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THE EUROPEAN WELFARE STATES AND A TIMID CONSTITUTIONAL PROTECTION AGAINST UNFAVOURABLE SOCIAL REFORMS*

Martin Štefko**

1 INTRODUCTION

Although states are free to decide if they introduce at least certain level of social security (or social welfare), many European countries¹ acquired very early, due to specific historical experience, a strong sensibility for the need of constitutional guarantees for social rights. The turn towards welfare state constitutions gained momentum after the end of WWI. It can be demonstrated by Article 161 of the Weimar's Constitution,² Article 102 of the Polish Constitution of 1921,³ the Soviet Constitution of 1936,⁴ or Czechoslovak Constitution of 1948.

Regardless to what reasons developed, once implemented, social security schemes experience profound changes all over Europe, due to many internal as well as external reasons. Because some European countries had developed social security schemes very early, it enables us to address a highly important issue in the current world - the effectiveness of fundamental social rights. Have

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¹ But even earlier in Mexico, in 1917, and other countries in Latin America like Brazil in 1934 (the Third Constitution). A comprehensive chapter on the social order characterizes the Brazilian Constitution of 1934. In addition, the Brazilian Constitution of 1988 comprises a veritable social policy programme.

² Constitution of the German Empire, Part 2 Fundamental Rights and Obligations of German citizens, Section 5 The Economy, Art. 161.

³ Cholewinski (1998, p. 242).

⁴ The Soviet Constitution contained a comprehensive right to social security. However, it was not understood as a justiciable right; it was a socialist constitution. Comparable provisions are taken up in all the socialist constitutions built on the model of the Soviet Constitution of 1936 (e.g. Article 60 of the Polish Constitution of 1952, Article 43 of the Bulgarian Constitution of 1971, or Articles 35 and 36 of the Constitution of the German Democratic Republic of 1968). See Osiatynski (1994).

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