Table of Contents

Tal	ble of Cases	XV		
	st of Contributors	XXV		
1.	. Introduction			
	Ulrich Becker			
	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		
	Anastasia Poulou			
	I. Introduction	24		
	II. The EU financial assistance mechanisms	25		
	III. The applicability of the Charter to EU institutions involved in	ı the		
	MTFA and EFSM	28		
	IV. The hybrid European financial assistance mechanisms	29		
	V. The applicability of the Charter to EU institutions involved in	ı 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 E	CB 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		

The Transition from Welfare to Workfare in Times of Crisis: A					
-		4.0			
		49			
11.	·				
		53			
	, .	53			
	·	54			
		55			
		57			
		58			
		60			
		62			
	• •	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			
. The Latvian Response to Its First Economic Crisis under					
a Fr	ree Market Economy	73			
Kris	stīne Dupate				
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.		83			
		83			
	a) Overview	83			
	b) Outcome	84			
		86			
	•	86			
		86			
		88			
	·	93			
		94			
		94			
		96			
	c) Changes of constitutional doctrine	97			
	Dor Józs I. II. IV. The a Fr Kris I. II.	Double-based Reform of the Hungarian Welfare State Jossef Hajdú I. Introduction II. The main reforms and developments of the social security systems in Hungary during the last financial crisis 1. Brief outlook of the Hungarian social security system 2. Pension system after the economic crises a) The transfer of the mandatory, private pension scheme (second pillar) b) Fundamental changes in early retirement pension rights 3. Challenges to the statutory healthcare system 4. Transformation of 'disability pension' to 'rehabilitation benefits' 5. Challenges to family policy 6. Employment and unemployment policies III. The impact of constitutional law on the content of social security rights 1. Transition from Constitution to Fundamental Law 2. Right to social security: state goals instead of social rights IV. Conclusion The Latvian Response to Its First Economic Crisis under a Free Market Economy Kristine Dupate 1. Introduction II. Reforms in national social security systems 1. Overview on the social security and healthcare system 2. Structural reforms and the cuts introduced after the crisis 3. Elements in the making and implementation of the reforms a) Overview b) Reasons for reforms c) Procedural particularities in the making of the reforms 11. Human rights affected by social security reforms 12. National case law referring to the social security reforms 13. National case law referring to the social security reforms 14. Human rights affected by social security reforms 15. National case law referring to the social security reforms 16. Analysis of the case law a) Role of constitutional rights aa) Right to property bb) Right to social security cc) Equality b) Role of general principles aa) Relation to rights bb) Legitimate expectation			

				TABLE OF CONTENTS	ix
		3.	Cri	tical assessment of the decisions	98
		4.	Rol	e of international law	101
			a)	ECHR	102
			b)	ICESCR	103
			c)	Other sources and conclusions	104
	IV.	Co	ncl	usion	105
5.				g the Welfare State During the Financial Crisis: The	
	Pivo	ota	l Ro	ole of the Constitutional Court of Romania	108
	Eler	1a-	Lur	ninița Dima	
	I.	In	troc	luction	108
	II.	Re	for	ms in Romania's social protection systems	111
		1.	Bac	ckground and stages of reform	111
			a)	First stage	112
			b)	Second stage	113
			c)	Third stage	114
		2.	Spe	ecific reform measures	115
			a)	Old-age benefits	115
				aa) Pensions pillar I	115
				bb) Pensions pillar II	119
				cc) Pensions pillar III	119
			- 20	Unemployment benefits	120
			c)	Family allowances	121
				aa) Social assistance benefits	121
				bb) Social insurance allowances	123
				Healthcare benefits	124
				Social assistance benefits	124
	III.			an rights affected by social protection reforms	125
				ocedural issues	126
		2.		nsions	128
			a)	Restrictions in cumulating the pension with salary	120
			1 \	income paid from state budget	128
			b)	Decrease in the amount of pensions	130
				aa) Right to property (article 44 of the Constitution and	130
				article 1 of Protocol 1 to the ECHR)	
			`	bb) Right to a decent living standard and right to benefits	131 132
			c)	Removal of the non-contributive part of the special pensions	133
				aa) Retroactive effect (article 15(2) of the Constitution)	133
				bb) Right to property	134
				cc) Decent living standard and securing conditions to	135
				increase the quality of life	136
				dd) Necessity of acts of parliament	137
				ee) Breach of other constitutional provisions (f) Independence of the judiciary	138
				ff) Independence of the judiciary	130

X TABLE OF CONTENTS

	3. Unemployment benefits	141					
	4. Other social protection benefits	143					
	IV. Conclusion	144					
6.	Salus Rei Publicae Suprema Lex Esto? Welfare State Reforms						
	Before the Greek Courts	148					
	Maria Bakavou						
	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					
	Elaine Dewhurst						
	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					

	II. 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
_	101 10 10 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	
8.	Legal Changes and Constitutional Adjudication in Portuguese	200
	Social Law in Consequence of the European Financial Crisis	208
	osé Carlos Vieira de Andrade, João Carlos Loureiro,	
	and Suzana Tavares da Silva	•
	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
0	A (D 11 1 2 CC 1 1 D 1 1 2 T 1 C 1 1 F 1 1 C 1 1 1 C 1 1 1 C 1 1 C 1 1 C 1 1 C 1 1 C 1	
9.	A 'Bail-In' of Social Rights? The Cypriot Experience of the	240
	Financial Crisis	Z4U
	Constantinos Kombos and Athena Herodotou	0.10
	I. Introduction	240

xii TABLE OF CONTENTS

	11.	The back	rground of the Cypriot economic crisis and the	
		adoption	n of the MoU	242
		1. The C	Cypriot banking crisis and the need to restructure	
		the we	elfare system	242
			ncertain legal nature of the MoU in the Cypriot legal order	245
	III.		s in national social protection systems during	
			ncial crisis	248
		1. Overv	view of the national social protection and healthcare systems	248
			onstitutional social protection	248
			verview of the social protection system	248
			verview of the healthcare system	250
			tural reforms and cuts	252
		a) O	ld-age pension	252
			ocial assistance	254
		c) Fa	mily allowances	255
		d) Ui	nemployment benefits	257
		e) He	ealthcare	257
		3. Groun	nds of justification and procedural particularities of	
			forms	258
	IV.	Social pr	rotection reforms before Cypriot courts: a	
		_	tional 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) Th	ne initial judicial approach: the Charalambous and	
		Ko	outselini-Ioannidou cases	262
		b) So	cial protection cuts and reforms and the right to property	267
		c) As	ssessing the Cypriot courts' approach to social protection	
			forms and human rights violations	271
		3. Separ	ation of powers and judges' remunerations	273
	V.	Conclus	ion	274
_				
10.			ne of the Financial Crisis in Italy: A Sea Change	
			rine of Social Rights	276
			les and Andrea Pin	
		Introduc		276
	II.	Backgro		278
			011 ECB letter, the political crisis, and the decline of	
			rights	278
			onstitutionalisation of the balanced budget rule	282
	III.		in national security systems	285
			ninary remarks: social security and the healthcare	
			n in Italy	285
			m (and counter-reform) of the pension system	287
		3. Reform	m 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	
	Coı	nstitution: The Legacy of the Financial Crisis in Spain	311
	Jua	n Antonio Maldonado Molina and Juan Romero Coronado	
	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 V.	Constitutional evaluation of the procedural aspects of the reforms	330
		 Constitutional evaluation of the procedural aspects of the reforms Constitutional evaluation of pension reform 	331
		3. Constitutional evaluation of health reform	333
	17	Conclusion	335
	V -	CALICIUMAL	

XIV TABLE OF CONTENTS

12.	Co	nclusions from a Comparative Perspective	338	
	Ulrich Becker			
	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	
Inde	ex		357	