

TREATY BODY MONITOR

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COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS 39TH SESSION SAN MARINO, INITIAL - 4TH REPORTS 9 NOVEMBER 2007

Information submitted to the Committee	1
State report	2
List of issues	2
NGO parallel reports	2
Themes and issues	2
Implementation of the Covenant	3
Discrimination	3
Immigration	3
Citizens living abroad	4
Equality of men and women	4
Labour issues	4
Social Security	5
Protection of the family, mothers and children	5
Physical and mental health	6
Education	7
Culture	7
Other issues	7
Conclusion	8

Information submitted to the Committee

San Marino submitted its combined initial - fourth periodic reports¹ to the Committee on Economic, Social, and Cultural Rights (the Committee) on 6 November 2006. San Marino's initial report was due on 30 June 1990, its second on 30 June 2000, and its fourth on 30 June 2005. While not providing any reasons for the

¹ E/C.12/SMR/4, 6 November 2006

delay in the submission of its reports, San Marino did note that it has been party to the Covenant on Economic, Social, and Cultural Rights (the Covenant) since 1986, and that it acknowledges the high standards that the Covenant sets. This was San Marino's first appearance before the Committee.

The State report

Despite having submitted a core document², San Marino's combined State Party report was only 49 pages long, which, as a Committee member noted, is relatively short. The first part of the report covers general information on San Marino's land and population, and its institutional and legal framework. The report's second part addresses general provisions of the Covenant and includes an article-by-article analysis of the State Party's compliance with the Covenant, including several articles in detail: Article 6 on the right to work and employment; Article 7 on fair wages, safe and healthy working conditions and working hours; Article 11 on the right to adequate standards of living, including the right to food; Article 13 on education and educational institutions; and Article 15 on culture, and cooperation in scientific and cultural fields.

List of issues

In a list of issues³ sent to San Marino before the examination, the Committee requested additional information on issues including the criminalisation of discrimination, the employment of persons with disabilities, trade unions and unemployment benefits. The Committee also asked about the categorisation of 'legitimate children' versus 'natural children', child obesity and HIV/AIDS. San Marino submitted timely, comprehensive replies to the list of issues that included a fair amount of statistical data.

NGO parallel reports

There were no parallel reports submitted to the Committee. When asked by Committee member Ms Bonoan-Dandan about the extent of civil society participation in the preparation of its periodic reports, the delegation stated that non-governmental organisations (NGOs) had not been involved in the drafting process; rather, the report had been drafted by a working group made up of the different sectors of the San Marino public Administration. However, the State Party stated that it had sought help from civil society in drafting the section of the combined report relating to trade unions.

Themes and issues

Ambassador and Permanent Representative Dario Galassi headed San Marino's delegation. Ambassador Galassi was joined by: Mr Lanfranco Ferroni, Judge of Civil Appeals; Ms Rina Melandri, Coordinator of the Department of Education and Culture; Mr Vladimiro Selva, Coordinator of the Department of Territory, Environment and Agriculture; Mrs Milena Gasperoni, Director of the Labour Office; Ms Federica Bigi, Minister Plenipotentiary, Director of Political Affairs, Ministry for Foreign and Political Affairs; Mr Andrea Gualtieri, Acting Director of the Health Authority; Ms Sabrina Bernardi, State Lawyer; Mr Edgardo Ercolani, Head of the Economic and Health Services Unit; Mr Mauro Casali, Office of the Ministry of Labour, Cooperation and Youth Policies; Mr Andrej Ceccoli, Coordinator of the Gender Equality Commission; Mr Massimo Della Balda, Member of the Commission for the Management of Subsidized Housing; Mr Eros Gasperoni, First Secretary, Ministry for Foreign and Political Affairs.

Committee members were pleased with the large and broad composition of the delegation.

² HRI/CORE/1/Add.119, 22 April 2002

³ E/C.12/SMR/Q/4, 21-25 May 2005

Implementation of the Covenant

Addressing San Marino's implementation of the Covenant in domestic law, the Committee first asked about the extent to which the State Party's courts had made reference to the Covenant. The Committee asked San Marino to provide examples of such cases and to report on their outcomes. The delegation did not present any specific examples of cases, but stated that articles of the Covenant had appeared in domestic law following law reforms in 1992.

Since this was the State Party's first appearance, the Committee asked the delegation some general questions about its implementation of the Covenant. Committee member Mr Sa'di stated that San Marino did not seem to have any major 'standout problems', but asked the delegation what implementative challenges it foresaw under the Covenant. In response, the head of the delegation cited lack of redress before the courts for contraventions of the Covenant and a number of difficulties in implementation.

Committee member Mr Riedel asked if San Marino planned to create a national human rights institution compliant with the Principles relating to the Status of National Institutions (the Paris principles). He also asked whether San Marino supported initiatives toward the development of an optional protocol to the Covenant. In reply, the delegation stated that it would be setting up a 'Defender of Civil Rights' or Ombudsman to carry out the same functions as a national institution. It also stated that, in regard to an optional protocol to the Covenant, that San Marino would have no objection to people being able to lodge individual complaints for contraventions of Covenant rights.

Discrimination

Mr Sa'di asked the delegation why it had not criminalised racial discrimination. Picking up this same point, Committee member Ms Wilson emphasised that it was much better to have a norm addressing racial discrimination as a preventative measure, and asked the delegation if San Marino planned to adopt criminal legislation addressing discrimination. Ms Bonoan-Dandan added that Article 2.2 of the Covenant places an obligation on State parties to guarantee Covenant rights without discrimination, and that this article has an immediate effect that does not rely on progressive realisation.

In response, the delegation explained that San Marino's society had changed a lot in recent years from a very homogenous society with few foreign nationals to a diverse society. Further, it stated that the Ministry of Justice had been asked to draft a proposed amendment to the criminal code to criminalise racial discrimination. There were also plans to educate young people on tolerance. The delegation also stated that San Marino was one of the world's oldest democracies and operated on a common law system.

Immigration

Committee member Ms Barahona Riera raised the issue of illegal immigration in San Marino. She noted that the State Party presented good statistics on immigration and asked the delegation for an explanation of its policy relating to illegal immigrants, and what its percentage of immigrants was relative to San Marino's population. Mr Sa'di also asked whether the State Party had had any problems relating to asylum seekers and refugees and what rights asylum seekers and refugees were entitled to. Lastly, Committee member Mr Dasgupta asked for clarification on the use of the term 'resident'. He noted that the State Party report also made a distinction between a 'resident' and a 'staying person', both also distinct from 'nationals'. Mr Dasgupta also noted that these classifications had a direct bearing on a person's access to social welfare and insurance measures.

The delegation stated in reply that San Marino was neither a 'utopia' nor a Police State and that while it does not monitor illegal immigration carefully, it is certainly monitored to a degree. Addressing the status of

asylum seekers and refugees, the delegation pointed out that San Marino was not part of the *Convention relating to the Status of Refugees*, and that their policy had been to grant residence permits to people on a case by case basis, mainly to young people in vulnerable situations. The delegation also stated that San Marino does not acknowledge the status of refugees or political asylum seekers due to the fact that it is a small State surrounded by a larger State.

Citizens living abroad

Committee member Mr Kolovsov asked the delegation why so many of its citizens had left the country to live abroad when the standard of life was so high in San Marino. Out of a population of around 25,000 around 13,000 live abroad, mainly in Italy. In response, the delegation stated that the correct figure of those living abroad was around one third of the population, and that during the 1950s and 1960s many citizens had emigrated mainly because of a lack of employment opportunities. The delegation also stated, however, that the link with citizens living abroad was still very strong and that since 1969 there has been official recognition of San Marino citizens living abroad. Further, an annual association meeting is held each October in which all San Marino citizens have a voice, and during which cultural events are hosted.

The equality of men and women

Committee member Ms Wilson complemented San Marino on its domestic laws supporting women's entry into the labour market. Ms Wilson asked if all women benefited from this law, and if some statistics could be provided. She also asked about the representation of women in parliament and in higher decision-making positions, including at universities.

Ms Bonoan-Dandan asked the delegation what the State Party's interpretation of the principle of equality was. Citing various laws referenced in paragraph 11 of San Marino's replies to the list of issues, Ms Bonoan-Dandan also asked what concrete mechanisms enforced these laws, stating that they were of little value if people could not seek redress from the courts. Further, Ms Bonoan-Dandan asked about the mandate and scope of San Marino's Commission for Equal Opportunities.

Ms Barahona Riera addressed women's employment in regard to San Marino's cultural norms, specifically Catholicism - the prevailing religion. She noted that in this cultural climate it was not easy for women to be included in the highest decision making bodies.

In response, the delegation described the Commission for Equal Opportunities as a political body whose purpose was to ensure the equality of all citizens, and to protect consumer interests. The delegation stated that the Commission had been discussing the Pan-European campaign to prevent violence against women and actively promoted reform of San Marino's electoral law to grant women higher representation in Parliament. The delegation acknowledged that only ten percent of Parliament members were women and also acknowledged that initiatives to increase this number has not been supported by the Catholic majority and by a minority of the reformist wing. The delegation also discussed new legislation from the Commission protecting working women assisting women that have recently returned to the workforce, that have been unemployed for over ten months, and who are over fifty years in age, by issuing them special contracts. The delegation cited that girls have a 100% inclusion rate in education.

Labour issues

Committee member Mr Martynov asked why San Marino had not ratified International Labour Organisation (ILO) Convention No. 81 of 1947. He also noted the phenomenon of the trans-frontier workers in San Marino, who can be employed on a consultancy or temporary basis that is less favourable to them. He asked what the difference between the various contracts was and suggested that San Marino carry out a survey,

based on a previous recommendation by the European Union (EU) Commission on Discrimination, to explore whether some groups of persons in San Marino were more vulnerable in the labour market than others.

Ms Wilson also expressed concern about the issuing of permits, noting that there were several different kinds, some of which denied the enjoyment of rights such as voting. Ms Bonoan-Dandan asked what measures had been taken by the Equal Opportunities Commission in the context of protecting consumer interests. Mr Zhan asked why San Marino did not have a minimum wage system, why there was a cap on the average family income level, and what happened if a family exceeded that cap. Ms Barahona Riera was curious as to why the radical labour conflicts of 2002, which seemed to involve the entire population, suddenly disappeared. She also asked about economic activity, productivity and job availability.

Relating to the ratification of ILO Convention No. 81 of 1947, the State Party asserted that it attached importance to the basic ILO Conventions, but that it lacked the necessary resources to meet the reporting requirements of the Conventions. Addressing questions on employment permits, the delegation stated that, under the law on citizenship passed in 2000, a person might be granted a residence or short stay-permit through lineage to their mother or father. It added that San Marino residents are entitled to the full enjoyment of rights, except the right to participate in elections.

The delegation further stated that frontier/cross-border workers are a major force in the labour market, and that while the Commission on Equal Opportunities investigates issues related to them, the basic differences between frontier workers and national workers has diminished considerably in recent years. Discussing the differences between fixed term and permanent contracts, the delegation stated that while there are minor differences relating to medical insurance, for the most part the difference only lies with the expiration of the contract. The delegation also discussed: 'tourist authorisation' for tourism, education and medical treatment; special 'sojourn' permits which grant continuous stay to foreign citizens who have a work or employment relationship; and 'seasonal permits'.

The delegation acknowledged that there are no minimum wage provisions in San Marino, stating that income is higher in San Marino than in neighbouring Italy and that this had been the trend for the last five years. In regard to labour conflicts, the delegation stated that the 2002 peak in the number of conflicts was a result of the renewal of the collective bargaining agreements, a process that lasted for three years.

Social Security

Messrs Abdel-Moneim and Zhan asked questions on retirement and the entitlement to retirement pensions. Mr Martynov questioned the delegation on whether San Marino planned to ratify ILO Convention No. 102 of 1952 on social security (minimum standards) and No. 118 of 1962, on equal treatment in social security.

Addressing retirement and pensions, the delegation stated that in 2005 there was a reform of the retirement system. This introduced a new method for calculating pensions and retirement age itself, which, while currently 60, will increase by six months each year until it reaches 65. The delegation stated that this would ensure the financial viability of the pension system until at least 2025 or 2030, and that corrective measures were in place if the situation did not function as smoothly as anticipated. Retirement pensions operate on a pay-as-you-go system with people making financial contributions while they are working. The delegation also discussed social pensions, stating that State-paid pensions were provided to persons above a certain age who had no other income. Disability pensions were also provided by the State.

Protection of the family, mothers and children

Ms Bonoan-Dandan asked about the rights of adopted children and whether a household headed by a single parent is considered a 'family'. Ms Barahona Riera asked for elaboration on a draft bill criminalising domestic violence referred to in the State Party report. Mr Sa'di asked whether or not trafficking, including

the trafficking of children and trafficking for prostitution were problems in San Marino given the high number of tourists. He also asked about the legality and prevalence of corporal punishment. Mr Pillay asked for statistics on the number of people and families living in 'difficult situations'.

The delegation responded to Ms Bonoan-Dandan by stating that the reform of the family law of 1996 recognised single parent families or common law marriages including cohabitation, and that the reform recognised the right of single persons to adopt. Addressing trafficking, the delegation stated that there had been no cases of trafficking in San Marino and pressed that they had recently passed a law addressing the exploitation of minors.

The delegation did not address corporal punishment specifically, but discussed domestic violence, stating that San Marino had only begun collecting data on domestic violence in 2006, but that a crisis hotline has been set up on an experimental basis and that there had been close collaboration with general and mental health care workers to combat the issue. The delegation confirmed that a bill on domestic violence was currently being drafted.

Addressing poverty, the delegation stated that poverty was almost totally eradicated, and that provisions adopted in 2005 ensured that financial support was made available to families and individuals that are in difficult financial situations (the delegation stated that 258 families had received assistance from a fund of around 920,000 Euros). Lastly, the delegation stated that various categories of person are entitled to temporary and subsidised housing, including married couples and families with children. Housing improvements and restoration, housing cooperatives, and arrangements for easier access to buildings for people with disabilities were among other initiatives identified by the delegation.

Physical and mental health

Discussion on the right to health featured prominently in the Committee's questions. Mr Riedel asked questions on: the provisions of a 2005 plan to target persons with serious health problems; the general status of primary health care; structural measures in place to combat HIV; the alarming high rate of child obesity; and the monitoring of water quality to ensure access to safe water. Mr Riedel also commended the delegation on San Marino's child immunisation record and the quality of their waste disposal facilities and sewerage system. Ms Wilson noted that the number of psychiatric cases in San Marino was high for such a small country, and asked if there had been any significant change since 2003 in such numbers. She also asked questions on: the suicide rate in the country; procedures involving the involuntary committal of persons to psychiatric centres; nursing homes for the elderly; and, lastly, measures to prevent cancer.

The delegation stated that free health care had been provided by the State since 1955. Financed through allocations of the State budget, non-citizens are required to pay a monthly premium as a contribution to the system. The delegation also discussed San Marino's 2007 and 2008 health care plan, which sets out various objectives and highlights the importance of primary health care, including the advancement of hospitals and clinics. The delegation noted that HIV incidence was very low in San Marino and that while health care is accessible in San Marino, specialised care is also available in Italy.

Addressing measures to combat child obesity, the delegation underscored the importance of promoting healthy food and physical activity in schools. In response to questions on cancer prevention, the delegation stated that San Marino conducts a number of tests to screen for various types of cancer, and has a special medical centre dedicated exclusively to women's healthcare issues. In regard to mental health care, the delegation stated that laws are in place to regulate psychiatric facilities, and that a family must give consent before a person can be admitted into psychiatric care. The delegation also stated that San Marino's suicide rate was quite low compared to other countries, and that senior citizens have access to strong support networks, with homes available to those in need and geriatric departments in all hospitals.

Lastly, addressing access to a safe water supply, the delegation noted that such needs had been met thanks to assistance from Italy. In addition, various measures had been taken over the last few years to reduce water consumption, with authorities encouraging citizens to conserve water.

Education

Committee member Mr Kerdoun asked about the cost of education in San Marino, the number of universities and departments therein, and whether such universities offered exchange programs. Ms Wilson asked about private schools, inquiring how many there were and whether government authorisation was required before they could be opened. Ms Wilson also asked how any foreign students study in San Marino, how many San Marino nationals study abroad, and whether human rights subjects are taught at San Marino universities. Ms Bonoan-Dandan asked whether economic, social and cultural rights were addressed in taught human rights courses.

In response, the delegation stated that education was guaranteed to all children up to the age of 16 years. Textbooks and transportation are also provided to help ensure the delivery of this right, but continued access to State-funded textbooks and transport was a privilege contingent upon a student's results. According to the delegation around half of San Marino's children are schooled locally, with the other half studying abroad.

The delegation stated that San Marino's goal was to provide future citizens with values for a sounder, more tolerant society. Courses on human rights are offered at the university, including training and refresher courses for teachers. While San Marino University is the only university in San Marino, it has agreements with Italian and other universities. According to the delegation, schools are also being used to raise awareness of economic, social, and cultural rights in the wider context of human rights education.

Culture

One Committee member asked whether San Marino, as a country with tremendous cultural heritage, facilitated the participation of all its citizens in cultural life. In reference to paragraph 244 of the State report, where it states that '(a)rts, science and education shall be free', he asked whether this referred to education in the arts, or more broadly referred to museums, and whether access to such places was free. The Committee also asked what percentage of the State budget was dedicated to cultural expenditure.

The delegation stated that San Marino has many cultural associations working closely with and alongside other cultural institutions, such as museums, based on a partnership organised in 1991 that provides for the development, comparison and circulation of cultural information. San Marino also provides public spaces for people to meet in and in 2006 one percent of the national budget went toward this effort. In addition, 3.7 percent of the budget is allocated to cultural activities, and 5.5 percent to school educational activities. As for the arts, the delegation stated that San Marino strives to engage the populace with art and music by providing free performances at certain times. The Government also cooperates closely with the private sector, with initiatives being carried out to promote cultural awareness and activities. Further, the delegation stated that a law governing sports was introduced in 2007, geared toward intercultural dialogue and promoting engagement with minorities.

Other issues

Other issues addressed by the Committee included: the origin of San Marino's 'Maritime Name'; methods for disseminating the Committee's concluding observations; the influence of Italian political issues on San Marino's domestic affairs; San Marino's process of appointing judges; and its views on international solidarity.

In response, the delegation stated that: San Marino's maritime name is derived from the founder of the republic, and is generally a very popular name in San Marino; the Committee's conclusions and recommendations will be promoted through a press release translated into Italian and posted online; the media in San Marino is very interested in international affairs and follow events very closely; Italian matters have very little bearing on San Marino; the appointment of judges is done on a competitive basis; and that San Marino has set up a fund to promote international solidarity, derived from the regular budget and approved on an annual basis. San Marino also emphasised that its contribution to international solidarity also takes place through contributions to the United Nations.

Conclusion

The Committee welcomed its positive and constructive first dialogue with San Marino. At the time of writing the Committee's Concluding Observations had not been made public. San Marino also appeared before the Committee on the Rights of the Child (CRC) in 2003.⁴

Last revised and updated: 1 February 2008.

⁴ Concluding observations are available at <http://www2.ohchr.org/english/index.htm> (document CRC/C/15/Add.214)

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