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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Thirty-third session

SUMMARY RECORD OF THE 39th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 15 November 2004, at 3 p.m.

Chairperson: Mr. MARCHÁN ROMERO
(Vice-Chairperson)

later: Ms. BONOAN-DANDAN
(Chairperson)

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In the absence of Ms. Bonoan-Dandan, Mr. Marchán Romero (Vice- Chairperson) took the Chair.

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS: (agenda item 6)

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

Fourth periodic report of Italy (continued) (E/C.12/4/Add.13; E/C.12/Q/ITA/2; E/C.12/1/Add.43; HR/CESCR/NONE/2004/3)

1. At the invitation of the Chairperson, the members of the delegation of Italy resumed their places at the Committee table.

2. Mr. TEXIER asked the delegation to explain why the unemployment rate in Italy was so high and wished to know what the current rate was. It would be useful to know who was affected most by long-term unemployment and what percentage of workers received the minimum wage.

3. In 2003, the International Labour Organization (ILO) had indicated that article 2,099 of the Italian Civil Code, according to which employees could receive part of their salary in kind, was not in line with the ILO Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99). He would be interested to know what the Government's position was in that regard. He stressed the importance of equal pay for work of equal value and asked the delegation to provide additional information on how that principle was put into practice.

4. He was concerned that Italian legislation restricted the freedom of judges to join trade unions and asked the delegation to provide information on the independence of the judiciary.

5. Mr. KOLOSOV said that the Maritime Code provision for imprisonment involving compulsory labour was in violation of the ILO Abolition of Forced Labour Convention, 1957 (No. 105).

6. Under the ILO Holidays with Pay Convention, 1970 (No. 132), a part of the holiday must consist of at least two uninterrupted working weeks. To his knowledge, that provision was not consistently implemented. He was also concerned that there was no law establishing the maximum permissible weight that could be carried by one worker.

7. The existing legislation on child labour was not always implemented, did not apply to all types of work, and did not cover all children under the age of 15. He would welcome further information on those points.

8. Ms. BRAS GOMES, referring to paragraph 101 of the report, asked whether the fact that there had been no requests from businesses for regularization of social security and tax violations, meant that realignment contracts did not have a systematic impact on the problem of

informal labour. Had the Government gathered from the regional bodies monitoring informal labour any information that could help it develop an efficient approach in dealing with informal labour?

9. She asked the delegation to provide data on the number of people entitled to the Minimum Integration Income, known as the RMI. It would also be useful to know how many people had stopped receiving the RMI because they had found work.

10. She enquired how many municipalities were covered by the Minimum Inclusion Allowance scheme and whether the Government planned to extend the scheme to the whole country. It would be useful to know whether the Government intended to increase unemployment benefits for private-sector employees.

11. She wished to know whether the minimum old-age pension and social pension were sufficient to ensure decent living conditions for the pensioners concerned and their families. What were the Government's expectations with regard to the new bill on pensions, approved in May 2004? Referring to paragraph 141 of the report, she asked how the fact that few younger workers were registered for the supplementary social security scheme would affect that scheme.

12. Mr. MARTYNOV wished to know why the Government had not ratified the ILO Prevention of Major Industrial Accidents Convention, 1993 (No. 174). He enquired what measures the Government was taking to prevent the black economy from expanding and to protect the social and economic rights of the people working in it.

13. In view of the fact that minimum wages were determined through collective bargaining and that trade unions claimed to represent around 40 per cent of the labour force, he asked how the minimum wage requirements were enforced with regard to workers who had not joined a trade union.

14. He would be interested to know the Government's position on the United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights, which had been adopted by the United Nations Commission on Human Rights in 2003. Finally, he asked the delegation what had replaced the Social Pact for Development and Employment, referred to in paragraph 124 of the report.

15. Mr. CEAUSU said that paying one employee more than others for work of the same value was unjustifiable. Remuneration for work of the same value might vary between enterprises, but not within a single enterprise. He stressed the need for the Government to recognize and implement the principle of equal pay for work of equal value. Information on social protection measures for people working in the informal sector would be welcome.

16. Mr. GRISSA wished to know why the phenomenon of informal labour had increased by 1.7 per cent between 1992 and 1999 if Italian labour inspectors knew which companies used informal labour.

17. Mr. FALLAVOLLITA (Italy) said that the current unemployment rate was 7.9 per cent. The total number of workers had been increasing steadily despite unfavourable economic conditions.

18. Mr. SERIO (Italy) said that the Italian judiciary was completely independent. The only restriction to which Italian judges were subjected concerned their participation in the activities of a political party.

19. Italy's legislation relating to employment contracts was based on the principle of freedom of contract, whereby the parties chose the terms of the contracts they concluded. When an employer violated that principle or the principle of good faith, a judge intervened to protect the employee by dictating the terms of the new contract and redressing discrimination.

20. Ms. MENICHINI (Italy) said that there had been a substantial increase in employment in 2003, with the total number of people working in Italy exceeding 22 million. In particular, employment among persons aged 50 to 59 and women had risen. The unemployment rate had dropped to 8.4 per cent.

21. Ms. MATARAZZO (Italy) said that the long-term unemployment rate had declined in 2003 to 4.2 per cent compared with 5.5 per cent in 1998. The problem of north-south disparity had also become less severe, partly as a result of labour-market reforms aimed at increasing the territorial mobility of labour. In particular, young people from the south of the country were encouraged to attend training courses in the north and apply their skills and experience in companies based in the south. About 2,000 workers had benefited from the programme. In addition, territorial pacts or agreements for local development had been concluded and some 11 million euros had been invested in the Mezzogiorno region. European Union (EU) structural funds had also been made available for specific projects in disadvantaged regions.

22. Her Government was strongly committed to addressing the problem of the informal labour market, inter alia to ensure the social protection of workers and acceptable labour conditions. The Committee's concluding observations on Italy's third periodic report had led to more stringent inspection of labour conditions and preventive action at the local and regional levels. A legislative decree coordinating existing instruments had recently been adopted. The labour-market reform measures had been supplemented by specific measures aimed at assisting companies in overcoming their dependence on the informal market.

23. Mr. FALLAVOLLITA (Italy) said that the situation of almost 700,000 workers previously employed in the informal sector had been regularized under recent legislation and they now all enjoyed social benefits.

24. Mr. DAU (Italy) said that there was no difference between unionized and non-unionized workers because the entire Italian economy was covered by between 400 and 500 collective agreements.

25. With regard to the concerted action method mentioned in paragraph 124 of the report, a new Pact for Competition and Development, the "Pact for Italy", had been concluded in 2002. Entrepreneurial associations and trade unions had recently urged the Government to envisage a new collaborative approach to the economy which might result in a new pact.

26. Mr. FALLAVOLLITA (Italy) said that the Government attached strategic importance to corporate social responsibility and had participated constructively in discussions of the issue in

relevant international forums. In particular, it had been involved in drawing up a common EU position. Although prime responsibility for the protection and promotion of human rights lay with the State, domestic and transnational corporations had an important role to play in observing human rights legislation and regulations. Italy therefore welcomed action in that regard by the United Nations and, in particular, the Office of the United Nations High Commissioner for Human Rights (OHCHR).

27. Ms. MENICHINI (Italy), replying to a question regarding child labour, said that a new Italian law incorporating European Council Directive 94/33/CE of 22 June 1994 prohibited the employment of children under the age of 15. Moreover, the education system had been reformed by Law No. 9 of 20 January 1999 and Law No. 30 of 10 February 2000, so that schooling was now compulsory for all children aged 6 to 15. Children between the ages of 15 and 18 were allowed to obtain practical work experience as an alternative to attending formal courses, but only within the framework of an education programme tailored to the needs of the individual trainee.

28. Mr. FALLAVOLLITA (Italy) said that Italy was still considering ratification of the ILO Prevention of Major Industrial Accidents Convention, 1993 (No. 174). However, three other ILO conventions mentioned in the list of issues had now been ratified. The Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), had been ratified in June 2002, the Part-Time Work Convention, 1994 (No. 175), in April 2000, and the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), in June 2000.

29. Ms. Bonoan-Dandan (Chairperson) took the Chair.

30. Mr. CEAUSU noted that the delegation, in response to his question about equal pay for work of equal value, had emphasized the principle of freedom of contract, meaning the freedom of the parties to establish the terms of a labour contract, as well as the principle of good faith, arguing that if either party was dissatisfied, it could institute legal proceedings for damages. By placing one party, the employer, in a more advantageous position, that approach undermined the non-derogable principle of equal pay for work of equal value, which was a peremptory norm of international law. The authorities should ensure that labour inspectors monitored respect for that norm under all circumstances and not just in cases where legal proceedings were instituted by a party to a contract. Many foreign workers in Italy were doubtless unaware of the legislation and were not in a position to negotiate fair terms. They had no choice but to accept the wages offered by a prospective employer.

31. Mr. KOLOSOV reiterated his query regarding Italy's Maritime Code. Sections 10.91 and 10.94 of the Code, which imposed prison sentences that might involve compulsory labour, violated the ILO Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105). The ILO Committee of Experts on the Application of Conventions and Recommendations had urged Italy to amend those two sections of the Code.

32. He also wished to know why the maximum permissible weight to be carried by a worker had not been legally specified, as required by the ILO Maximum Weight Convention, 1967 (No. 127).

33. He had not received an answer either to his query regarding workers' entitlement to a minimum of two weeks' holiday.
34. He was pleased to hear that the situation with respect to child labour had improved as a result of reforms in the education system. However, the Italian Government had informed ILO that the number of child labour offences recorded in 2002 had increased by 19.52 per cent compared with 2000.
35. Mr. TEXIER associated himself with Mr. Ceausu's comment on the principle of equal pay for work of equal value. Labour law in most countries recognized that the contracting parties were not equal, that the employer fixed the terms of the contract and that the employee had no choice but to accept. In its written reply to the list of issues, Italy mentioned that the principle of freedom of contract was tempered solely by the principle of non-discrimination, although the Court of Cassation had ruled that employers were not guilty of discriminatory conduct where wage differentials were provided for in collective agreements. It was thus extremely difficult for an individual to prove that discrimination had occurred, particularly if the principle of equal pay for work of equal value was not automatically applicable. He urged the State party to give serious thought to the matter.
36. Mr. FALLAVOLLITA (Italy) said that the written reply had mentioned not only the principle of non-discrimination but also that of the minimum wage, which was a further restriction on freedom of contract. The weaker party was thus not required to accept all terms offered by the employer. He noted with surprise that while the Committee demanded justiciability of international treaty norms, it was not impressed by the argument that allegedly unfair contract terms were justiciable in the domestic courts.
37. Ms. MENICHINI (Italy), replying to the question regarding child labour, said that, according to a study by the National Institute for Statistics, only 0.66 per cent of children in the 7 to 14 age group had been involved in child labour in December 2000. Although those data demonstrated that the situation could not be described as an emergency, Italy had launched a National Action Plan against child labour. It had translated and disseminated to all actors, especially labour inspectors, the ILO Guidelines for strengthening legislation, enforcement and the overall legal framework pertaining to child labour. The Ministry of Labour and Social Affairs had also launched a programme of training courses for inspectors based on the Guidelines.
38. The results of the Minimum Integration Income (RMI) scheme were currently being reviewed. During the first phase, from 1 January 1999 to 31 December 2000, some 37,000 persons in 39 municipalities had benefited from affirmative action to combat poverty and social exclusion. During the second phase, covering the subsequent two-year period, the scheme had been extended to 306 municipalities but no data regarding the number of beneficiaries were yet available. The scheme had been linked during the second phase to other measures of social protection and job creation.
39. Pursuant to the institutional reform approved in 2001, welfare policies had been decentralized. New financial legislation for 2004 provided for joint financing of projects by the central Government and the regions. Some regions such as Campagna and Lazio had already approved legislation introducing measures similar to the RMI scheme.

40. Ms. DESSI (Italy) said that the sections of the Maritime Code referred to by Mr. Kolosov had not been applied for many years.
41. Mr. FALLAVOLLITA (Italy) observed that the authorities would probably move to abolish those sections, since they were to all intents and purposes obsolete.
42. Mr. CEAUSU said that his query regarding the right to equal pay for work of equal value should not be interpreted as implying any denial of the justiciability of that right in domestic courts. He simply wished to stress how difficult it would be for immigrant workers to prove in court that employers were acting in bad faith when they established lower wage-levels for workers from abroad. On the other hand, if the principle was recognized as a peremptory norm, the administrative authorities responsible for imposing labour law would be able to assess the conformity of contractual provisions with that norm and to impose administrative penalties and fines on offenders.
43. Mr. DAU (Italy) said that all employment contracts provided for employees' right to holidays, usually for a period of 28 to 32 days, with no financial alternative. The High Court had ruled that the right to holidays was not available to employers.
44. Ms. BRAS GOMES suggested that the next periodic report should include specific data on how many people no longer depended on the RMI as a result of having found employment. It would be interesting to learn whether the State party intended to extend coverage of the programme to the national level.
45. Ms. MENICHINI (Italy) said that the statistics provided had included 25,000 families who had been taken out of poverty. Efforts were under way to ensure coordination between central and regional government policies on welfare and social intervention.
46. Mr. FALLAVOLLITA (Italy) said that minimum wage and discrimination legislation ensured that even people in a vulnerable position received equal pay for work of equal value.
47. Ms. MATARAZZO (Italy) added that a 2003 decree implementing an EU directive to combat discrimination prohibited all forms of direct and indirect discrimination at work. Anyone who felt that they were a victim of discrimination had direct access to justice, without need for a lawyer.

Articles 10-12 of the Covenant

48. Mr. RIEDEL reiterated the request for information on the cost of medication under the privatized health system, and the measures the State party had taken to combat the negative effects that system might have on the health of vulnerable groups. The Committee had also requested more information about the results of the latest completed National Health Plan, especially with regard to older persons and other vulnerable groups. The State party should provide specific statistical data on those results, in accordance with the guidelines set out in General Comment No. 14, so that the Committee could analyse the progress made.
49. The reporting State should clarify what "new means and strategies" it had implemented to assist chronic patients, the elderly and the disabled since the year 2000, and what the results had been.

50. He requested updated statistics on the incidence of HIV/AIDS. While the State party had acknowledged the priority action required in that field, it would be useful to know what steps had been taken since 2000, what the success rate had been, and what difficulties had been encountered.

51. According to NGO reports, about 10,000 prisoners had been diagnosed with infectious diseases, as a result of prison overcrowding. Additional information should be provided on measures taken to avoid such overcrowding. The 2003 decrease in the budget allocation for the prison health service needed clarification. The State party should indicate whether the situation had been rectified in 2004.

52. Additional information would be welcome on the availability of hospital treatment to mental health patients.

53. Mr. SADI asked whether the State party planned to introduce measures to respect the right of asylum-seekers to family reunification, since many of them spent a considerable period waiting for their applications to be processed. Additional information should be provided on the results of implementing the legislation to prevent, suppress and punish trafficking in persons, especially women and children. And it would be interesting to learn whether the Government had considered combating the problem of an ageing population by encouraging childbirth.

54. Mr. MALINVERNI asked how the provisions of the 1999 law on equalization, rationalization and fiscal federalism functioned in the different regions of the State party. It would be interesting to know whether there was a system of redistribution of wealth between regions and, if so, how it worked. He requested additional information on measures taken to integrate Roma immigrants.

55. Mr. CEAUSU asked whether the three-year separation requirement in divorce cases also applied when one of the spouses had been found guilty of committing a serious crime.

56. It was difficult to understand why the terms “natural children” and “legitimate children” continued to be used in the State party.

57. More details should be provided on the regularization campaign referred to in the reply to question 24 of the list of issues, and on the fate of the 700,000 workers who had been removed from the informal sector. It would also be interesting to learn what measures were being taken to encourage employers to regularize the situation of their employees.

58. The delegation should clarify reports that hundreds of thousands of people were evicted from their homes every year, and that the availability of social housing for immigrants had decreased dramatically. It would be interesting to hear the State party’s response to reports that 16 immigrant families with residence permits had been evicted and sent to live in a complex surrounded by walls and barbed wire.

59. Mr. KERDOUN requested additional information on measures envisaged to combat poverty in the southern and central regions of Italy.

60. He asked what action the authorities planned to take to combat illegal immigration, and what measures would be adopted to protect the rights of illegal immigrants who successfully settled on Italian territory. Further details should also be provided on specific measures the State party intended to take to help all immigrants, legal and illegal. The current status of the three-year planning document for 2004-2006 on policy regarding immigration and foreigners in Italy needed clarification. It would be useful to know the reasons for the delay in adopting Law No. 189 of 2002. The State party should explain why it had not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

61. He asked whether there were any specific legal provisions in place for the protection of women migrant workers and, if not, what measures the Government planned to take to improve the living and working conditions of such women. He requested statistical information on the current housing shortage in the northern and central regions of Italy. He also asked what specific measures had been taken to ensure a supply of high-quality drinking water for all.

62. Ms. BARAHONA RIERA asked how the impact of the new law on violence against women and family members was being evaluated, and whether any statistics were available on the number of women who had begun legal proceedings for domestic violence. The Committee had been informed that 75 per cent of women victims of domestic violence still did not file complaints. She wondered whether any measures were being taken to give greater publicity to the law and to encourage victims to speak out against violence in the home. She wished to know how the Government assessed the effectiveness of the measures in place to protect women against violence, whether the results of such assessments were positive and, if not, how protection measures could be improved.

63. Turning to the issue of child protection, she asked what steps had been taken to prevent child pornography and Internet paedophilia. Although the distinction between children born in and out of wedlock had been eliminated in national policies, she wondered whether it was still made in provisions at the local and regional levels.

64. She enquired how rent levels were monitored in Italy, given that a large number of tenants faced eviction because they could not afford to pay their rent. She wished to know whether evicted tenants were provided with social housing or whether they were simply left on the streets.

65. Ms. BRAS GOMES asked whether a definition of basic social services existed in Italian legislation, and whether the provision of such services remained the responsibility of the State, rather than of regional and local authorities. The Government's written replies to the Committee's list of issues stated that it was increasingly difficult for women with children to find and keep a job in Italy owing to a lack of child-care institutions; she wished to know whether extending child day-care services was a priority for the Government. Given the increase in life expectancy in Italy, and the high levels of disability among persons over 80 years of age, she asked what services were being developed to address the combined health and social care needs of older persons, and whether measures had been taken to improve home-care services.

66. Mr. KOLOSOV said that the Committee had been informed about particularly poor conditions in temporary detention centres for asylum-seekers in Italy, and asked for detailed information on the facilities available in such centres. He wondered whether minimum standards had been set for conditions of temporary detention. Although Italy had recently adopted a law prohibiting domestic violence, corporal punishment of children by their parents was not explicitly prohibited. According to the Committee's information, 78 per cent of cases of physical abuse against children took place in the family and he enquired whether the Government intended to amend its domestic violence legislation in order to improve protection for children.

67. Mr. TEXIER wished to know how many people in Italy were currently homeless, and whether that figure was increasing or decreasing. He asked whether there was any legislation in place to grant access to housing for the poorest sectors of Italian society, and what measures were being taken to protect tenants in cases of eviction. The Committee's General Comments No. 4 and No. 7 set standard conditions for eviction, which warned against the excessive deployment of police forces and stated that tenants should be rehoused. The Committee had been informed by NGOs that in several cases in Italy eviction had involved an excessive police presence and had taken place in winter. He asked whether measures had been taken to allow for the suspension of eviction orders during winter, and how tenants who were evicted at that time of year were protected in the event that they could not be rehoused.

68. Ms. IACONTINO (Italy) said that Italian legislation had been amended in 2000 in order to guarantee the provision of essential medication for chronic diseases free of charge by the national health service. Investigations had shown an increase in the proportion of health service funds used for the purchase of medication. The cost-effective prescription of medication was considered imperative for the effective delivery of appropriate health care. Italy's most recent national health plan, for 2003-2005 contained a strategic project for older persons and other vulnerable groups. The Government was making efforts to change the social approach of that strategy from treatment to prevention, and to move from the provision of health assistance to an integrated system of health and social care, thus guaranteeing ongoing treatment and protection for older persons.

69. Italy's national health plan also contained a strategic project for assisting people living with HIV/AIDS, which was based on a World Health Organization decision issued in 1999. The project involved improving control and monitoring of HIV, monitoring HIV transmission, improving quality of life for people living with HIV/AIDS, reducing high-risk sexual behaviour, running awareness-raising campaigns for young people, developing vaccine-therapy research, and improving the social reintegration of people living with HIV/AIDS. The Ministry of Health was committed to fulfilling that plan as quickly and effectively as possible. Written information on the Ministry's strategic project for mental health would be submitted to the Committee.

70. Mr. FALLAVOLLITA (Italy) said that family reunification for asylum-seekers could only be facilitated once asylum had been granted. The main problem with asylum claims was the delay between an application being filed and a judgement being made on whether asylum should or should not be granted. Measures were being taken to speed up that process, including increasing the activities of the representative of the Office of the United Nations High Commissioner for Refugees (UNHCR), who played a key role in screening asylum applications.

71. Ms. ALBERTI (Italy) said that the only centres for temporary assistance that existed in Italy were for asylum-seekers who had been refused asylum and were being returned to their country of origin. The maximum period of residence in such centres had been increased from 30 to 60 days, since the authorities often required longer than 30 days to make the enquiries necessary to return an asylum-seeker. Persons resident in such centres enjoyed the right to make and receive telephone calls, to write letters, to move freely within the centre, to receive visitors, to practise a religion and to have access to an interpreter.

72. During the past week, Italian legislation had been amended in accordance with a decree passed by the Constitutional Court to guarantee asylum-seekers access to legal defence. Although certain Italian legislation contained provisions on asylum, there was still no specific law on the question. Plans to draft new immigration and asylum laws were currently under consideration. Two main changes were planned for asylum legislation: reducing the duration of the asylum application screening process, and eliminating applications made simply for the purpose of obtaining a residence permit. New asylum procedures would involve the establishment of regional committees, which would address the issue of screening asylum applications and have a maximum period of 35 days from the filing of a claim in which to reach a decision on whether or not to grant asylum.

The meeting rose at 6 p.m.