr. RIEDEL asked whether the State party planned to set up a national human rights institution, in accordance with the Paris Principles.

5. Mr. PILLAY asked whether citizens who had been unsuccessful in cases invoking the provisions of domestic legislation were able, as a last resort, to invoke the Covenant directly before the courts in order to assert one or other of the rights enshrined therein, such as the right to adequate housing.

6. Mr. KERDOUN, referring to paragraph 59 of the report, in which the State party recognized the right of peoples to freely dispose of their natural wealth and resources, asked whether, by extension, the State party was in favour of all peoples of the world being able to exercise their right to self-determination, including the Saharan people. With regard to international cooperation and the activities to assist and support the needy mentioned in paragraph 62 of the report, he asked what was San Marino's main source of income and which countries benefited most from its assistance.

7. Mr. KOLOSOV asked whether Italy, San Marino's neighbour, exerted any influence on San Marino society and whether its social problems had an impact on the daily lives of San Marino nationals. He also wished to know whether the fact that nearly half the population of San Marino lived abroad was explained by the very high – indeed too high – standard of living in the State party. Lastly, he was astonished that citizens who went bankrupt lost their voting rights, as mentioned in paragraph 11 of the State party's core document (HRI/CORE/1/Add. 119).

8. Mr. SADI asked what were the main challenges that the State party faced in implementing the rights enshrined in the Covenant and whether there was really no racial discrimination in the Republic of San Marino, given that it had deemed it unnecessary to adopt legislation criminalizing acts of racial discrimination. He also asked whether the principles enshrined in the Covenant influenced San Marino's policies and laws and whether the Covenant had already been invoked before the

national courts. Lastly, he wished to know whether the State party received refugees and asylum seekers and, given the importance of tourism revenues, whether there was a great demand for work visas from foreigners wishing to find a job in the tourism sector.

9. Ms. WILSON asked how the State party intended to disseminate the concluding observations that the Committee would adopt at the end of its consideration of the combined initial and second, third and fourth periodic reports of San Marino and, in particular, whether it intended to publish them through a website. She asked what rights holders of a cross-border work permit enjoyed, whether they paid taxes at source and could claim some social benefits in San Marino and, more generally, what were the rights and privileges attached to the different stay permits, notably to residence permits.

10. She welcomed the adoption of Law No. 131 of 29 September 2005 on the promotion, support and development of employment and training, which, inter alia, enabled women to re-enter the job market after a long break in their working lives, and asked how many women had benefited from those provisions. More generally, she wished to know what percentage of women occupied positions of responsibility and how many headed university departments.

11. Ms. BONOAN-DANDAN said that it was regrettable that there was no legislation criminalizing racial discrimination and asked when the State party intended to adopt one in order to fulfil its obligations under the Covenant. Concerning the implementation of article 3 of the Covenant, in which States parties undertook to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the Covenant, she wished to know what machinery had been put in place to ensure compliance with the various laws adopted in that area. Lastly, she asked what were the precise mandate and sphere of action of the Commission for Equal Opportunities set up in 2004.

12. Mr. DASGUPTA asked what was the total amount of the international solidarity provision mentioned in paragraph 63 of the report, both in absolute figures and as a percentage of gross domestic product (GDP), and whether the State budget for 2007 also included an entry for international cooperation. He would like to know what distinction the State party made between residents and holders of a stay permit, not all of whom seemed to be eligible for social assistance and other social benefits.

13. Mr. TIRADO MEJIA asked what was the State party's position on the potential adoption of an optional protocol to the International Covenant on Economic, Social and Cultural Rights and what was the procedure for the appointment of judges, who could not be nationals of San Marino because of the need to ensure the impartiality of the judiciary in a country where everyone knew each other. Were those judges recruited by competitive examination and must they be European and/or come from a particular country?

14. Ms. BARAHONA RIERA asked what influence Catholicism had on the situation of women in San Marino society and, in particular, on decisions taken to establish gender equality in the State party. Was the legislature planning to do away with the pejorative, discriminatory terms "natural" and "illegitimate" children? She wished to know the estimated percentage of illegal immigrants in the country, the

criteria applicable to the naturalization of foreigners and the factors that had given rise to the 2002 labour conflicts, which appeared to have affected all social groups.

The meeting was suspended at 10.50 a.m. and resumed at 11 a.m.

15. Ms. BIGI (San Marino) said that San Marino was a micro-State that shared the culture of the country that surrounded it: Italy. Until the 1960s, the country had had few jobs to offer its inhabitants and many families had had to emigrate. Even at the present time, it was estimated that a third of San Marinese citizens lived abroad. In that context, the authorities were seeking to maintain strong, close ties between San Marinese citizens living abroad and their country or origin. A very active association of San Marinese abroad enabled them to make their voice heard at home. A particular effort was being made with young people living abroad, with the organization of stays designed to enable them to learn Italian and familiarize themselves with San Marinese culture.

16. There was no national human rights institution as such, but there were plans to remedy that situation. In the meantime, the Government had created the institution of human rights ombudsman, with essentially the same powers as a national human rights institution.

17. While San Marino shared the principles enshrined in the Convention relating to the Status of Refugees, it did not recognize the status of refugee or asylum seeker. As a small country with no border controls, it had encountered difficulties in establishing the mechanisms essential for dealing with cases of refugees and asylum seekers and had thus far preferred to take a case-by-case approach. A distinction was made between temporary residents and permanent residents, who enjoyed the same rights as citizens, except for the right to vote. Her delegation did not have any precise statistics on illegal immigration.

18. Replying to the question about Western Sahara, she said that the Republic of San Marino did indeed recognize the principle of self-determination and the right of peoples freely to dispose of their natural wealth and resources, but reserved the right not to express an opinion on the subject with regard to Western Sahara, which was not a recognized State.

19. Concerning the dissemination of the Committee's recommendations and concluding observations, the Ministry of Foreign Affairs intended to publish a press release in all the main media and to give a detailed account of the discussions between the delegation and the Committee. In general, the people of San Marino were very interested in international affairs and the place occupied by their country in international bodies.

20. With regard to the adoption of an optional protocol to the Covenant, San Marino had been unable, given its limited human and material resources, to take part in the discussions on the issue. However, it believed it was appropriate that individuals should be able to appeal directly to the Committee for the enforcement of their economic, social and cultural rights.

21. The absence of specific legislation on racial discrimination could be attributed to the fact that, until recently, San Marino society had been very homogeneous and had included virtually no foreign community other than Italians, meaning that there had been no problem of racial discrimination. Nevertheless, as a preventive measure, the Government had asked the Ministry of Justice to amend the Criminal

Code in order to criminalize acts of racial discrimination. Campaigns had also been undertaken to promote tolerance, particularly among the young.

22. Ms. BERNARDI (San Marino) said that article 4 of the Declaration on Citizens' Rights established the principle of equality of all citizens, regardless of their sex, national or ethnic origin and social status. Even if it was not expressly mentioned in that article, discriminating against anyone on grounds of race, language or national origin could be considered prohibited in all circumstances. The absence of a law on racial discrimination should not be interpreted as reflecting any lack of interest in that issue on the part of the authorities. The country was increasingly aware of the issue as a result of the increase in migrant flows. Moreover, a number of laws, for instance laws on education and employment, dealt, indirectly or otherwise, with discrimination. For instance, employers were prohibited from basing recruitment decisions on criteria other than professional abilities. In recent years, the State party had adopted policies aimed at promoting intercultural and interethnic dialogue, particularly among the younger generation.

23. Mr. FERRONI (San Marino) said that any legislation must take account of the history and culture of each State. In the case of San Marino, relations among private individuals were governed by common law. Such law was flexible and was therefore adaptable to economic, social and cultural change. Drawing up a specific instrument on racial discrimination would entail the drafting of a code that might prove superfluous. Besides, such legislation already existed, even though it might need supplementing, since all San Marino's legal principles were based on that of equality. With regard to the criminalization of acts of discrimination, criminal penalties must not be seen as a panacea: the proportionality of the penalty to the seriousness of the crime must be considered on a case-by-case basis.

24. Mr. CECCOLI (San Marino) said that the Commission for Equal Opportunities set up by the Law of 25 February 2004 was essentially political in nature, since its members came from all the parties represented in the Great Council and its purpose was to guarantee all citizens equal opportunities and equality before the law. The Commission had produced a 70-page report that showed that there was no fundamental discrimination between the sexes, but that San Marino policy was evolving on some points with which the Commission was concerned, such as abortion.

25. The role of women in San Marino was influenced by Roman Catholic culture. The composition of the Great Council had recently given rise to a debate about the issue of parity between men and women in political representation since, despite the absence of discrimination, women accounted for only 10 per cent of Council members. The proposal to increase their representation had failed to obtain a majority in the Great Council because of the Catholic-based parties, whose elites were opposed to the increase even though their rank-and-file membership were in favour of it. The country would have to wait for those parties to evolve naturally.

26. Ms. GASPERONI (San Marino), referring to the role and integration of women in the workplace, cited a law that had aroused considerable interest throughout the political class. The law concerned women re-entering the job market, women who were long-term unemployed (over 12 months) and women aged over 50, to whom it offered special employment contracts and a period of personalized job training and integration managed by a specialist. The incentives offered to employers made it possible to help women who were long-term unemployed to find

a job, but as finding a job was very easy, there had never been any need for recourse to that type of contract. Whether they had lost their job for economic reasons or were returning to work after taking time off to raise their children, women found employment fairly quickly, a situation perhaps attributable to the rapid rise in their educational levels, the high rate of school attendance among girls and the efforts made to raise awareness and promote non-discrimination within the school system. All of that yielded benefits in terms of the role of women in society and in the workplace, to the point that the female employment rate had increased by 2 per cent over the past three years, while the female unemployment rate had decreased by the same amount. However, the unemployment rate had been very low to start with – 2.8 per cent – and the time taken to find a job was very short.

27. Mr. BERNARDI (San Marino) said that under the 2000 Nationality Law, any child born of a San Marinese parent automatically acquired nationality on coming of age. Adoptive parents of San Marinese nationality could transmit their nationality to their child. Children born in San Marinese territory of unknown or stateless parents could also acquire nationality. Moreover, San Marinese nationality could be acquired by naturalization if the applicant had resided in the country for at least 30 years, or 15 years if married to a San Marinese citizen. The naturalized person must renounce his or her nationality of origin and swear an oath of loyalty to the Republic of San Marino. Nationality was denied to anyone with a criminal record.

28. No permit was required for a stay of less than 10 days in the country. Thereafter, it was compulsory to obtain a stay permit. Permits were issued without a problem to anyone wishing to stay for tourism or study purposes for a maximum of 90 days. Foreigners taking up a paid job of non-fixed duration had to obtain a special permit. A seasonal work permit could also be issued to anyone planning to engage in a paid activity for a maximum of 10 months.

29. Mr. FERRONI (San Marino) said that since 2002, following the reform of the Declaration on Citizens' Rights and Fundamental Principles of San Marino's Constitutional Order and the 2002-2003 judiciary law, any citizen could become a judge of any rank. The reform had also amended the procedure for becoming a member of the judiciary: previously, judges had been appointed at the proposal of the Judicial Commission, which had put forward only foreign lawyers, judges or legal experts, and the proposal had to be accepted by a qualified majority of the Great Council. Currently, appointment was by competitive examination, consisting of: oral examinations for conciliating judges, whose jurisdiction was limited to cases involving maximum amounts of 25,000 euros; oral and written examinations and an evaluation for judges of second instance (civil and criminal appeal judges); and, for judges of third instance (highest judges of appeal) and judges of extraordinary remedies, examinations based purely on professional qualifications.

30. Because the legislature had recognized that, in the event of a conflict of laws, the international instruments to which San Marino had acceded took precedence over national laws, those instruments ranked higher than all national laws since they enjoyed the same rank as the Constitution, making it easy for San Marino's judges to enforce them. The absence of explicit references to the Covenant was attributable to the fact that San Marinese legislation governed a whole range of sectors in which the rights enshrined in the Covenant were exercised (work, business, family, etc.). Thus, when those legislative provisions accorded with not only the principles of the

Declaration but also the content of the Covenant, there was no need to justify them further in order to legitimize them.

31. The distinction between illegitimate and legitimate children was purely terminological: it described different situations but entailed no discrimination. An illegitimate child was one born out of wedlock, but the child was treated in exactly the same way as a legitimate child.

32. Mr. GASPERONI (San Marino) said that the budgetary credits allocated to the International Solidarity Fund for international cooperation and solidarity had been: 65,000 euros for 2006, fully disbursed, and 61,000 euros for 2007, which would be fully disbursed by the end of the year, representing 0.007 per cent of gross national product (GNP). The Republic of San Marino did not transfer any bilateral funding directly to recipient countries. Instead, it used international channels such as the United Nations and its specialized agencies, which worked in the field on very specific projects about which the competent San Marinese departments were kept regularly informed, or international or local NGOs, San Marino-based or otherwise. Thus, its funding went primarily to projects. The country's main source of income was still tourism; supply in that sector needed to be improved, in order to attract more visitors year-round and encourage them to stay longer.

Articles 6 to 9 of the Covenant

33. Mr. MARTYNOV, noting that San Marino had not ratified two important ILO Conventions on unemployment, namely, the Unemployment Convention (No. 2) and the Employment Policy Convention (No. 122), asked the delegation whether it could give the reasons for that situation and indicate the Government's intentions in that regard. In 2003, the Council of Europe's European Commission against Racism and Intolerance had noted that "there are groups of persons who are in a position of disadvantage within the labour market or may be more vulnerable to discrimination" and had suggested that San Marino should "conduct a survey into the possible existence, extent and manifestations of racism within the labour market, possibly in the framework of a wider survey concerning racism and discrimination in San Marino". He asked whether the Government had acted on that suggestion and, if so, what had been the findings of the survey.

34. With regard to cross-border workers, who were entitled only to temporary employment contracts, and "consultants", whose contracts were even less advantageous, especially in terms of pay, he noted that an ad hoc Commission on Trans-Border Workers had been established to examine the issue. He asked what had been the outcome of that examination and whether the Commission had made any recommendations. He wished to know what were the differences between permanent employment contracts, temporary employment contracts and consultancy contracts in terms of remuneration, paid leave, working hours and social security. Since unemployed persons with resident status or a residence permit did not have the same social security rights as citizens of San Marino, he would like to know whether the Government intended to put an end to such discrimination.

35. Lastly, even though the standard of living was high and there were no serious problems with regard to social security, San Marino had ratified neither the ILO Social Security (Minimum Standards) Convention (No. 102), Social Policy (Basic Aims and Standards) Convention (No. 117) and Equality of Treatment (Social Security) Convention (No. 118) nor the European Social Charter, which it had

nevertheless signed in 2001. He asked the delegation whether it could give an explanation of the Government's attitude to international social security instruments and an indication of its intentions.

36. Mr. ABDEL-MONEIM asked whether the fact that San Marino was landlocked caused it economic problems, particularly with regard to imports and exports transiting through Italian ports. He noted with satisfaction that invalidity benefit was funded by income tax and came to more than 1,200 euros a month, but was surprised that the social pension (around 450 euros a month) and family benefits were so low and asked the delegation to pass on his comments in that regard.

37. Mr. ZHAN Daode said that the size of the San Marino delegation was evidence of the importance the State party attached to the dialogue with the Committee. Life expectancy at birth was very high in San Marino, showing that economic, social and cultural rights were well respected. The report under consideration was straightforward, clear and concise, but focused more on the progress made than on the problems faced. He wished to know why, as indicated in paragraph 76 of the report, there was no minimum wage and what happened if a family had an annual per capita income above the amount envisaged by Law No. 54 of 28 April 1999, mentioned in paragraph 138 of the report.

38. The CHAIRPERSON, speaking as a member of the Committee, expressed surprise that average wages were higher in the public sector than in the private sector, when the opposite was true in most countries, and requested more information in that regard.

39. Ms. BARAHONA RIEIRA, expressing her belief that the criminalization of certain offences ensured that society was protected, asked whether there was any bill aimed at criminalizing domestic violence and any programme for combating that problem.

40. Mr. RIEDEL, noting San Marino's exemplary record in three major public health areas, namely, child immunization, sanitation and drinking water supply, asked how water quality was monitored. He wished to know how the vulnerable groups mentioned in paragraph 211 of the report had been identified, what measures had been taken to help them and what results had been achieved. He would also like more information on the "cultural" transformation of primary health care centres referred to in paragraph 218 of the report. It would be useful to hear from the delegation whether any action to combat AIDS had been taken under the Health and Social Plan 2006-2008 and, if so, what. He would like clarification as to what specific measures the State party planned to take to involve the community more closely in health management. Lastly, he wished to know the reasons for childhood obesity and what action the authorities had taken or planned to take to combat that phenomenon which, as in many other countries, affected the entire population.

41. Mr. SADI, noting that San Marino's economy was based mainly on tourism and that trafficking of persons was prohibited by articles 2, 6 and 8 of the Criminal Code, asked whether there were any statistics giving an idea of the scale of the problem and whether any prevention programmes had been put in place. With regard to corporal punishment, which was banned in schools under articles 2, 3 and 4 of the Criminal Code, he asked whether that ban extended to the family, what was the situation with regard to child abuse and whether there was any case law in that area.

42. Ms. WILSON, observing that the number of psychiatric examinations in 2003 seemed high in relation to the number of inhabitants, asked how the situation had evolved since then and whether more recent data were available. She would also like to have information on the suicide rate, which was not mentioned in the report, and on the institutionalization of people with mental problems, particularly on whether such a measure could be appealed. Concerning older persons, she asked whether there were cases of elderly people being abandoned by their family or living in isolation, whether there were any centres to which they could go and, if so, how they functioned, particularly whether they were public and State funded or private and fee-paying. Lastly, she asked whether there were any cancer-prevention measures targeting the population as a whole and, more particularly, women.

43. Ms. BONOAN-DANDAN, noting that paragraph 143 of the report defined the family as “the union between a man and a woman including their natural or adopted offspring”, asked what was the status of single parent families and whether the financial support mentioned in paragraph 146 as benefiting “young couples buying or restoring a house” could also be given to a single person with one or more children. She wished to know whether the parental leave mentioned in paragraph 148 of the report also benefited single mothers and requested information on protection of the right to sexual and reproductive health, of which there was no mention in the report.

44. Mr. PILLAY asked how many people were experiencing difficulties and needed support, whether the minimum wage was fixed at a level enabling a worker and his/her family to live a decent life and whether the “certificate of social credit” sufficed to cover the needs of families and single persons in need of support. Lastly, he congratulated the State party on the absolutely remarkable measures taken and results achieved with regard to the right to housing.

The meeting rose at 12.55 p.m.