

Table of Contents

<i>Table of Cases</i>	xv
<i>List of Contributors</i>	xxv
1. Introduction	1
<i>Ulrich Becker</i>	
I. Starting points	1
II. The constitution of the welfare state under pressure	6
1. Social policy reforms and the financial crisis	6
2. Constitutional protection of social rights	7
a) Starting points: different meanings of social rights	8
b) Interplay between different legal levels	9
c) Mechanisms: dimensions of human rights	12
d) Substance: guidelines for social protection	14
e) Procedure: separation of powers and rule of law	15
III. Aim and outline of the Book	16
1. Aim	16
2. Time and area under analysis	17
a) Countries	17
b) Time frame	21
3. Structure of the country reports	22
2. Human Rights Obligations of European Financial Assistance Mechanisms	24
<i>Anastasia Poulou</i>	
I. Introduction	24
II. The EU financial assistance mechanisms	25
III. The applicability of the Charter to EU institutions involved in the MTFA and EFSM	28
IV. The hybrid European financial assistance mechanisms	29
V. The applicability of the Charter to EU institutions involved in the EFSF and ESM	33
1. The applicability of the Charter to the Eurogroup	33
2. The applicability of the Charter to the Commission and the ECB	36
3. The applicability of the Charter to the Council of the EU	40
VI. International human rights obligations of the ESM	41
VII. Conclusion	48

3. The Transition from Welfare to Workfare in Times of Crisis: A Double-based Reform of the Hungarian Welfare State	49
<i>József Hajdú</i>	
I. Introduction	49
II. The main reforms and developments of the social security systems in Hungary during the last financial crisis	53
1. Brief outlook of the Hungarian social security system	53
2. Pension system after the economic crises	54
a) The transfer of the mandatory, private pension scheme (second pillar)	55
b) Fundamental changes in early retirement pension rights	57
3. Challenges to the statutory healthcare system	58
4. Transformation of 'disability pension' to 'rehabilitation benefits'	60
5. Challenges to family policy	62
6. Employment and unemployment policies	63
III. The impact of constitutional law on the content of social security rights	66
1. Transition from Constitution to Fundamental Law	66
2. Right to social security: state goals instead of social rights	67
IV. Conclusion	71
4. The Latvian Response to Its First Economic Crisis under a Free Market Economy	73
<i>Kristīne Dupate</i>	
I. Introduction	73
II. Reforms in national social security systems	75
1. Overview on the social security and healthcare system	75
2. Structural reforms and the cuts introduced after the crisis	77
3. Elements in the making and implementation of the reforms	79
a) Overview	79
b) Reasons for reforms	81
c) Procedural particularities in the making of the reforms	82
III. Human rights affected by social security reforms	83
1. National case law referring to the social security reforms	83
a) Overview	83
b) Outcome	84
2. Analysis of the case law	86
a) Role of constitutional rights	86
aa) Right to property	86
bb) Right to social security	88
cc) Equality	93
b) Role of general principles	94
aa) Relation to rights	94
bb) Legitimate expectation	96
c) Changes of constitutional doctrine	97

3. Critical assessment of the decisions	98
4. Role of international law	101
a) ECHR	102
b) ICESCR	103
c) Other sources and conclusions	104
IV. Conclusion	105
5. Upholding the Welfare State During the Financial Crisis: The Pivotal Role of the Constitutional Court of Romania	108
<i>Elena-Luminița Dima</i>	
I. Introduction	108
II. Reforms in Romania's social protection systems	111
1. Background and stages of reform	111
a) First stage	112
b) Second stage	113
c) Third stage	114
2. Specific reform measures	115
a) Old-age benefits	115
aa) Pensions pillar I	115
bb) Pensions pillar II	119
cc) Pensions pillar III	119
b) Unemployment benefits	120
c) Family allowances	121
aa) Social assistance benefits	121
bb) Social insurance allowances	123
d) Healthcare benefits	124
e) Social assistance benefits	124
III. Human rights affected by social protection reforms	125
1. Procedural issues	126
2. Pensions	128
a) Restrictions in cumulating the pension with salary income paid from state budget	128
b) Decrease in the amount of pensions	130
aa) Right to property (article 44 of the Constitution and article 1 of Protocol 1 to the ECHR)	130
bb) Right to a decent living standard and right to benefits	131
c) Removal of the non-contributive part of the special pensions	132
aa) Retroactive effect (article 15(2) of the Constitution)	133
bb) Right to property	134
cc) Decent living standard and securing conditions to increase the quality of life	135
dd) Necessity of acts of parliament	136
ee) Breach of other constitutional provisions	137
ff) Independence of the judiciary	138

3. Unemployment benefits	141
4. Other social protection benefits	143
IV. Conclusion	144
6. <i>Salus Rei Publicae Suprema Lex Esto?</i> Welfare State Reforms Before the Greek Courts	148
<i>Maria Bakavou</i>	
I. Introduction	148
II. Overview of the Greek social security protection systems and their reforms	151
1. Overview of the Greek social security system	152
2. Suggested and implemented reform measures	155
3. The Greek healthcare system	160
III. Constitutional and human rights affected by social security reforms	164
1. Procedural particularities in the adoption of the reform measures	164
2. Constitutional protection of the welfare state	165
3. Overview of the Greek system of judicial review	167
4. Social protection reforms before the Greek courts	169
a) The initial phase of judicial self-restraint	169
b) The milestone decisions on cuts in pensions	171
c) Current developments	173
d) The decision on the Greek PSI LM Facility Agreement	175
5. Assessment of the courts' approach to social protection reforms	175
6. The healthcare reform before the Greek courts	177
IV. Conclusion	179
7. The Financial Crisis as a Turning Point for Constitutional Rights Jurisprudence: An Assessment of the Absence of Social Rights Protection in the Irish Constitution	181
<i>Elaine Dewhurst</i>	
I. Introduction	181
II. The economic crisis and crisis-related reforms	183
1. Economic crisis in Ireland	183
2. Structure, administration, and funding of social protection and healthcare	183
a) Structure	184
b) Administration	186
c) Funding	187
3. Justifying crisis-related reforms	187
a) Old-age benefits	191
b) Social assistance	193
c) Family allowances	194
d) Unemployment benefits	195
e) Healthcare	196
f) Overall assessment	197

III. Crisis and the Constitution	199
1. Institutional and procedural conditions	199
2. Constitutional rights impact	200
3. Administrative protections	203
4. Social protection and healthcare rights	205
IV. Conclusion	206
8. Legal Changes and Constitutional Adjudication in Portuguese Social Law in Consequence of the European Financial Crisis	208
<i>José Carlos Vieira de Andrade, João Carlos Loureiro, and Suzana Tavares da Silva</i>	
I. Introduction	208
II. Reforms in national social security systems	210
1. Overview of the social security and healthcare system in Portugal	210
a) Social security	211
b) Civil servant's social protection system: convergent social protection scheme	213
c) Healthcare system	213
2. Structural reforms and cuts introduced after the crisis	214
a) Old-age benefits	214
aa) Old-age benefits: a brief introduction	214
bb) Reform and cuts during the intervention	216
b) Social assistance	217
c) Family allowances	218
d) Unemployment benefits	218
e) Healthcare	219
aa) Sickness benefits	219
bb) Healthcare: National Health Service and ADSE	220
3. Relationship between the reforms and financial assistance commitments	220
III. Human rights affected by social security reforms and constitutional theoretical achievements from this period	223
1. National case law	223
a) State Budget Law 2012	224
b) State Budget Law 2013 and definitive cut in amount of the pensions of CGA beneficiaries	226
c) Decisions of 2014 and 2015	229
2. Critical assessment of Portuguese constitutional case law	232
3. The judicial protection of social rights in times of crisis	236
IV. Conclusion	239
9. A 'Bail-In' of Social Rights? The Cypriot Experience of the Financial Crisis	240
<i>Constantinos Kombos and Athena Herodotou</i>	
I. Introduction	240

II. The background of the Cypriot economic crisis and the adoption of the MoU	242
1. The Cypriot banking crisis and the need to restructure the welfare system	242
2. The uncertain legal nature of the MoU in the Cypriot legal order	245
III. Reforms in national social protection systems during the financial crisis	248
1. Overview of the national social protection and healthcare systems	248
a) Constitutional social protection	248
b) Overview of the social protection system	248
c) Overview of the healthcare system	250
2. Structural reforms and cuts	252
a) Old-age pension	252
b) Social assistance	254
c) Family allowances	255
d) Unemployment benefits	257
e) Healthcare	257
3. Grounds of justification and procedural particularities of the reforms	258
IV. Social protection reforms before Cypriot courts: a constitutional approach	261
1. Legal basis for challenging social protection cuts and reforms	261
2. Social protection cuts and reforms: the human rights dimension	261
a) The initial judicial approach: the <i>Charalambous</i> and <i>Koutselini-Ioannidou</i> cases	262
b) Social protection cuts and reforms and the right to property	267
c) Assessing the Cypriot courts' approach to social protection reforms and human rights violations	271
3. Separation of powers and judges' remunerations	273
V. Conclusion	274
10. The Outcome of the Financial Crisis in Italy: A Sea Change for the Doctrine of Social Rights	276
<i>Matteo De Nes and Andrea Pin</i>	
I. Introduction	276
II. Background	278
1. The 2011 ECB letter, the political crisis, and the decline of social rights	278
2. The constitutionalisation of the balanced budget rule	282
III. Reforms in national security systems	285
1. Preliminary remarks: social security and the healthcare system in Italy	285
2. Reform (and counter-reform) of the pension system	287
3. Reform of labour market regulation and unemployment benefits	291

4. The healthcare system and its underfunding	293
5. Social assistance under stress	296
IV. Human rights affected by social security reforms: the jurisprudence of the Italian Constitutional Court	298
1. From 2011 to 2014: the Constitutional Court and the de-prioritisation of social rights	298
2. From 2015 to present: the (slow) recovery of social rights	301
a) The mitigation of the impact of specific Court judgments	301
b) Budgetary constraints and the need of adequate justification	303
c) The hard core of social rights	305
d) The principle of reasonableness	306
V. Conclusion	307
11. The Predominance of a 'Strong' Economy over a 'Weak' Social Constitution: The Legacy of the Financial Crisis in Spain	311
<i>Juan Antonio Maldonado Molina and Juan Romero Coronado</i>	
I. Introduction	311
II. Characterisation of the reforms	314
1. As to the form: the 'making-of': the governmentalisation of the reform process	314
2. On the substance: arguments used to justify the reforms	315
a) Financial stability	315
b) Economic emergency	315
c) Gaining the confidence of the financial markets	316
d) Implementing policies of the European Union	316
III. The structural reforms	319
1. The retirement pension	319
a) Early reforms	319
aa) No revaluation of pensions	320
bb) Reform of the retirement pension	320
b) Decisive reforms	322
aa) Consolidation measures and measures to favour the continuity of the working life	322
bb) Sustainability factor and revaluation index of the public pension system	323
2. Long-term care	325
3. Family allowances	327
4. Unemployment	327
5. Healthcare	329
IV. Interpretation by the Constitutional Court	330
1. Constitutional evaluation of the procedural aspects of the reforms	330
2. Constitutional evaluation of pension reform	331
3. Constitutional evaluation of health reform	333
V. Conclusion	335

12. Conclusions from a Comparative Perspective	338
<i>Ulrich Becker</i>	
I. Legacy of the reforms with respect to social protection	338
1. Facts: social protection reforms	338
a) Pensions and healthcare	338
b) Unemployment and family benefits	340
c) Social assistance	341
2. Reasons: financial crisis and other drivers	342
3. Outcome: cutbacks and structural changes	344
II. Legacy of the reforms with respect to constitutional law	346
1. The role of constitutional law and adjudication	346
a) Overview	346
b) Objects and rights	348
c) Inter- and supranational sources	349
2. Impact of the constitution on welfare state reforms	350
3. Economic pressure and legal doctrine	351
III. The financial crisis and the constitution of European welfare states	353
 <i>Index</i>	 357