

III. SOCIAL REFORMS IN CENTRAL AND EASTERN EUROPE AND THE EUROPEAN SOCIAL MODEL

Eberhard Eichenhofer

1. Different influences on transformation

Twenty years after the Iron Curtain fell and Central Europe regained its historic position as territories at the center of the continent, one may ask: What were the influences which inspired social reforms during the last two decades? Both actors and observers will agree that social policy changes in Central and Eastern Europe which were implemented to overcome the legacy of the communist regime, were not – as imagined by a holistic ideology – initiated through one comprehensive master plan which inspired and guided changes, leading the transformation process in one, clear direction. There were in fact many divergent influences at work, which did not concur in their targets and methods, but led to contradictory orientations. This makes the explanation of how the changes happened more complicated, and it is therefore worthwhile to examine the origins of the reforms in detail. There is no simple answer to be given as how to summarise the outcome of the fundamental changes which the peoples of the Central European societies have witnessed during the last two decades.

1.1. Rediscovery of an own history

Not only for the political actors, but also for the people themselves, the leading motive for transformation was to regain political autonomy, which had been lost under communist governance, since the late 1940s all “brother countries” – including the Central and Eastern European states – were forced to adopt their own economic and social system of a Soviet type. So, the first and foremost impulse for reform was to get rid of these Soviet-type influences on the economic and social structure, which had determined the – at that time so-called – “people’s democracies” of Central and Eastern Europe for two generations. This orientation was addressed to rediscover the countries’ own politi-

cal, social, economic and cultural traditions – not a few of them, as the Baltic States, to rebuilt at that time as independent political communities after decades of dependence. This orientation was intended to re-establish a national concept of society, which had originally been established after the end of the First World War (1919), but became lost before or during the Second World War. So, the first aspiration of transformation was to rediscover the lost national histories of the transformation countries. In this sense, transformation was oriented toward the countries’ own pasts.

1.2. Adapting to an open world economy

It was however not only democracy which was to be regained, but also economic and social organisation, which was to establish on the fundamentals of the internationally acknowledged civil, social and economic rights of the individual. A second motive for social reforms was to cope with the demands of international organisations, and the transition states – then called “new democracies” – strove to adhere to these and to play an independent role. This created a further imperative for reforms. In this context, the initiatives and measures of financial and technical assistance taken by the United Nations (UN), the World Bank, the International Monetary Fund (IMF) and the International Labour Organisation (ILO) should be remembered. All these institutions did extensive and far-reaching work in order to overcome the previous split between east and west to open the Central and Eastern European countries to the world economy. They contributed substantially to the goal of the “new democracies” becoming a part of the emerging global economy. A whole series of measures were therefore taken to enable the Central and Eastern European countries to play an active role in the future global economy and society, based on international governance.

1.3. Taking part in European integration

A third motive for the transformation was to join the (Western) European integration. Both the Council of Europe and the European Communities were institutions which the Central European states tended toward after the communist integration framework – embedded in COMECON and the Warsaw Treaty – failed and was dissolved. This went hand in hand with the decline of the Soviet Union. At the 1993 Copenhagen Summit the EC opened the door to Central and Eastern European countries becoming Member States of the EC/EU if they fulfilled the criteria which permanent membership within these institutions necessarily requires.

This meant taking on the *acquis communautaire* – the whole range of laws, rules and institutions that the traditional Member States had developed in the past, in order to make their economies a Single Market. Since the era of Jacques Delors – former President of the EC Commission – the EC is not longer conceived as an economic project but is at the same time a social project. So the goal is not only that of joining the Member States in a Single Market, but also bringing about a European social model.

This model is implicitly enshrined in the social provisions of the Member States’ law and is, simultaneously, to be strengthened and explicitly deepened by EC/EU law. The

question therefore must be discussed, whether – and if so, to what extent – the social reforms which took place in Central and Eastern European States during the last two decades are to be conceived as a means of adapting these countries to the European social model.

2. Characteristics of Central European social reforms

2.1. Coping with legacies of the past

All the reforms of labour law and social security found their starting points in the respective institutions of the old regime. The new democracies took the then prevailing rules and laws as a basis from which the new rules could and should derive.⁷⁰ So, despite the fact that the aim of the reform process was to overcome the negative results of the past, the old system of work, welfare and social security established the frame of reference for the new one. As the economic and social circumstances were to be dealt with in the future, the old system defined the path on which the new system depends.

2.2. Terminating state and introducing market economy

The first steps of reform were not directed towards social, but economic goals. As the communist system was built upon state ownership, planning and state control of prices and wages and the arrangement of a command economy turned out to be inefficient and unfair, the first reforms were intended to reduce state and increase private influence on the economy. By doing so, civil society regained its traditional role as the driving force for trade and prosperity. Newly built companies could therefore go bankrupt and workers could be dismissed if the employer lacked working possibilities. This rapid and profound economic change had substantial social effects, which could be neither intellectually separated, nor politically neglected. So, the first social reforms had to accompany basic economic changes implemented immediately after the collapse of the communist regime.⁷¹ Unemployment insurance and social protection of workers in companies which could go bankrupt formed the first steps of reform.

2.3. New start in social security

In the early reform phase the old system of welfare and social security was conceived as “very ineffective, very costly,”⁷² and “deprived citizens of any liability towards themselves, and any motivation to do anything about themselves.”⁷³ From the further critical observation that the system did not provide for genuine participation of the employers

and employees, and was challenged by profound economic and demographic changes, the conclusion matured and it became clear that fundamental changes were needed.

As for the historic experiences of social insurance – deeply embedded in a joint Central European history of social insurance ever since the late 19th century – the economic reforms of the first years were intended to concur with efforts to strengthen and broaden social cohesion in order to establish a socially oriented market economy.⁷⁴ So, based on the employment and unemployment insurance services an active employment policy was introduced and re-qualification, job-creation and employment benefit schemes were implemented. An effective social assistance programme was also introduced to safeguard a minimum level of existence for each citizen.⁷⁵

Both programmes were new, because in the communist era both institutions were lacking – as employment was available in the state-run economy and vast state subsidies for basic goods – food and flats – reduced the costs of living for the population.

A further step was taken to overcome the previous state monopoly in social welfare as social security. In social welfare, private charities and churches were given their own spheres of social work activity; in social security the participation of both employers and employees has been re-introduced.⁷⁶ This was accompanied in social security, where the former shared financing of employers and employees was re-invented. Because the vast, all embracing state-budget, nourished by the surplus of state-owned industries, was no longer available,⁷⁷ the sources of traditional social security financing had dried out completely.⁷⁸ Due to these changes the idea was strengthened that social security is the joint responsibility of both employers and employees. Social security was therefore re-established as an institution based on the idea of social partnership.

Family benefits were reoriented as flat-rate benefits helping all families to maintain their children.⁷⁹ As for administration, new instruments of control were created: democratically elected bodies to supervise the administration, and comprehensive control of all decisions, through independent judges.⁸⁰ These reforms meant a substantial increase

⁷⁰ Vladimír Rys, V., *La sécurité sociale dans une société en transition: L'expérience tchèque; quels enseignements pour l'Europe?* Lausanne 1999, p. 38 et sequ.

⁷¹ Rys, V., *La sécurité sociale dans une société en transition: l'expérience tchèque; quels enseignements pour l'Europe?* Lausanne 1999, p. 39 et sequ.

⁷² Tomeš, I., *Social Policy in Czechoslovakia*. In: Bent, G. (ed.), *Social policy in Europe*. Copenhagen 1992, p. 54.

⁷³ Tomeš, I., *Social Policy in Czechoslovakia*. In: Bent, G. (ed.), *Social policy in Europe*. Copenhagen 1992, p. 54.

⁷⁴ Tomeš, I., *Social Policy in Czechoslovakia*. In: Bent, G. (ed.), *Social policy in Europe*. Copenhagen 1992, p. 55 et sequ.

⁷⁵ Florek, L., *Entwicklungsgeschichte sozialer Sicherheit aus östlicher Sicht – das Beispiel Polen*. In: Maydell, B./ Hohnerlein, E. M. (Hg.), *Die Umgestaltung der Systeme sozialer Sicherheit in den Staaten Mittel- und Osteuropas*. Berlin 1993, p. 39, 48.

⁷⁶ Tomeš, I., *Social Policy in Czechoslovakia*. In: Bent, G. (ed.), *Social policy in Europe*. Copenhagen 1992, p. 57.

⁷⁷ Tomeš, I., *Social Policy in Czechoslovakia*. In: Bent, G. (ed.), *Social policy in Europe*. Copenhagen 1992, p. 57.

⁷⁸ Florek, L., *Entwicklungsgeschichte sozialer Sicherheit aus östlicher Sicht – das Beispiel Polen*. In: Maydell, B./ Hohnerlein, E. M. (Hg.), *Die Umgestaltung der Systeme sozialer Sicherheit in den Staaten Mittel- und Osteuropas*, 1993, p. 39, 47.

⁷⁹ Tomeš, I., *Social Policy in Czechoslovakia*. In: Bent, G. (ed.), *Social policy in Europe*. Copenhagen 1992, p. 57 et sequ.

⁸⁰ Swiatkowski, A., *Social Policy Changes and Social Security Technics in Poland*. In: Bent, G. (ed.), *Social policy in Europe*. Copenhagen 1992, p. 39, 50 et sequ.

in social spending, which coincided with rising contributions and taxes, which were not so well received by the public.

2.4. A new system of labour – Collective bargaining instead of state governance

As for the development of wages and other working conditions, former state regulation came to an end and was replaced by collective bargaining. This system was substituted and accompanied by a national minimum-wage legislation, the purpose being to ensure that wages were high enough to meet the basic needs of workers and their families and fair enough to avoid social dumping. Minimum wage legislation also safeguards fair competition which does not rely on the exploitation of the workers. It underlines that work is not a commodity, as the 'price' of work should not be determined by the market, but by the state or collective bodies – both arrangements which replace the market by public actions. These changes brought about the re-establishment of a tripartite structure of general governance, in which constant consultation between independent employers' organisations and trade unions with the state is guaranteed. Social dialogue thus became again a leading instrument of social policy.⁸¹

2.5. Transformation between economic and social imperatives

The transformation was not just primarily a process destroying the old, ineffective structure imposed on the economy and society in the name of communist ideology, but it was also a means to reorganise economic and social life by replacing old institutions with new ones, which were in substance established during the history of the transforming societies before they were forced to adapt their societies and economies to the Soviet system. The implementation of market principles in the economy was hence not only a way forward to an international economy, based on these principles, but at the same time a way backward to the histories of the transformation countries. And the transformation did not set aside the social policy institutions which originated from a time before the Soviet governance, nor removed the influence of the state.

Transformation did however change the functions, institutions and rules of social policy and altered the character of the institutions of the state.⁸² During the first years of transition, old and new structures ran parallel and a lack of clarity created confusion.⁸³ During the course of this process economic interpretation and imperatives regained importance; at the same time social policy goals altered in structure and direction. Social security had to assume a supportive role in a market economy to protect those in circumstances beyond their control and at the same time avoid setting incentives for in-

⁸¹ Rys, V., *La sécurité sociale dans une société en transition: l'expérience tchèque; quels enseignements pour l'Europe?* Lausanne 1999, p. 93 et sequ.

⁸² Haffner, F., *Ökonomische Rahmenbedingungen der Systeme sozialer Sicherheit in Ostmittel- und Osteuropa*. In: Maydell, B. / Hohnerlein, E.M. (Hg.), *Die Umgestaltung der Systeme sozialer Sicherheit in den Staaten Mittel- und Osteuropas*. Berlin, 1993, p. 57 et sequ.

⁸³ Haffner, F., *Ökonomische Rahmenbedingungen der Systeme sozialer Sicherheit in Ostmittel- und Osteuropa*. In: Maydell, B. / Hohnerlein, E.M. (Hg.), *Die Umgestaltung der Systeme sozialer Sicherheit in den Staaten Mittel- und Osteuropas*. Berlin, 1993, p. 65 et sequ.

dividuals to act detrimentally toward the prevailing economic goals of a market oriented economy. For this purpose the traditional social welfare and social security institutions needed to be rebuilt upon new imperatives.

3. The European social model

3.1. Origin, reputation and dimensions of the European social model

The term "European social model" was coined by former EC Commission President Jacques Delors in the late 1980s. Under his responsibility the EC completed its social policy change in direction as it took the lead in a reorientation of social policy through the implementation of the Single Market and Monetary Union in the 1990s. Since that period, the concept has inspired all EU social policy initiatives. Nevertheless, it is highly controversial. Lawyers dislike it,⁸⁴ as it is quite abstract and global. It is linked with 'third way politics' or the 'social market economy' and has an analytic as a normative dimension. As to the former, the historic and comparative dimensions can be distinguished, and as to the latter, one can discern the primary legislation and the findings in the context of the open method of co-ordination.

3.2. Europe's common social policy legacy

History can easily illustrate a common heritage of social policy in Europe shared by all European states.⁸⁵ This goes back to the Greek and Roman era, and was deepened during medieval times, finding its first institutional expression in the poor law, which was created at the turn of the 16th century. The welfare state was the prevailing order mid 18th century during the era of enlightened absolutism and it gained ground again from the late 19th century onwards, as industrialisation and urbanisation imposed on the state new and unknown challenges pertaining to the 'social question.' In all this long period social policy turned out to be a remarkable and main characteristic of public life in all European countries, and their institutions – which were established in this context – were more or less alike. Above all during the 20th century the welfare state became the main feature of European states, giving the nation state a new and more coherent structure through the deepening of internal solidarity. Society became more socially inclusive and protective.

3.3. European welfare states under comparison

Despite their joint European roots, the modern welfare states were not and still today are not more or less alike. Rather, they became more different during the process of their transformation into modern, social insurance-based welfare states which began in the last decade of the 19th century. In 1990 the famous Danish sociologist Gøsta Esp-

⁸⁴ Rebhahn, R., *Europäisches Sozialmodell – oder nationale Sozialmodelle für Arbeitsbeziehungen und Welfare?* In: Eilmansberger, T. / Herzig, G. (Hg.), *Soziales Europa*. Baden-Baden 2009, p. 15 et sequ.

⁸⁵ Eichenhofer, E., *Geschichte des Sozialstaats in Europa*. München 2007.

ing- Andersen⁸⁶ described clearly and precisely at least three different ‘worlds’ or ‘types’ that can be distinguished within the Western European welfare state tradition: the social democratic Northern European, the conservative Central European, and the Western, Anglo-Saxon liberal welfare state approach. The post-communist ‘Eastern’ world had not yet been taken into account, because at that time it did not belong to welfare capitalism. This description is accurate as it marks precisely the profoundly different starting points of the welfare state in Europe in the late 19th century, when divergent orientations toward the outlook of the modern welfare state arrangement were to be noticed. The typology can thus illustrate the path dependencies of welfare state development, which are inspired by the different ideals of welfare, i.e. equality, proportionality, or poverty prevention.

These types, however, do not represent the reality of social policy, but stand for “ideal types” (Max Weber) which give an abstract, and idealised picture of the various social policy institutions, and the typology does not therefore represent real welfare state arrangements.⁸⁷ If one takes a closer look at real welfare states, one can observe that these are not based upon ideal types, but quite regularly draw upon different elements of the various types. So, for example, the British welfare state has a strong element in its National Health Service, this being based on a universal approach to welfare and not – as the British approach generally is supposed to be – on a minimalist approach. The Northern welfare states of today incorporate a strong income-related component, which is regarded as the characteristic feature of the continental welfare states, whereas continental states have universal systems of income protection – assumed to be the characteristic of the Northern type – above all in their family benefits legislation. So, all in all, as each type of welfare draws upon elements of the other types, the existing welfare states become much more similar to one another, as the idea of the different welfare state approaches might indicate.

3.4. Growing EU law influence

Seen from a normative angle it should, additionally, be taken into consideration that the Member States of the EU are integrated into a supranational union which is given authority to enact laws on its own as far legal power is endowed to this union. In the last decades a growing influence on the social legislation of the Member States has been observed, on the basis of EC directives, EC regulations, ECJ case law or, finally, by means of suggestions, recommendations or other soft law measures to direct various fields of the Member States’ social policy.⁸⁸ In labour law social dialogue became a strong instrument to arrange and co-ordinate collective bargaining in the European context.

⁸⁶ Esping-Anderson, G., *Three Worlds of Welfare Capitalism*. New Jersey 1990.

⁸⁷ Jepsen, M. / Pascual, A. S., *Unwrapping the European social model*. Místo 2006; Lessenich, S., *Das “Europäische Sozialmodell” in Mitteleuropa – Eine doppelte Herausforderung*. In: *Collegium Europaeum Jenense* (Hg.), *Soziales Europa – Testfall Polen und Tschechien*. Jena, 2008, 5 ff.

⁸⁸ Becker, U., *Der nationale Sozialstaat in der Europäischen Union: von Einwirkungen und Verschränkungen*. In: Belina, M. / Kalenska, M. (Hrsg.), *Pocta Petru Trösterovi*, k 70. narozeninám. Praha 2009, 49 et

3.5. Modernising social security

Above all, on the basis of an EU-driven process of social security modernisation a growing influence on the political goals and directions of the Member States social policy developments can be observed. In this context not only did the Member States agree on the very general and elementary orientations of social policy – for example that it must foster employment instead of social transfer and therefore introduce, instead of unconditional benefits, conditional ones – but a series of political imperatives, to be respected by the Member States in their own social reform agenda, were also developed. As regards pension policy, a greater emphasis should be placed upon a three-pillar system of pensions and efforts undertaken to prolong the period of working life, in order to improve fairness between generations and the performance of the traditional pension system. In health care more emphasis should be placed on preventing bad health which increases spending on health care in the very ultimate phase of human life.

4. Transition exacerbated social conditions, making fundamental changes imperative

4.1. Transition – A fundamental re-orientation

The transformation of Central and Eastern European economies and societies in the 1990s was not only a unique experiment, but it also exposed those societies to a fundamental economic and social crisis.⁸⁹ They were not only confronted with the collapse of the communist regime and all its economic and social consequences – the replacement of state ownership, a command economy and a totalitarian autocracy, with private enterprise, market economy and democracy – but, additionally, this transition itself led to deep economic and social distortions. Inequality – growing poverty among the vulnerable groups of the elderly, disabled, families and unemployed, and growing affluence – was flourishing and at the same time the democratic government was not established enough to organise social reform based on a democratic consensus.

4.2. Transition crisis and social reform

So, on the reform agenda not only was a fundamental institutional reorientation of social policy necessary to overcome the social welfare system as part of the previously existing rationing system,⁹⁰ but reform had also to make possible and find appropriate answers

sequ.; Eichenhofer, E., *Geschichte des Sozialstaats in Europa*. München, 2007, p. 16, 57 et sequ; Weiss, M., *Europäisches Arbeitsrecht quo vadis? Vom „hard law“ zum „soft law“*, *ibid.*, p. 412 et sequ; Zukowski, M., *Wirtschafts und Sozialpolitik in Mitteleuropa – Das Beispiel Polen*. In: *Collegium Europaeum Jenense* (Hg.), *Soziales Europa – Testfall Polen und Tschechien*. Jena 2008, p. 19.

⁸⁹ Tomeš, I., *Ten Years of Social Reform in the Central and Eastern European Countries*. In: Maydell, B./ Nußberger, A., *Transformation von Systemen sozialer Sicherheit in Mittel- und Osteuropa*. Berlin 2000, p. 21 et sequ.

⁹⁰ Tomeš, I., *Ten Years of Social Reform in the Central and Eastern European Countries*. In: Maydell, B./ Nußberger, A., *Transformation von Systemen sozialer Sicherheit in Mittel- und Osteuropa*. Berlin 2000, p. 23 et sequ.

to the newly emerging economic and social side effects of the transformation of society itself, which became increasingly dramatic the longer the period of transition lasted. So, when at the starting period of transformation the newly created unemployment and social assistance schemes started to operate, a whole series of unsolved problems became apparent: the unclear relation to other parts of the social security and welfare system, and the position of national and local welfare agencies, which were under-funded and understaffed, and consequently unable to work as successfully as they should.⁹¹

The economic and social crisis also increased substantially the numbers of beneficiaries, and at the same time reduced the number of tax and contribution payers. Thus a shrinking group of economically active individuals had to subsidise a growing number of beneficiaries. The question was therefore raised as to whether social benefits had not been too generously established.⁹² An end to subsidising basic goods and the costs of housing caused the general costs of ordinary life to increase. Employment policy turned out to be far less effective than expected, and the growing economic role of the self-employed was difficult to play in the context of a lack of clear legal rules on their functioning within the emerging decentralised economies.

The political systems in the transition countries were also neither strong enough, nor effective enough to master the immense political changes necessary to cope with these unique challenges, because political imagination was lacking and a social consensus on the reforms needed was very hard to achieve: "Everybody wanted to reform the economy, but at the same time wished to preserve his or her generous social arrangement. Conflicts of interests arose, finding support to the communist survivors, especially among the vulnerable groups."⁹³ Rising unemployment reduced productivity, and at the same time the need for higher taxes and contributions made economic proficiency more difficult to achieve.

4.3. Emerging social reform agenda

It took nearly a decade before Central and Eastern European Countries started to initiate substantial social reforms to their inherited social security and social welfare programmes. Confronted with a problematic legacy and a whole range of new challenges they discovered as a common denominator their Bismarckian past, as former parts of the Austrian-Hungarian monarchy or the Balkan states, which created, after their in-

dependence from the Ottoman Empire, systems in accordance with Central European imperatives.⁹⁴

Additionally, most transition countries had to bear huge public debts. They therefore needed the support of international financial institutions such as the World Bank and the IMF. When these institutions lent money to the transition states they made it conditional on the reorganisation of their public expenditure and debts – including that based on social transfers. So the reform countries became also partners of the World Bank and subject to its financial guidance and governance.⁹⁵ During those years the World Bank established a new approach to pension policy, which was identified as a constant source of implicit public debt. In the study "Averting the Old Age Crisis" (1994) the World Bank developed a paradigmatic picture of a sustainable old-age pension system which should be established on the basis of three pillars – basic public pensions, second employees' pensions, and third private pensions. This model inspired most of the transition countries and brought about pension reforms with far-reaching consequences.

5. Central Eastern Europe's social reform under the imperatives of the European social model

5.1. Association with the Central and Eastern European states

The EU concluded agreements with (third) countries and international organisations regarding their association with the Union. Association could be limited to occasional economic cooperation⁹⁶ (as with the EEA), establish wide-ranging economic integration, or make way for the future accession of a new Member State. The EC concluded in the mid-1990s association agreements with the Central and Eastern European states of Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia, with the aim of closer cooperation to enable those states to accede

⁹¹ Tomeš, I., Ten Years of Social Reform in the Central and Eastern European Countries. In: Maydell, B./ Nußberger, A., Transformation von Systemen sozialer Sicherheit in Mittel- und Osteuropa. Berlin 2000, p. 26 et sequ.

⁹² Tomeš, I., Ten Years of Social Reform in the Central and Eastern European Countries. In: Maydell, B./ Nußberger, A., Transformation von Systemen sozialer Sicherheit in Mittel- und Osteuropa. Berlin 2000, p. 27 et sequ.

⁹³ Tomeš, I., Ten Years of Social Reform in the Central and Eastern European Countries. In: Maydell, B./ Nußberger, A., Transformation von Systemen sozialer Sicherheit in Mittel- und Osteuropa. Berlin 2000, p. 31.

⁹⁴ Tomeš, I., Ten Years of Social Reform in the Central and Eastern European Countries. In: Maydell, B./ Nußberger, A., Transformation von Systemen sozialer Sicherheit in Mittel- und Osteuropa. Berlin 2000, p. 34.

⁹⁵ Müller, K., Die politische Ökonomie der Rentenprivatisierung. Erfahrungen aus Mittel- und Südosteuropa. In: Stuchlik, A. (Hg.), Rentenreform in Mittel- und Osteuropa. Wiesbaden 2010, p. 95 et sequ.

⁹⁶ As in the agreements with Algeria, Morocco, Tunisia and Turkey (Gacon-Estrada, Helene). The cooperation agreements concluded between the European Community and the Maghreb Countries (Algeria, Morocco and Tunisia), in Jorens, Y / Schulte, B. (eds.), European social security law and third country nationals. Brussels 1998, p. 323.