Gender Equality Laws in the Post Socialist States of Central and Eastern Europe

Mainstream Fixture or Fizzer?

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Abstract

In Central and Eastern European countries, the enactment of gender equality laws (GELs), defined as stand-alone national legislation that provide an overarching legislative response to gender discrimination as distinct from the traditional approach of incorporating gender equality provisions into existing legislation or constitutions, has been a marked regional trend since the collapse of the Soviet Union. However, rather than being driven by domestic movements for change, GELs seem primarily to have emerged due to pressure from development agencies, potential trading partners and donor organisations which predicate their assistance and business on the establishment of the 'rule of law' and of particular relevance in the region the desire to join the European Union (EU), which requires potential members to introduce gender equality legislation as part of the communtaire aquis. Despite the widespread enactment of GELs in the region, research suggests that the implementation of GELs has been slow, inefficient and in some cases non-existent. Reasons posited for this include a lack of judicial familiarity with new concepts contained in the legislation, the use of legislation taken from models in existing member states, lack of information disseminated about the new laws to relevant parties, weak political support and capacity weakness in states that are resource stretched. This article considers a further reason – the weakness of the enforcement and implementation mechanisms in the laws themselves and argues that despite the placement of expansive positive duties on a range of public and private actors in many of the GELs, the implementation and enforcement mechanisms of the fifteen GELs considered are weak. Consequently, despite their remarkable scope the duties created under the GELs are largely symbolic and will continue to be so unless, such legislation is amended to include mechanisms to enable the realization of those duties in practice.

Keywords: gender equality laws, enforcement mechanisms, rule of law, post-socialist states, European Union.

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A. Introduction

Preventing discrimination against women and achieving gender equality is a pressing challenge for the global community in the 21st century. The injustices that women suffer and continue to experience on a daily basis are many and varied including exclusion from or limited (rights to) participation in the political and public spheres of community life, economic dependence and marginalization, the prevalence of stereotypes which limit life opportunities or which see women as inferior, unequal rights in the family, and subjection to violence in the community and in the family. In Central and Eastern European countries, the enactment of gender equality laws (GELs), defined as stand-alone national legislation that provide an overarching legislative response to gender discrimination as distinct from the traditional approach of incorporating gender equality provisions into existing legislation or constitutions, has been a marked regional trend since the end of the Cold War and the collapse of the Soviet Union. Indeed, fifteen countries in the region, each transitioning from socialist or authoritarian rule to democracy, have enacted GELs.[1] However, rather than being driven by domestic movements for change, GELs seem primarily to be a response to exogenous influences. Those influences include pressure from development agencies, potential trading partners and donor organizations which predicate their assistance and business on the establishment of the 'rule of law'.[2] In addition, and of particular relevance in the region, the desire to join the European Union (EU), which requires potential members to introduce gender equality legislation as part of the *communtaire aquis*, appears to have been a driving force behind the enactment of GELs in the region. Seven of the fifteen countries reviewed in this article are recent members of the EU,[3] a further six have 'candidate' or 'potential candidate' status[4] and three of the remaining four are members of the Council of Europe with aspirations to eventually join the EU.[5]

Despite the widespread enactment of GELs in the region, research suggests that the implementation of GELs has been slow, inefficient and in some cases

1 Law on an Equal Gender Society 2004 (Albania); Law on Gender Equality in Bosnia and Herzegovina 2003; Law of the Republic of Lithuania on Equal Opportunities 1998 (Lithuania); Act on Equal Opportunities 2002 (Bulgaria); Law on Ensuring Equal Opportunities for Women and Men 2006 (Moldova); Gender Equality Act 2004 (Estonia); Republic of Croatia Gender Equality Act 2003; Law on Equal Opportunities of Women and Men 2006 (Macedonia); Law of the Kyrgyz Republic On State Guarantees for Ensuring Gender Equality 2003; Law of Georgia on Gender Equality 2010; Law on Gender Equality 2009 (Serbia); Act on Equal Opportunities of Women and Men 2002 (Slovenia); Law no 202/2002 on Equal Opportunities for Women and Men 2002 (Romania); Law no 2004/2 on Gender Equality in Kosovo 2002; On Equal Rights and Opportunities for Women and Men 2005 (Ukraine).

2 F. Ni Aolain & M. Hamilton, 'Gender and the Rule of Law in Transitional Societies', 18 *Minnesota Journal of International Law,* 2009, pp. 380 388.

3 Bulgaria and Romania joined the EU in 2007, Estonia, Slovenia and Lithuania joined in 2004.

4 Croatia, Macedonia, Albania, Kosovo and Bosnia and Herzegovina, and Serbia.

5 Georgia joined the Council of Europe in 1996, the Ukraine and Moldova joined in 1995.

non-existent.[6] Reasons posited for this include a lack of judicial familiarity with new concepts contained in the legislation,[7] the use of legislation taken from models in existing member states which is sometimes an awkward fit with existing domestic law,[8] lack of information disseminated about the new laws to relevant parties,[9] weak political support especially since many GELs were fast tracked through parliament without extensive debate,[10] a lack of appropriate institutional structures to enforce the new laws and norms,[11] and capacity weakness in states that are resource stretched.[12] This article considers a further reason – the weakness of the enforcement and implementation mechanisms in the laws themselves. Indeed, this article argues that despite the (remarkable) placement of expansive positive duties on a range of public and private actors in many of the GELs, the implementation and enforcement mechanisms of the fifteen GELs are weak. Consequently, the duties created under the GELs are largely symbolic and will continue to be so unless such legislation is amended to include mechanisms to enable the realisation of those duties in practice.[13]

Part II of this article defines GELs and reviews the history of their emerging presence in the modern legal landscape. Part III considers the rule of law requirements placed by external donors and states on Central and Eastern countries in exchange for aid and trade. Part IV considers the impact of the *gender acquis* on the enactment of GELs in Central and Eastern Europe and Part V evaluates the implementation and monitoring mechanisms in the GELs enacted by the fifteen countries in the region. Part VI concludes that the enforcement and implementation mechanisms of the GELs in the fifteen reviewed countries are generally weak, despite some notable examples and presents a further reason for the poor implementation of GELs in the region to date.

6 A. Sloat, *Legislating for Equality: The Implementation of the EU Equality Acquis in Central and Eastern Europe* Jean Monnet Working Paper No 8, New York, 2004, pp. 54-70, available at: <http://centers.law.nyu.edu/jeanmonnet/papers/04/040801.html>.

7 V. Stoyanova, 'The Council of Europe's Monitoring Mechanisms and Their Relation to Eastern European Member States Noncompliance', 45 *Santa Clara Law Review,* 2004-2005, p. 739, at 756.

8 F. Beveridge, 'Gender and EU Enlargement: Potential and Progress', 8 *Gender in Transition* 2007, p. 1, at 1.

9 J. Hunt & C. Wallace, 'Implementing Gender Equality and Mainstreaming in an Enlarged European Union: Some Thoughts on Prospects and Challenges for Central Eastern Europe', *Journal of Social Welfare and Family Law,* Vol. 27, No. 2, 2005, p. 213, at 219.

10 E. Weiner, 'Eastern Houses, Western Bricks? Re-Constructing Gender Sensibilities in the European Union's Eastward Enlargement', *Social Politics: International Studies in Gender, State and Society,* Vol. 16, No. 3, 2009, 303 at 309.

11 M. Sleeper, 'Anti-discrimination Laws in Eastern Europe: Toward Effective Implementation', 40 *Columbia Journal of Transnational International Law,* 2001, p. 177.

12 S. Smolens, 'Violence Against Women: Consciousness and Law in Four Central European Emerging Democracies – Poland, Hungary, Slovakia and the Czech Republic', *Tulane European and Civil Law Forum*, Vol. 15, No. 1, 2000, p. 19.

13 L. Lucas, 'Does Gender Specificity in Constitutions Matter', *Duke Journal of Comparative and International Law,* Vol. 20, No. 1, 2009, p. 133, at 140.

B. Defining GELs

The term 'GEL' refers to stand-alone legislation that seeks exclusively to implement principles of gender equality as distinct from the incorporation of gender equality provisions into existing legislation or constitutions.[14] GELs have become an increasingly popular state response globally to a range of exogenous pressures and imperatives imposed by domestic and international demands alike. A GEL can provide *de jure* compliance with international obligations such as those imposed by the Convention on the Elimination of All Forms of Discrimination against Women 1979,[15] can signal, in developing and transitioning societies, compliance with the 'rule of law' requirements of donors and external states offering 'conditional' aid or assistance and can provide evidence that a country has met the requirements of regional alliances such as the EU. Since their inception, GELs, far from constituting a homogeneous body of law have evolved into a complex and diverse range of models ranging from laws that seek to comprehensively incorporate a broad range of substantive legal rights (identified as multi-area GELs in this article) to those that focus on a few areas of women's human rights (identified as targeted GELs in this article).[16]

The world's first GEL, the Law on Sex Equality, was enacted by the Democratic People's Republic of Korea in 1946, predating the Universal Declaration of Human Rights (1948). However, GELs had their modern genesis in the United Kingdom (UK) with the enactment of the Equal Pay Act 1970 (UK) and the Sex Discrimination Act 1975 (UK), a package of laws aimed at addressing gender-based discrimination across a range of areas in women's lives.[17] This was followed by the Sex Discrimination Act 1984 (Cth) in Australia. Since then, there have been several 'waves' of GELs, the most recent being in Central and Eastern Europe and in Southeast Asia commencing in the early 2000s.[18] The earlier GELs and many of those enacted in industrialized Western nations predominantly focus on a few areas (typically employment, education and equality and non-discrimination). They characteristically provide very detailed coverage of the areas they encompass such as the models adopted in the Scandinavian countries, which are notable for their extensive developments in targeted equal opportunity and employment laws.[19] In contrast, GELs enacted in the last decade, particularly those in post-conflict states or developing countries and societies transitioning from socialism or authoritarian rule and a centrally planned economy to democ-

14 C. Forster & V. Jivan, *Gender Equality Laws: Global Good Practice and a Review of Five Southeast* Asian *Countries* (Bangkok: UNIFEM, 2009). <http://cedaw-seasia.org/docs/Aw_GEL_incover 050609Feb10.pdf>.

15 1249 UNTS 13, adopted on 18 December 1979 by GA Res 34/180, entered into force 3 September 1981, U.N Doc A/RES/34/180,1979.

16 *See* Forster & Jivan, 2009, at 28.

17 L. Dickens, 'Re-regulation for Gender Equality: From Either/Or to Both', *Industrial Relations Journal,* Vol. 37, No. 4, 2006, p. 299, at 299.

18 *See, e.g.,* the Law on the Development and Protection of Women 2004 (Laos); The Law on Gender Equality 2001 (Vietnam); Magna Carta For Women 2008 (Philippines).

19 *See, e.g.,* the Gender Equality (Consolidation) Act 2002 (Denmark), Act on Equality Between Men and Women 1991 (Sweden), The Act Relating to Gender Equality 2005 (Norway).

racy and a free-market economy have shown a preference for multi-area GELs.[20] Multi-area GELs typically encompass a broad range of areas including violence against women, political representation, equality and non-discrimination, rural women, trafficking in women, the collection of gender statistics, employment and education.

C. The Rule of Law Requirements of Donors

Many post-conflict societies and those transitioning from socialism or authoritarian rule and a centrally planned economy to democracy and a free-market economy have weak economic and institutional structures and lack resources and transparency, and some are plagued by endemic corruption.[21] They are therefore reliant on aid and support from a range of outside states and institutions.[22] The United States and other members of the international community have an extensive program of foreign aid in the form of human, technological and financial capital to states that are either transitioning to democracy or that are newly democratic including the former republics of the USSR, Asia, Eastern Europe, Latin America and parts of Africa.[23] Post-conflict countries may require reconstruction aid from institutions such as the World Bank and the International Monetary Fund, which also act as catalysts and guarantors for bilateral donors and global trading agreements. Such programs are further supplemented by the United Nations (UN) agencies, which similarly provide a substantial program of technical support to transitioning societies.

Many donor organisations, external states and global trading partners predicate their assistance and business with new and transitioning democratic states on the establishment of the 'rule of law',[24] including the passage of fair, equal and non-discriminatory laws.[25] The rule of law as defined by the United Nations is a "principle of governance in which all persons, institutions and entities, public and private, including the State itself are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated and which are consistent with international human rights norms and standards".[26] The requirement for the introduction of the rule of law can be traced to the proliferation of key international treaties after World War II and their promotion of it as foundational to

20 An exception to this trend is Spain, which enacted a multi-area GEL in 2007 Constitutional Act for Effective Equality Between Women and Men 2007 (Spain).

21 *See* P. Lundy & M. McGovern, 'Whose Justice? Rethinking Transitional Justice from the Bottom Up', *Journal of Law and Society* Vol. 35, No. 2, 2008, 265 at 276; P. Stephan, 'Rationality and Corruption in the Post-Socialist World', 14 *Connecticut Journal of International Law,* 1999, 533 at 9.

22 *See* Lundy & McGovern, 2008, at 276.

23 S. Astrada, 'Exporting the Rule of Law to Mongolia: Post Socialist Legal and Judicial Reforms', *Denver Journal of International Law and Policy,* Vol. 38, No. 3, 2010, 461 at 462.

24 *See* Ni Aolain & Hamilton, 2009, at 388.

25 B. Stark, 'When Globalisation Hits Home: International Family Law Comes of Age', 39 *Vanderbilt Journal of Transnational Law*, 2006, 1551 at 1556.

26 Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* (UN Doc S/*2004*/616) at 4.

state institutions. Its importance in United Nations work is demonstrated by the fact that the UN has even issued guidelines for the development of tools used in for the establishment of the rule of law in post-conflict and transitioning states.[27] In addition, strategies aimed at ensuring that states share Western norms and values became one of the mainstays of US foreign policy in the post-1991 world, under the presidency of George Bush. The consequent spread of democracy in newly independent states provided a strategic means of countering any potential neo-Soviet entity from emerging and challenging America. The key premise underlying such policies that promote democracy is the notion that liberal democratic states do not threaten each other the way pairs of non-liberal states do. Unsurprisingly, therefore, in post-conflict societies, justice packages are frequently part of negotiated peace agreements.[28] Such packages have resulted in the enormous increase in the amount of money spent on 'human rights' and 'legal and judicial development' by donors including a range of legal activities formerly considered the domain of national states.[29] These include building courts, setting up legal aid clinics, training judges and lawyers and writing and enacting laws, to name a few.[30] Further, NGOs, UN agencies and multilateral donors may attach conditions of 'good governance' to loans and run a range of programs to heighten local knowledge of human rights.[31] Poorer countries often have little option but to agree to good governance conditions.[32] In addition, and of great significance in the Central and Eastern European region, many transitioning societies, out of their own volition, want to seek admission to regional organisations such as the African Union, the EU or the Organisation of American States. These unions promote, or even require, ratification and implementation of international and regional human rights conventions before membership is granted.[33]

However, despite its potential for considerable (positive) impacts on gender equality, a significant body of research has found that the introduction of the rule of law in transitioning societies through the intervention of outside actors often does not lead to the implementation or encouragement of gender equality. In post-conflict societies, for example, criminal accountability is often at the forefront of the rule of law project. Indeed, research has indicated that in post-conflict contexts, women are often largely absent from forums that settle the nature and design of transitional justice.[34] Many of the Security Council resolutions, for example, do not mention gender. Resolution 1325, which was introduced to rem-

27 UN Office of the High Commissioner for Human Rights, *Rule of Law Tools for Post-Conflict States: Reparations Programmes*, 2008, HR/PUB/08/1, available at: <http://unhcr.org/refworld/docid/47ea6ebf2.html> [accessed 12 April 2011].

28 *See* Lundy & McGovern, 2008, at 266.

29 B. Oomen, 'Donor-Driven Justice and its Discontents: The Case of Rwanda', 36 *Development and Change,* 2005, 887 at 890.

30 *See* Oomen, 2005, at 889.

31 *See* Oomen, 2005, at 890; D. Tolbert & A. Solomon, 'United Nations Reform and Supporting the Rule of Law in Post-Conflict Societies', 19 *Harvard Human Rights Journal,* 2006, 29, 55.

32 *See* Lundy & McGovern, 2008, at 276.

33 S. Quast, *Justice Reform and Gender,* 2008, Geneva at 19.

34 C. Bell & C. O'Rourke, 'Does Feminism Need a Theory of Transitional Justice? An Introductory Essay', 1 *International Journal of Transitional Justice,* 2007, p. 23, at 23.

edy this omission, posits women as critical actors in the peace-building process urging the representation of women at all decision-making levels and requires the protection of women in the constitution, the electoral system, the police and the judiciary.[35] However, commentators have argued that Resolution 1325 does not address the root structural causes of discrimination such as access to economic and other resources and discriminatory laws, which often remain in place.[36] In a reflection of the public–private divide identified by feminist scholars as hindering gender-equality initiatives in developed Western nations, often excluded in rule of law reforms are those matters which affect the private lives of women such as inheritance, property ownership, divorce, domestic violence, religious law, and mandated equal access to political representation. In some instances, the rule of law project actually reifies and encourages traditional practices and structures that are harmful to women or that re-entrench women's prior exclusion.[37] The widespread enactment of GELs in Central and Eastern Europe, however, appears to challenge these findings, since on a formal level at least, they represent a specific focus on the issue of gender equality.

D. GELs in Central and Eastern Europe

In Central and Eastern Europe, the enactment of multi-area GELs in many countries appears to mark a trend towards the protection of women's rights in accordance with the administration of the rule of law.[38] Of the fifteen states that emerged out of the former Soviet Union, six have enacted GELs including Estonia,[39] Lithuania,[40] Kyrgyzstan,[41] Georgia,[42] Moldova[43] and the Ukraine.[44] In the former Yugoslavia, 6 of the 7 countries created at the end of the civil conflict, including Slovenia,[45] Croatia,[46] Bosnia and Herzegovina,[47] Kosovo,[48] Serbia[49] and Macedonia,[50] have enacted GELs, whilst in the Balkans, Albania,[51] Bulgaria[52] and

35 C. Binder, K. Lukas & R. Schweiger, 'Empty Words or Real Achievement? The Impact of Security Council Resolution 1325 in Armed Conflicts', 101 *Radical History Review,* 2008, p. 22, at 25.
36 *See* Binder *et al.*, 2008, at 25.
37 L. Henderson, 'Authoritarianism and the Rule of Law', 66 *Indiana Law Journal,* 1991, 383, 400.
38 Four further countries; Azerbaijan, Kazakhstan Poland and Tajikistan have prepared draft gender equality laws which have not yet been enacted.
39 Gender Equality Act 2004 (Estonia).
40 Law of the Republic of Lithuania on Equal Opportunities 1998 (Lithuania).
41 Law of the Kyrgyz Republic On State Guarantees for Ensuring Gender Equality 2003.
42 Law of Georgia on Gender Equality 2010.
43 Law on Ensuring Equal Opportunities for Women and Men 2006 (Moldova).
44 On Equal Rights and Opportunities for Women and Men 2005 (Ukraine).
45 Act on Equal Opportunities of Women and Men 2002 (Slovenia).
46 Republic of Croatia Gender Equality Act 2003.
47 Law on Gender Equality in Bosnia and Herzegovina 2003.
48 Law no 2004/2 on Gender Equality in Kosovo 2002.
49 Law on Gender Equality 2009 (Serbia).
50 Law on Equal Opportunities of Women and Men 2006 (Macedonia).
51 Law on an Equal Gender Society 2004 (Albania).
52 Act on Equal Opportunities 2002 (Bulgaria).

Romania[53] have enacted GELs. Whilst the 15 countries that have enacted GELs in the region are diverse in a range of ways, they are all commonly transitioning to democracy after a protracted period of socialist rule. The post-Soviet states that were formed after the economic breakdown of the former Soviet Union are transitioning (at very different paces) to democracy from the autocratic executive rule of the Soviet Union. The countries that emerged from the protracted civil conflict that beset the former Yugoslavia are also transitioning to democracy and continuing the long process of re-establishing basic institutions.[54] Albania, Romania and Bulgaria have all emerged from the repressive socialist rule of the Cold War and have embraced democratic parliamentary reform. Albania became a parliamentary democracy in 1998, Romania held its first elections in 1989 after forty years of communist rule, and Bulgaria held its first free elections in 1990.[55]

Whilst there are a range of external influences that have likely contributed to the widespread enactment of GELs in the region, including (as discussed above) the requirement to comply with international obligations and pressure from donors such as UN agencies and the US, the major driving factor in this region appears to be the prospect of achieving membership of the EU. As Sloat puts it, membership of the Union has been a strong incentive to undertake legal reform for many countries during the transition process to democracy after the collapse of the Soviet Union.[56] EU membership is seen as a way to ensure future security against a return to communism,[57] a path through which to join the 'true' Europe[58] and importantly a means of enjoying a range of economic benefits such as free access to the EU single market for exports, as well as EU financial support for reform.[59] To gain membership of the Union, a candidate country must satisfy the Copenhagen Criteria which requires it to accept and conform to EU standards of law, political principles, judicial decisions and human rights guarantees and reforms, known collectively as the '*acquis communautaire*'.[60] The gender *acquis*, as part of the legislative stipulations of the *communautaire,* requires the adoption of EU laws and regulations and decisions of the European Court of Justice on gender equality.[61] It is this requirement that appears to have been the major impetus that has led to a proliferation of multi-area GELs in the region.

The enactment of a single piece of domestic legislation to satisfy the gender *acquis* without engaging in the complicated, lengthy and resource intensive pro-

53 Law no 202/2002 on Equal Opportunities for Women and Men 2002 (Romania).

54 D. Cameron, 'Post-Communist Democracy: The Impact of the European Union', *Post Soviet Affairs,* Vol. 23, No. 3, 2007, p. 185.

55 M. Alexander, 'Democratization and Hybrid Regimes Comparative Evidence from Southeast Europe', *East European Politics & Societies,* Vol. 22, No. 4, 2008, p. 928.

56 *See* Sloat notes 6 at 5.

57 S. Eneva, 'The European Union Gender Equality Laboratory: Its Effect on Eastern European Candidate Countries', *Review of Law and Women's Studies,* Vol. 15, No. 1, 2006, p. 147, at 157.

58 H. Grabbe, 'Challenges of EU Enlargement', *in* A. Lieven & Mi Trenin (Eds.), *Ambivalent Neighbours: The EU, NATO and the Price of Membership,* Carnegie Endowment, Washington, 2003.

59 *See* Stoyanova, 2004-2005, at 745.

60 *See* Eneva, 2006, at 149.

61 A. Masselot, 'The State of Gender Equality Law in the European Union', *European Law Journal,* Vol. 13, No. 2, 2007, p. 152.

cess of amending multiple pieces of legislation is an immediate and achievable response to the *acquis* requirements of the EU. It serves as an easy mark of compliance for candidate countries since it can be monitored and evaluated in a relatively straightforward manner by examining whether the requisite law exists and whether it conforms to EU stipulations. Of the 15 countries examined in this article, Bulgaria, Estonia, Lithuania, Romania, Slovakia and Slovenia have successfully negotiated to join the EU. Croatia and Macedonia are EU 'candidates', which means that each member state of the Union and the European Parliament has agreed to 'candidate' status for the new country. Albania, Kosovo, Serbia and Bosnia and Herzegovina are 'potential candidate' countries which means they have begun the 'stabilization and association' process to bring them progressively closer to the EU and have been promised EU membership upon completion of this process. Two of the three remaining countries – Ukraine and Georgia[62] – have gained membership to the Council of Europe, referred to by some as the 'antechamber' leading to EU membership, since no country in the history of the EU has joined without first obtaining membership in the Council of Europe.[63]

Despite the widespread enactment of GELs in the region, reports indicate that implementation has been poor to date, at best. Authors have posited a number of reasons for this apparent failure at implementation. These include (1) a lack of familiarity with the new concepts introduced by the legislation especially for judges trained in socialist regimes, who seemingly lack experience in the kind of jurisprudence that characterizes democratic states with market economies,[64] (2) the complexity of the new legislation often drafted by overseas consultants adopting the practice of 'twinning', *i.e.*, introducing legislation modeled on the legislation in existing member states, which is sometimes an awkward fit with existing domestic law,[65] (3) a failure by the government to provide adequate information about the new laws to the general populace or to legal actors such as lawyers and the judiciary,[66] (4) the provision of weak political support, especially since many GELs have been fast tracked through parliament without extensive debate,[67] (5) the prioritization of other problems in the region which are considered more pressing and more worthy of scarce resources than the implementation of GELs such as "privatisation, job loss, social instability, international crime, inflation and corruption"[68] (6) a lack of appropriate institutional structures to enforce the new laws and norms,[69] (7) a visible 'capacity' weakness in candidate

62 The Ukraine joined the Council of Europe in 1995 and embarked on an active program of adapting Ukrainian laws to EU with the clear aim of joining an enlarged Europe; Georgia joined the Council 1n 1999.

63 *See* Stoyanova, 2004-2005, at 245.

64 *Ibid*., at 756.

65 S. Velluti, 'Implementing Gender Equality and Mainstreaming in an Enlarged European Union. Some Thoughts on Prospects and Challenges for Central Eastern Europe', *Journal of Social Welfare and Family Law,* Vol. 27, No. 2, 2005, 213. *See also* Beveridge, 2007, at 1.

66 *See* Hunt & Wallace, 2005, at 219.

67 *See* Weiner, 2009, at 309.

68 *See* Eneva, 2006, at 151.

69 *See* Sleeper, 2001, at 188.

states that are resource stretched, if not poor.[70] This article considers a further reason – the weakness of the enforcement and implementation mechanisms in the law itself. Enforcement and implementation mechanisms are critical to the effective functioning of legislation in general and GELs in particular.[71]

E. Evaluating Implementation and Enforcement Mechanisms

The widespread enactment of GELs throughout Central and Eastern Europe appears to signify, a commitment to gender equality. However, to date, the enactment of GELs has not led to any significant changes in gender equality in the region.[72] In other regions and countries, where rule of law reforms have led to the enactment of gender equality provisions, commentators have argued there is often a significant gap between the rhetoric of equality and the enforcement measures on the ground. For example, whilst peace agreements often contain gender equality language driven by international obligations, a closer examination of the agreements reveals that there are no mechanisms of enforcement or any forms of evaluation to measure success or otherwise. This is evident in the example of Northern Ireland's transitional agreement, which included key commitments to ensuring women's equality of opportunity to participate in the public sphere and to equal presence in political party representation; however, no implementation mechanism was agreed upon, or ultimately included, to deliver on these commitments.[73] Similarly, as Hamber has observed of South Africa's experience, the transitional process failed to adequately address either women's conflict experiences or the socio-economic harms of apartheid despite constitutional commitments to equality. Instead, social stability has involved the reassertion of power and advantage by those elites who benefited most from the apartheid regime.[74] This section therefore seeks to evaluate the implementation and enforcement mechanisms of the GELs enacted in Central and Eastern Europe in order to, first, measure genuine state commitment to the realisation of gender equality through GELs and, second, to evaluate the likely effectiveness of the new laws. Without a framework for implementation, GELs, although symbolic, will be purely declarative as the establishment of legal rights and obligations is insuffi-

70 *See* Smolens, 2000.

71 *See* J. Sternlight, 'In search of the best procedure for enforcing employment discrimination: a comparative law analysis', *Tulane Law Review,* Vol. 78, No. 5, 2004, 1401 at 1407.

72 I. Silova & Cathryn Magno, 'Gender Equity Unmasked: Democracy, Gender, and Education in Central/Southeastern Europe and the Former Soviet Union', *Comparative Education Review,* Vol. 48, No. 4, 2004, p. 417; E. Hafner-Burton, M. Emilie & M. Pollack, 'Mainstreaming Gender in the European Union: Getting the Incentives Right', *Comparative European Politics,* Vol. 7, No. 1, 2001, p. 1472; Velluti, 2005, at 266.

73 F. Ni Aolain & E. Rooney, 'Underenforcement and Intersectionality: Gendered Aspects of Transition for Women', 1 *International Journal of Transitional Justice,* 2007, 338 at 346.

74 B. Hamber, 'Rights and Reasons: Challenges for Truth Recovery in South Africa and Northern Ireland', *Fordham International Law Journal,* Vol. 26, No. 4, 2003, 1074-1094.

cient to generate equality unless the law also creates mechanisms to enable the realization of those rights in practice.[75]

There are a range of mechanisms which could be and should be incorporated into a GEL to facilitate implementation and enforcement, ideally administered through the creation of a single (independent) national institution.[76] Possible mechanisms include the following: (i) a mechanism to ensure that existing and future domestic legislation accords with the substantive provisions of the GEL to prevent discriminatory law existing alongside the GEL reducing its ability to reduce and address discrimination; (ii) positive duties on not only institutions, particularly the state, but also other actors to implement the principles of equality enshrined in the GEL, such as targeted duties, temporary special measures, gender mainstreaming and equality action plans; (iii) mechanisms to oversee, monitor and enforce the fulfilment of those obligations such as a reporting mechanism or a system of penalties or rewards; and, finally, (iv) a complaints process which enables victims of gender discrimination to make complaints and receive remedies. The following sections seek to evaluate against these benchmarks the strength of the implementation and enforcement mechanisms in the GELs in the fourteen countries reviewed for this article.

I. Harmonization Mechanisms

The substantive provisions of a GEL are compromised in their effectiveness if there is no mechanism that ensures that other existing domestic laws and proposed legislation accord with its provisions. In order to ensure the harmonization of other legislation, it is important to include in a GEL a procedure to (i) revise existing legislation to evaluate the level of (in)consistency with the GEL, (ii) to scrutinize proposed legislation for consistency with the GEL and (iii) to compel the legislature to harmonize (through amendments, repeals and the enactment of new legislation) inconsistencies identified in existing legislation and Bills with the GEL. These three procedures should each contain an anticipated time frame for completion recorded in the GEL.

Overall, the harmonization mechanisms incorporated into the GELs of the fourteen countries reviewed are weak. Slovenia, Serbia, Macedonia, Bulgaria and Kyrgyzstan have no harmonization mechanisms of any kind in their GELs. In the nine remaining countries, each GEL establishes a body or bodies that have responsibility for the review of existing legislation for harmonization. In most, however, the review function is broadly framed. For example, Georgia requires the Gender Equality Advisory Council[77] to "perform analysis of the legislation and draft proposals for overcoming gender inequalities existing in the legislation",[78] Estonia requires the Gender Equality Commissioner to "make proposals to the Government of the Republic, government agencies and local governments and

75 *See* Lucas, 2009, at 140.

76 L. Reif, 'Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection', 13 *Harvard Human Rights Journal,* 2000.

77 Law of Georgia on Gender Equality 2010, Art. 12(3)(b).

78 *Ibid*.

their agencies for amendments to the legislation",[79] the Ukraine requires the legislature and the Ombudsman for Gender Equality to make recommendations for modifications to existing legislation, Lithuania requires the Equal Opportunities Ombudsman to submit recommendations to the State government and administration institutions 'on the revision of legal acts'[80] and Bulgaria requires the National Agency for Equal Opportunities between Women and Men to "harmonize the legal framework in the field with the European Union regulations".[81]

In some countries, however, the requirement for harmonization is more specific and therefore more likely to be effective. For example, in Kosovo, the Office for Gender Equality must recommend "compilation and, alteration, and amendment of laws and regulations" if it identifies a conflict between GELs and other laws and can request a compatibility assessment before the Assembly of Kosovo. In Croatia, the Gender Equality Ombudsman can approach the court to determine whether domestic law conforms to the GEL and must, if the law is determined to not be in accord with the GEL, initiate proceedings to amend the law.[82] In Bosnia and Herzegovina, two Gender Centres established by the GEL must initiate amendments to any laws that are not in accord with the GEL and the "relevant authorities at all levels" must ensure "the amendment of existing legislation to bring it into conformity with the provisions of this Law".[83] In Moldova, the Ministry of Health and Social Protection has a duty to propose "amendments to normative acts in order to bring them into conformity with this Law",[84] and in Albania, the state organs must ensure that legislation which 'constitutes gender discrimination' is changed or repealed.[85]

Of the countries reviewed, only two specifically provide for any scrutiny of proposed legislation to ensure compliance with the GEL. Even in those two countries, the requirement is broadly framed referring to gender equality generally rather than specifically to the provisions or articles of the GEL itself. For example, Lithuania requires state governments and the state to ensure that "equal rights for men and women are guaranteed in all new legislation",[86] whilst in Kosovo the Ministries must merely 'collaborate' with the Office of Gender Equality during the preparation of draft laws.[87]

Despite some provision for the harmonization of existing and proposed legislation as illustrated above, none of the reviewed countries provides for a systematic review of *all* existing laws and *all* proposed legislation to ensure compatibility and consistency. In many instances, the duty placed on the implementing body is broadly and vaguely termed, often requiring that legislation reflect the principles of gender equality rather than specifically requiring that legislation be compatible

79 Gender Equality Act, 2004, s 16(4) (Estonia).
80 Law of the Republic of Lithuania on Equal Opportunities 1998, Art. 12(2) (Bulgaria).
81 Law no 202/2002 on Equal Opportunities Between Women and Men (2002), Art. 5(b).
82 Republic of Croatia Gender Equality Act 2003, Art. 23.
83 Law on Gender Equality in Bosnia and Herzegovina 2003, Art. 21.
84 Law on Ensuring Equal Opportunities for Women and Men 2006, Art. 19(2)(a) (Moldova).
85 Law on an Equal Gender Society 2004, Art. 7 (Albania).
86 Law of the Republic of Lithuania on Equal Opportunities 1998, Art. 3 (Lithuania).
87 Law no 2004/2 on Gender Equality in Kosovo 2002, s 4.11.

with the particular provisions of the GEL. Moreover, no country provides a process for the modification of any inconsistent laws identified, in order to achieve consistency between the GEL and other domestic legislation. Such a process is necessary to obligate the legislature to amend or repeal inconsistent legislation within a set time frame. The failure of the reviewed countries to require a systematic review of all relevant legislation and Bills or to identify a process for the modification of inconsistent laws means that, in many countries, discriminatory laws will co-exist with the GEL, and in the absence of guidelines to determine which law will take precedence if there is conflict, it is likely that existing discriminatory legislation will continue to be applied.

II. Positive Duties on Public and Private Institutions

The achievement of gender equality requires action from those in positions of power (rather than victims) to achieve substantive equality.[88] For a GEL to work proactively (and not merely retrospectively), positive duties must be imposed on the state and its institutions, employers (both public and private) and other societal actors who are best placed in many instances to take the steps to generate change in practices and structures. Such duties recognize the collective group nature of gender inequality and that "societal discrimination extends well beyond individual acts of prejudice".[89] These steps can take a number of forms and might include a duty to formulate an equality plan which sets out the duties and obligations of certain parties, an obligation on the state, employers and other institutions to implement temporary special measures to achieve substantive equality in areas where inequalities persist, or a targeted duty to carry out functions associated with the implementation of the GEL.

The introduction of positive duties in equality legislation has been approached very cautiously in many developed countries.[90] In the United Kingdom, the introduction of a gender equality duty in 2007, which applies to all public authorities in England, Scotland and Wales, has been heralded as a major step forward in the effectiveness of gender equality legislation. The Equal Opportunities Commission has called it "the most significant change in sex equality law in the 30 years since the *Sex Discrimination Act* (SDA) came into force".[91] In the 14 countries reviewed for this article, expansive duties are placed on a number of public and private institutions, much more wide-reaching than the UK gender

88 *See* Dickens, 2006, at 304.

89 S. Fredman, *Discrimination Law,* Oxford University Press, Oxford, 2001, at 164.

90 The duty is a legal requirement on all public authorities, when carrying out all their functions, to have due regard to the need: (1) to eliminate unlawful discrimination and harassment on the grounds of sex; and (2) to promote equality of opportunity between women and men. All listed public bodies must produce a gender equality scheme showing how it intends to fulfil the general and specific duties identified in the Act. However recommendations to place a positive duty on employers to take positive action to prevent discrimination rather than resting the onus on employees through complaints processes have been rejected in the UK. *See* S. Fredman, *Human Rights Transformed: Positive Rights and Positive Duties,* Oxford University Press, Oxford, 2008).

91 Equal Opportunities Commission UK, 'Fairness for All: A New Commission for Equality and Human Rights' 2004, EOC response to the White Paper, 6 August. <http://eoc.org.uk/PDF/eoc_cehr_response_final.pdf> (accessed 12 April 2011).

equality duty. This then appears to be a very strong and potentially remarkable feature of the GEL in the region since the performance of those duties could have a significant impact on gender equality in the region.[92] For example, the Moldova GEL places a duty on the Central Election Commission, election councils and District Bureaus to "ensure the observance of the principle of equality between men and women in the electoral sphere",[93] on mass media to develop 'programs and materials to overcome gender stereotypes',[94] on employers to 'ensure equal remuneration for labour of equal value'[95] and "undertake measures to prevent sexual harassment of women and men at their place of work",[96] and on educational and training institutions to "ensure equality between men and women in the educational and/or training process".[97] Lithuania places a duty on the state government and administration institutions to "draw up and implement programmes aimed at ensuring equal opportunities for women and men",[98] on education and science institutions to 'ensure equal conditions for women and men' regarding admission, grants, curricula and assessment,[99] on employers to 'provide equal pay for work of equal value', to 'take appropriate means to prevent sexual harassment', to 'provide equal working conditions' and to 'provide opportunities to improve qualifications',[100] on salespersons, producers and service providers to ensure they will not foster "public attitudes towards the superiority of one sex against the other when providing information on their products, goods and services".[101] In Estonia, the GEL places a duty on state and local government agencies to "change the conditions and circumstances which hinder the achievement of gender equality".[102] In Croatia, the GEL places a duty on political parties to determine "methods for the promotion of a more balanced representation of women and men in the party bodies, on the lists of candidates for the Croatian Parliament and bodies of local and regional self-government".[103] In Kosovo, the GEL places a duty on all registered political parties to ensure 'both females and males are equally represented',[104] on educational institutions to 'establish, implement and supervise policies' to ensure gender equality in the areas of access to education, the curriculum, materials and texts, and the inclusion of females and males in areas typically considered for one gender and in sport and leisure activities.[105]

92 *See* Dickens, 2006, at 304 who describes how recommendations to shift the onus for action onto employers rather than employees through complaints processes have been rejected in the UK. Note that in parts of Canada a duty is placed on employers to identify pay discrimination.
93 Law on Ensuring Equal Opportunities for Women and Men 2006, Art. 7(1) (Moldova).
94 *Ibid.*, Art. 8(2) (Moldova).
95 *Ibid.*, Art. 10(3) (Moldova).
96 *Ibid.*, 2006, Art. 10(3)(d) (Moldova).
97 *Ibid.*, 2006, Art. 13(1)(a) (Moldova).
98 Law of the Republic of Lithuania on Equal Opportunities 1998, Art. 3(2).
99 *Ibid.*, Art. 4.
100 *Ibid.*, 1998, Art. 4.
101 *Ibid.*, 1998, Art. 5.
102 Gender Equality Act 2004, s 9(1) (Estonia).
103 Republic of Croatia Gender Equality Act 2003, Art. 15.
104 Law no 2004/2 on Gender Equality in Kosovo 2002, s 10.1.
105 *Ibid.*, s 14.2.

As well as the expansive range of targeted duties described above, some GELs in the region also place duties on private and public actors to implement temporary special measures. There is, however, no provision for special measures in Lithuania, the Kyrgyz Republic, Romania, Georgia and Estonia. Slovenia places a duty on state authorities to adopt special measures and gives a power to 'economic operators, political parties and civil society organisations' to adopt special measures in any field where the representation of one gender is lower than 40%.[106] Macedonia places a duty on the 'legislature, the executive, and the judiciary' as well as 'the public sector, public companies, political parties and the civil sector' to adopt special measures[107] when there is unequal participation of women and men which, like in Slovenia, is set at less than 40%.[108] Similarly, in Bulgaria, the GEL places a duty on state and territorial executive bodies to employ women preferentially for all positions they are qualified for until a 40% representation is reached.[109] Croatia places a duty on all government bodies and entities vested with public authority to introduce 'affirmative actions' when there is a 'significant' imbalance, to promote equal participation of women in bodies of 'legislative, executive and judicial power' with a final aim of representation that mirrors that in the population.[110] Moldova places a general duty on employers to use affirmative action to ensure equal access to employment.[111]

III. Monitoring and Enforcement Mechanisms

A strong feature of the GEL in Central and Eastern Europe is the placement of positive duties on well-positioned state and other societal actors to implement GEL, as discussed in the section above. However, a measure of the likely effect and impact of those duties and their ability to engender structural change is the strength of the monitoring and enforcement mechanisms which ensure that duties are performed with the desired and intended results. The failure to incorporate adequate and effective monitoring will render the duties, regardless of their breadth, powerless. For example, whilst the GEL in the Kyrgyz Republic places a duty on persons of different sex to 'carry equal obligations in relation to household work' there is not, and probably could not be, any mechanism to monitor the implementation of this provision in the GEL.[112] There is a range of mechanisms that can be adopted by legislation generally to monitor public authorities, private organizations and individuals to ensure that they do perform the obligations placed upon them by law and/or to impose sanctions when they do not. Such mechanisms include an obligation to report, the establishment of a system of rewards or incentives, the establishment of a system of disincentives such as the denial of credit and government tenders or the publication of names of violators and finally more punitive measures such as fines or imprisonment.

106 Act on Equal Opportunities of Women and Men 2002, Arts. 7 & 8 (Slovenia).
107 Law on Equal Opportunities of Women and Men 2006, Art. 8 (Macedonia).
108 *Ibid.*, Art. 6(3) (Macedonia).
109 Act on Equal Opportunities 2002, Art. 34 (Bulgaria).
110 Republic of Croatia Gender Equality Act, Part 3.
111 Law on Ensuring Equal Opportunities for Women and Men 2006, Art. 5(6)(d) (Moldova).
112 Law of the Kyrgyz Republic on State Guarantees for Ensuring Gender Equality 2003, Art. 19.

In the fourteen GELs reviewed in this article, almost uniformly (with some notable exceptions described below) the monitoring mechanisms are extremely weak. For example, Azerbaijan has no monitoring mechanisms, whilst in virtually every other country the primary monitoring mechanism is a system of reporting requiring that various 'bodies' established to implement the GEL must report to a variety of authorities. Although reporting can be an effective monitoring mechanism, it requires rigorous procedures including clear benchmarks to measure progress; clear guidance on what should be included in the report; frequent and regular reporting timelines; and crucially significant consequences and sanctions if there has not been satisfactory progress in meeting the obligations and duties imposed by the legislation.[113]

The reports mechanisms adopted in the GEL examined, uniformly do not set benchmarks and do not identify specific requirements for what should be contained in the report. Typically, a broad reference to the achievement of gender equality is the only guidance included. For example, Georgia requires the Gender Equality Advisory Council to provide an annual report to the Parliament of Georgia 'on the status of gender equality in Georgia' and on "the status of the implementation of international obligations with respect to gender equality".[114] In Lithuania, the Equal Opportunities Ombudsman must report on the implementation of the GEL and submit recommendations to government and state institutions and lodge an annual public report to the legislative body. In Moldova, Gender Units, established in both central and local public administration authorities, must report periodically to specialised bodies 'on activity on issues of equality between women and men'.[115] In the Ukraine, the Commissioner for Gender Equality must submit annual reports to the Parliament on the implementation of the GEL. In Albania, the minister responsible for gender equality issues must report annually to the National Council on Gender Equality on the "activity of the office, the progress made to attain gender equality and problems encountered and the means of overcoming them".[116] In the Kyrgyz Republic, the National Council on Women, Family and Gender development must 'publish annual reports' on the implementation of the GEL,[117] and similarly in Estonia the minister of social affairs must also 'publish reports' on the implementation of the GEL. In Kosovo and Croatia, the Office for Gender Equality must report to the government on the activities of the office. In Kosovo, the Gender Equality Attorney must report each year to the Kosovo Assembly,[118] and in Croatia the Ombudsman must report each year to the Parliament[119] on the implementation of the GEL. In Bosnia and Herzegovina, the Gender Centres established under the GEL must report to the Ministry each year on the implementation of the GEL.[120] In Serbia,

113 *See* Forster & Jivan, 2009, at 131.
114 Law of Georgia on Gender Equality 2010, Art. 12(4).
115 Law on Ensuring Equal Opportunities for Women and Men 2006, Art. 19 & 20 (Moldova).
116 Law on an Equal Gender Society 2004, Art. 13 (Albania).
117 Law of the Kyrgyz Republic on State Guarantees for Ensuring Gender Equality 2003, Art. 2.
118 Law no 2004/2 on Gender Equality in Kosovo 2002, s 6.5.
119 Gender Equality Act 2003, Art. 21 (Croatia).
120 Law on Gender Equality in Bosnia and Herzegovina 2003, Art. 24.

the Ministry responsible for gender equality issues must report to the government and to the Committee of the National Parliament on 'gender equality protection and promotion' each year.[121]

In addition to reporting requirements, a further effective mechanism lies in systems of rewards and incentives. However, none of the reviewed countries adopt the system of rewards and incentives adopted by other GELs[122] and most do not impose sanctions on those who do not meet the duties and obligations imposed by the GEL. There are nevertheless some exceptions. For example, in Bosnia and Herzegovina a fine of 1,000 to 30,000 KM is imposed on a 'juristic' person who (i) does not take steps to eliminate and prevent employment discrimination, (ii) does not introduce appropriate curricula in educational institutions, (iii) does not differentiate on the basis of sex in the collection of statistics and (iv) who does not "take appropriate steps and use effective protective mechanisms against discrimination on the grounds of gender, harassment and sexual harassment".[123] Further, a criminal offence is created by the GEL with a penalty of six months to five years imprisonment for 'violence, harassment or sexual harassment on the grounds of gender'.[124] Serbia's GEL also imposes fines of 5,000 to 100,000 RSD on institutions that discriminate in the provision of education and employers who do not perform the duties imposed by the GEL or otherwise breach the GEL. The GEL does not, however, impose sanctions on the many other institutions which have duties under the GEL. For example, health care providers, political parties and a variety of government institutions are not penalized for a failure to deliver under the GEL. Slovenia imposes a fine of 100,000 to 300,000 SIT on a political party for a failure to submit a report (if requested) on the implementation of special measures and for not submitting a plan required under Article 31, which details the methods and measures required for more balanced representation of women on party bodies and candidate lists. In neither instance is a penalty imposed for a failure to carry out the special measures or the proposed plan. In Macedonia, a fine of 100,000 to 200,000 denars is imposed for a failure to submit the periodical plan required from a range of public and private bodies,[125] but there is no penalty for a failure to implement the plan or a failure to implement the special measures that are required under the GEL. There is also a fine of 10,000 to 15,000 denars for the failure to appoint a coordinator for the Commission of Equal Opportunities, but there are no sanctions for any failures of the Commission itself to implement the GEL.[126] In the Kyrgyz Republic, enforcement bodies created by the GEL can publish the names of violators but no other consequences are identified.[127] In Croatia, a penalty of KRK, 3,000 is imposed for failure to submit an action plan but no penalty is imposed for any failure to implement affirmative action, which is major feature of the Croatian GEL.

121 Law on Gender Equality 2009, Art. 52 (Serbia).
122 *See*, for example, The Magna Carta of Women 2009, s 33 (Philippines).
123 Law on Gender Equality in Bosnia and Herzegovina 2003, Art. 28.
124 *Ibid.*, 2003, Art. 27.
125 Law on Equal Opportunities of Women and Men 2006, Art. 8 (Macedonia).
126 *Ibid.*, 2006, Art. 43 (Macedonia).
127 Law of the Kyrgyz Republic on State Guarantees for Ensuring Gender Equality 2003, Art. 31.

IV. Complaints Process

Complaints processes have been criticized as a weak enforcement mechanism because they rely on individuals rather than powerful institutions (such as the state) for enforcement of the law. In particular, victims are left to initiate the case, bring the evidence and formulate the legal arguments.[128] In addition, the emphasis is often on compensating individuals rather than requiring the discriminatory actor or institution to change structures, policies or behaviour.[129] However, an individual complaints process whereby victims of gender-based discrimination can seek compensation and/or seek a change or cessation of the discriminatory act itself is an important and useful component of an implementation strategy as long as it is accompanied by proactive measures such as positive duties, as discussed above. As well as providing a victim with a remedy, a complaints process can play an important role in deterring public and private actors from future acts of discrimination either through compensation orders or through injunctions. There is a wide range of mechanisms and bodies which can be constituted or utilized through the GEL to receive and investigate complaints. Features of a good practice complaints process requires the incorporation of a number of key components: (i) It should be facilitated by a funded independent body; (ii) It should be staffed by gender experts; (iii) The complaints process should be free of charge to complainants; (iv) The complaints process should extend to violations by both public authorities and private institutions and individuals; (v) Standing should be open, enabling the lodgment of complaints by those not personally harmed by violations; (vi) There should be a clear procedure for establishing liability with set time frames for investigations; (vii) The burden of proof should be placed on the violator rather than the complainant; (viii) The complaints body should have the power to award appropriate and adequate remedies; (ix) Information about victims should be confidential and retaliation prohibited; (x) Requests for an opinion should be accepted from a person or institution concerned with whether their action will or has caused a breach; and (xi) An effective appeals process should be incorporated.[130]

All the GELs in the countries examined in this review, with the exception of Georgia, have incorporated some form of a complaints process. Generally, however, the processes adopted are weak. Most are administered by entities appointed by government, either specifically created for the task such as Commissioners, Advocates, Ombudsman, or existing government departments and no statement

128 *See* Fredman, 2001, at 164-165.

129 *See* Dickens, 2006, at 303.

130 *See* A. Chapman, 'Discrimination Complaint-Handling in NSW: The Paradox of Informal Dispute Resolution', *Sydney Law Review* Vol. 22, No. 3, 2000, p. 16; *See* Sternlight, 2004, at 1401; B. Gaze & R. Hunter, 'Access to Justice for Discrimination Complainants: Courts and Legal Representation', *UNSW Law Journal,* Vol. 32, No. 3, 2009, p. 699.

of independence or impartiality is included.[131] Exceptions to this include Lithuania, Croatia and Bulgaria, where the GEL specifically states that the Ombudsman appointed to administer the GEL is to be independent and impartial. Some of the GELs reviewed include the detailed procedures necessary for a clear, accountable and effective complaints processes including procedures identifying who may lodge complaints, time limitations for lodging complaints, how the process of investigation by the designated body should be conducted, and the time frame within which a complaint must be investigated. The most significant weakness of the GELs examined overall, however, and as discussed below, is the lack of remedies available. No GEL enables the investigative body itself to award compensation, and whilst some have the power to sanction the violator or issue an order to prevent further discrimination some provide no remedies at all.

For example, in Macedonia the procedures are detailed and include the following good practice components: a complaint must be initiated in writing by individuals, citizen groups and other legal entities or the Ministry administering the process itself; it is free of charge to the complainant; the process extends to violations by both public and private institutions; the burden of proof rests on the violator; the complaint must be laid within a year of the violation (although the Ministry has a discretion if the complaint is of 'great significance'); once a complaint is lodged, the Minister has a 60-day time frame to prepare a response which is then submitted to the Ombudsman who has the authority to order a violator to comply with any recommended conditions. In Slovenia, the Advocate for Equal Opportunities can receive complaints from individuals, NGOs, trade unions and from anonymous complainants if there is sufficient information. Whilst complaints must be received within a year of the violation, as in Macedonia, the Advocate has discretion to extend the time. In the Slovenian process, the hearing is conducted free of charge, the Advocate can request further information from the parties if necessary, the Advocate must issue a written opinion on the complaint (although no time frame is set unlike Macedonia) and he or she may make recommendations as to how the inequality can be rectified including calling on the violator to fix the problem within a set time period.[132] There are, however, no consequences if the violator does not respond to the request for changes. In Estonia, the Gender Equality Commissioner must accept applications from any person.[133] The Commissioner can request information relating to the complaint and must produce an opinion within two months.[134] In Lithuania, the Ombudsman must investigate complaints received from any 'natural and legal person'[135] and must

131 *See* J. Hughes & G. Sasse, 'Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs', *Journal on Ethnopolitics and Minority Issues in Europe,* 2003, Vol. 1, No. 1, 1 at 26 who note that often the bodies responsible for the monitoring and implementation of minority protections, such as Ombudsmen, are themselves politically marginalized within many Central and eastern European countries.

132 Act on Equal Opportunities of Women and Men 2002, Arts. 20-28 (Slovenia).

133 Gender Equality Act 2004, s 16(2) (Estonia).

134 *Ibid.*, s 17(4) & (5) (Estonia).

135 Law of the Republic of Lithuania on Equal Opportunities 1998, Art. 18(1).

respond within one month.[136] The Ombudsman can recommend the violator cease the discriminating acts or that an act is repealed; however, there are no provisions to obligate either the violator or the legislature to respond to the recommendations.[137] In Kosovo, the Gender Equality Attorney receives complaints from any individual (irrespective of whether or not they are the victim), NGO or any other organizations, and from anonymous complainants if there is sufficient information. Complaints must be received within one year of the violation(s), but there is discretion to extend if necessary, and the Attorney has thirty days to review the complaint. Whilst the Attorney can recommend penal proceedings, no direct sanctions, however, are available. In Bulgaria, the public defender after receiving a complaint (the GEL does not specify who may lodge complaints) must investigate the matter and make suggestions and recommendations.[138] Violators have two months to declare whether they accept the recommendations of the public defender and then must respond with what measures they have undertaken for redress and the terms on which they intend to undertake.[139] In addition, in the strongest complaints-handling process of the fourteen examined, the public defender can issue 'mandatory prescriptions and punitive decrees'[140] and the defender must, every year, publish the names of violators including employers and institutions that have not complied with the recommendations.[141]

In some instances in the GELs of the countries reviewed, whilst reference is made to a complaints process, no procedures for the administration of that process are identified. For example, in Bosnia and Herzegovina the GEL states that the two Gender Centres established by the GEL have the right to "investigate breaches of this law at the request of ministries, citizens, or non-governmental organisations, or on their own initiative".[142] In the Kyrgyz Republic, the National Council of Women, Family and Gender Development can receive complaints from "state bodies, civil society organisations and other non government organisations". The Council is also responsible for the "coordination of activities of various bodies for the settlement of disputes pertaining to violations of gender equality".[143] In Romania, the National Agency for Equal Opportunities between Women and Men has a duty to "receive complaints on infringements of the provisions of the GEL from individuals, legal persons, public and private institutions".[144] No other procedural details are provided in the GELs of these countries.

Of the fourteen countries, not one enables its complaints-handling bodies to award compensation to victims. In most, victims are directed by the GEL to the courts to lodge claims for compensation. In Moldova, the GEL simply states that

136 *Ibid.*, Art. 22.
137 *Ibid.*, Art. 24(2).
138 Act on Equal Opportunities for Women and Men 2002, Art. 46 (Bulgaria).
139 *Ibid.*, Art. 53 (Bulgaria).
140 *Ibid.* 2002, Art. 53 (Bulgaria).
141 *Ibid.*, Art. 54 (Bulgaria).
142 Law on Gender Equality in Bosnia and Herzegovina 2003, Art. 24.
143 Law of the Kyrgyz Republic on State Guarantees for Ensuring Gender Equality 2003, Art. 34.
144 Law no 202/2002 on Equal Opportunities for Women and Men 2002, Art. 26(1) (Romania).

"persons subject to sex discrimination as set out in this Law are entitled to reparation of damage according to the conditions established by legislation".[145] In Macedonia, although, as detailed above, there is a detailed complaints process in the GEL and sanctions against violators can be issued, victims are unable to receive compensation directly under the GEL and must pursue civil action under ordinary legal processes.[146] In Romania, employees and other individuals are directed to file a complaint in court for compensation and/or an injunction to stop the discriminatory acts.[147] In Bulgaria, although there is a very strong complaints procedure giving the public defender strong powers to sanction the violator, there is no ability to award compensation. Instead, victims are directed to the courts, where they can lodge an action free of filing fees.[148] In some countries, whilst victims are directed to the court system to apply for compensation, procedural rules, different from ordinary principles of civil procedure, are identified. For example, in Serbia although compensation claims must be heard in the courts, group actions are authorized and the court is authorized to take unusual action such as removing discriminatory text books from an educational institution or banning advertisements.[149] Further, a strict timetable is stipulated requiring that the first court hearing be held within fifteen days of receipt of the complaint and that the court must make a decision within eight days of the hearing, and, if there is a motion for an interim measure, a decision must be made within three days.[150] In Estonia, in contrast, the specific procedural rules identified for the court are limiting measures (rather than enabling) including limiting discrimination actions under the GEL to discrimination in 'professional life' and in 'an offer of employment or training',[151] limiting actions to 1 year after the violation and obliging the court to take into account whether the violator has eliminated the discriminating circumstances.[152] In Romania, employees and other individuals can "file a complaint in court for compensation and/or an injunction to stop the discriminatory acts".[153] Thus, a significant weakness of the complaints-handling processes in the GELs reviewed is their failure to provide for an award of compensation. Although the GELs do create a cause of action for victims (which may not have been previously recognized) in the court system, victims are largely left to navigate the pitfalls of the adversarial system rather than benefiting from the investigative approach that characterizes the complaints-handling processes in other jurisdictions and in other areas of law.

145 Law on Ensuring Equal Opportunities for Women and Men 2006, Art. 24(1) (Moldova).
146 Law on Equal Opportunities of Women and Men 2006, Art. 38 (Macedonia).
147 Law no 202/2002 on Equal Opportunities for Women and Men 2002, Arts. 43-48 (Romania).
148 Act on Equal Opportunities for Women and Men 2002, Art. 61 (Bulgaria).
149 *Law on Gender Equality* 2009, Art. 43 (Serbia).
150 *Ibid.*, Art. 47 (Serbia).
151 Gender Equality Act 2004, Art. 13 (Estonia).
152 *Ibid.*, Arts. 13 and 14 (Estonia).
153 Law no 202/2002 on Equal Opportunities for Women and Men 2002, Arts. 43-48 (Romania).

F. Conclusion

This article has reviewed fifteen GELs that have been enacted in Central and Eastern Europe since the collapse of the Soviet Union and the end of the Cold War. It has considered the reasons for the widespread enactment of GEL in the region and found that it has occurred primarily as a result of external pressure(s) to transport the rule of law into national legal systems and by the concomitant desire of countries in the region to join the EU, which requires potential members as part of the *communtaire aquis*, to introduce gender equality law reform measures. Although the establishment of effective mechanisms for the implementation and enforcement of the legislation is also required as part of the *communtaire*, scrutiny has often been cursory. Whilst commentators have posited a number of reasons for the poor implementation of GEL in the region, this article has proposed a further reason, the weakness of the monitoring and implementation mechanisms in the laws themselves. An examination of the enforcement and implementation mechanisms of the GEL has revealed that in many of the GELs, these weak mechanisms are likely to hinder rather than facilitate implementation.

The weaknesses of the mechanisms are many and varied. None of the GEL reviewed have harmonization provisions that require a systematic review of *all* existing laws and *all* proposed legislation to ensure compatibility and consistency. Importantly, no GEL provides a process for the modification of any inconsistent laws identified, in order to achieve consistency between the GEL and other domestic legislation. Such a process is necessary to obligate the legislature to amend or repeal inconsistent legislation within a set time frame. Further, the failure of the reviewed countries to require a systematic review of all legislation and Bills or to identify a process for the modification of inconsistent laws means that in many countries discriminatory laws will co-exist with the GEL, and in the absence of guidelines to determine which law will take precedence if there is conflict, it is likely that existing discriminatory legislation will continue to apply unimpeded. Although the GELs are noteworthy for their expansive proactive duties, including in some an obligation to implement special measures, placed on the state, the institutions of the state, employers, educational institutional and other bodies, the mechanisms to monitor and enforce these duties are extremely weak. Most GELs adopt a reports process for that function but do not include benchmarks to measure progress, guidance on what should be included in the report; frequent and regular reporting timelines; and crucially, few consequences and sanctions if there has not been satisfactory progress in meeting the obligations and duties imposed by the legislation. Further, whilst most GELs do contain a complaints-handling process, most, however, are not administered by independent institutions, and none authorize the administrative bodies which administer the complaints process to award compensation. Most instead direct the victim to the ordinary (adversarial) court system and although some GELs do set (more lenient) procedures for different stages of the court hearing many do not. In addition, while a few countries provide for sanctions, most do not. Overall, this article has revealed that the enforcement and implementation processes of the GELs in

the region are weak and while there are some individual examples of effective mechanisms, no GEL has a comprehensive framework providing another reason to those already identified by commentators for the disappointing lack of implementation of GELs in the region to date.