



**GEORGIAN
YOUNG
LAWYERS'
ASSOCIATION**



GEORGIAN EXPERIENCE AND PERSPECTIVES OF IMPLEMENTING ELECTRONIC ELECTION TECHNOLOGIES

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**Tbilisi
2024**

This report was made possible by the financial support the Royal Norwegian Embassy in Georgia. The content of this report is the sole responsibility of the Georgian Young Lawyers' Association and may not express the views of the donor organization.



Norwegian Ministry
of Foreign Affairs

Heads of Publication: NONA KURDOVANIDZE
NANUKA KRUASHVILI

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Technical Editor: IRAKLI SVANIDZE

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INTRODUCTION

Full implementation of electronic technologies in the election process is a long process and its successful implementation depends on many factors. The complexity of the reform is determined, on the one hand, by the technological and logistical support of the process, and on the other hand, by the change in voter behavior and adaptation to electronic means. It is important that the consumer trusts the process and understands its logic.

The use of electronic technologies in elections cannot be an end in itself. It is important to adjust them wisely to the election procedures, to pragmatically determine the pace and extent of the introduction of these technologies.

Thus, in order to implement a large-scale and successful reform, the election administration should make significant efforts so that the benefits obtained as a result of the introduction of electronic means are not overshadowed by the alienation of them and the voters. In order to speed up the process and increase the efficiency of the election administration, the smooth operation of the system and the prevention of related errors are of essential importance.

Within the framework of piloting, from 2018 to October 1, 2023, 8 elections were held electronically.¹ Specific electronic election means, procedures and conditions of their use were defined each time by the CEC resolution.² GYLA actively monitored the process of introducing technologies, cooperated with CEC and partner non-governmental organizations.

In the general parliamentary elections of 2024, approximately 90% of voters will benefit from technological innovations.³ Despite the experience accumulated by the election administration and other involved parties, as well as the piloting efforts, the scale of the upcoming parliamentary elections and the growing tension associated with them will serve as the final test for the introduction of electronic technologies.

In transition democracies, the introduction of electronic technologies can be a good way to build trust in the electoral process. However, there is also a high risk of discrediting the process. For years, GYLA has pointed to such fundamental challenges as control of the will of voters, bribery, use of administrative resources, and others. Without eliminating these harmful practices, the use of electronic technologies and the appropriate work done by the election

¹ Electronic technologies were piloted during the following elections: the midterm elections of the Zugdidi Municipality Sakrebulo on May 13, 2018, and the midterm elections of the Sakrebulo in Tkibuli and Tskaltubo on May 19, 2019. The use of electronic technologies was also observed in subsequent elections, including the local self-government elections in 2021, the midterm elections of the Parliament of Georgia and the municipal council on April 2, 2022, the midterm election of the Senaki municipality council on October 1, 2022, the by-elections/extraordinary elections on April 29, 2023, and the by-elections on October 1, 2023. GYLA has conducted physical observations for all elections utilizing electoral technology since the 2021 local government elections, with the exception of the Senaki midterm election on October 1, 2022.

² On July 26, 2017, the Central Election Commission of Georgia (CEC) was authorized by the Election Code to conduct vote counting and summarize results electronically. This provision applies specifically to by-elections and extraordinary elections during the transitional period leading up to the 2020 parliamentary elections. The record related to the use of electronic technologies was further expanded by the legislative regulation adopted on June 28, 2021. With a new record, the CEC was authorized to conduct voter registration, voting, vote counting, and compilation of result summary protocols electronically in the next municipal body elections (local self-government elections of October 2, 2021). This includes the use of a photo search system, video recording of vote counting, scanning of ballots, and the use of barcoded ballots. In December 2021, in the transitional provisions chapter of the Election Code, a norm granting similar powers to the election administration appeared again. In December 2022, a new Chapter was added to the Election Code entitled "Voting using electronic means". Specific electronic means, as well as the manner and conditions of their use, were defined each time by the CEC resolution.

³ „In the 2024 parliamentary elections, almost 90% of voters will vote using electronic technologies“, CEC official website, February 6, 2023, available at: <https://cesko.ge/ge/siakhleebi/pres-relizebi/singleview/11031836-2024-tslis-parlamentis-archevnebshi-amomrchevelta-titkmis-90-khmas-elektronuli-teknologiebis-gamoqenebit-mistsems>, updated: 06.02.2024.

administration will not be sufficient to achieve a high degree of trust in the electoral process. Without addressing these fundamental challenges, the electorate will persist in feeling that they are engaging in a process where the outcome is predetermined, owing to the unfair advantages enjoyed by the ruling party.

Confidence in the electoral process is directly linked to the long-term stability of a country's political system and shapes public trust in democratic institutions. Calls for systemic reforms by European partners highlight precisely this aspect. Introducing electronic technologies into the electoral process should not serve as a distraction from addressing fundamental issues.

RESEARCH OBJECTIVES AND METHODOLOGY

The current report examines and assesses the experience and associated challenges encountered during the implementation of electronic technologies in Georgia. It delves into the findings gleaned from observing the general, by-elections, and extraordinary elections conducted between 2021 and 2023, as well as the measures undertaken by the election administration. The document analyzes the modifications introduced in the electoral legislation concurrently with the digitization of elections, while also outlining potential risks. Drawing upon the findings, the document offers pertinent recommendations. The reporting period encompasses the timeframe from October 2021 to October 2023.

The document outlines separate reports for the April 29, 2023 by-elections /extraordinary elections and the October 1, 2023 by-elections /extraordinary elections.

During the elections held on October 2, 2021, April 2, 2022, April 29, 2023, and October 1, 2023, GYLA monitored the piloting of electronic technologies through on-the-ground observers. For other cases, GYLA analyzed the legislative framework of the elections and the data provided by the Central Election Commission.

During the paper's development, socio-legal (non-doctrinal) research methods, as well as comparative-legal and contextual-legal (historical) approaches, are active. The research incorporates information and insights gathered through GYLA's observation missions, examination of the Georgian legal framework, review of international organizations' recommendations, analysis of good practice documents, and study of relevant literature pertaining to the use of electronic technologies in elections.

1. INTERNATIONAL EXPERIENCE, RECOGNIZED CRITERIA AND RECOMMENDATIONS RELATED TO THE USE OF ELECTRONIC TECHNOLOGIES IN ELECTIONS

Today, elections are held in 40 countries of the world using electronic means, in different scales and forms.⁴ International experience indicates that the adoption of electoral electronic technologies has not been universally permanent across all countries. There are instances where certain states, after piloting these tools, reverted to conducting elections through traditional means.⁵ Some countries have since returned to some form of electoral technology.⁶ The public's perception of electronic elections varies from one state to another. While public trust is crucial for evaluating the effectiveness of the system, public sentiment alone cannot guarantee the success of a reform.

Despite the rather successful piloting in Germany⁷ from 1998 to 2005 and the trust of a significant part of the public towards the process, the state returned from the electronic system to the traditional one.⁸ Two German citizens have applied to the Federal Constitutional Court to challenge the constitutionality of electronic voting.⁹ The plaintiffs argued that the voting machines were vulnerable to hacking. The court decision was published in 2009.¹⁰ Although it did not rule out the use of electronic voting methods, the court emphasized the importance of ensuring transparency in elections so that the public can verify the process without requiring specialized technical knowledge.¹¹ Therefore, the court deemed the availability of results in a non-electronic format and the ability to reliably verify the process as essential prerequisites for the constitutionality of conducting electronic elections.¹²

States retain complete discretion to determine the electoral model they employ. Whether electronic technologies are utilized or not, all elections must adhere to international treaty obligations and politically binding soft law requirements, such as the 1990 Copenhagen Document of the Organization for Security and Co-operation in Europe (OSCE).

In order to ensure the conduct of high-standard democratic elections, states should consider interpretative documents such as the ICCPR general comments and international good practices, including the Code of Good Practice in Electoral Matters of the Venice Commission, as well as election monitoring reports from organizations like the OSCE/ODIHR and their associated recommendations.

In 2002, the Venice Commission developed an important international act - the "Code of Good Practice in Electoral Matters" ("Code").¹³ Among other crucial topics concerning elec-

⁴ Is E-VOTING currently used in any elections with EMB participation? International Institute for Democracy and Electoral Assistance (International IDEA), available at: <https://www.idea.int/data-tools/question-view/742>, updated: 06.02.2024.

⁵ Vladimer Napetvaridze, "Electronic elections: foreign experience", Politics N1, 2017.

⁶ In the "social elections" conducted in Germany in 2023, remote voting was also permitted. These social elections occur every six years and enable voters to elect a self-governing council responsible for overseeing health and pension insurance funds. With approximately 52 million eligible voters, this election ranks as the third largest in Germany, following the European Parliament and federal elections.

⁷ The devices manufactured by the Dutch company NEDAP were used.

⁸ The Constitutionality of Electronic Voting in Germany, National Democratic Institute, available at: <https://www.ndi.org/e-voting-guide/examples/constitutionality-of-electronic-voting-germany>, updated: 06.02.2024.

⁹ International Foundation for Electoral Systems and National Democratic Institute for International Affairs: Implementing and Overseeing Electronic Voting and Counting Technologies, 2013, p. 109.

¹⁰ Use of voting computers in 2005 Bundestag election unconstitutional, Official website of the German Federal Constitutional Court, available at: <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2009/bvg09-019.html>, updated: 06.02.2024.

¹¹ Ibid.

¹² Ibid.

¹³ European Commission for Democracy through Law (Venice Commission), Code of Good Practice in Electoral Matters, available at: <https://rm.coe.int/090000168092af01>, updated: 06.02.2024.

tions, the Code also addresses electronic voting. The Commission emphasizes that despite the benefits of utilizing electronic methods in elections, it is vital to remain vigilant about potential risks.¹⁴ According to the document, ballot papers should be designed in such a way as not to confuse voters.¹⁵ For the purposes of calculation, consideration should be given to printing the electronically expressed will in physical form.¹⁶ Electronic voting methods must be secure and reliable.¹⁷ They are considered secure if the system can withstand a targeted attack.¹⁸ Furthermore, ensuring the transparency of the system is essential, which entails the ability to verify its proper functioning.¹⁹

According to the Venice Commission, electronic elections are compatible with the standards of the Council of Europe as long as preventive measures are adhered to and the process complies with European standards on electoral matters.²⁰

The Commission emphasizes that electronic elections must adhere to Article 3 of the First Protocol to the European Convention on Human Rights. This article stipulates that contracting states commit to conducting elections in a free environment, at reasonable intervals, by secret ballot, ensuring that people have the opportunity to freely express their choice.²¹ According to precedent law, the same right encompasses the individual's right to vote and participate in elections, as well as principles of universality and equality.²²

The Council of Europe was one of the first organizations to initiate the development of recommendations for member states regarding the integration of electronic technologies into the electoral process. The Committee of Ministers of the Council of Europe issued a recommendation on legal, technical, and operational standards for electronic voting in 2004.²³ 10 years after the adoption of the document, the need to update it became clear.²⁴ The revised document issued in 2017 contains 49 issues detailing specific legal obligations regarding universality, equality, freedom, secrecy, transparency, accountability, system reliability and security of elections.²⁵

According to the OSCE/ODIHR recommendation, sufficient time should be allocated for public discussions and technological studies prior to the implementation of electronic technologies.

¹⁴ European Commission for Democracy through Law (Venice commission), On the Compatibility of Remote Voting and Electronic Voting with the Standards of the Council of Europe, Article 54, § 11, available at: [https://www.venice.coe.int/webforms/documents/CDL-AD\(2004\)012.aspx](https://www.venice.coe.int/webforms/documents/CDL-AD(2004)012.aspx), updated: 06.02.2024.

¹⁵ European Commission for Democracy through Law (Venice commission), Code of Good Practice in Electoral Matters, § 22, available at: <https://rm.coe.int/090000168092af01>, updated: 06.02.2024.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ European Commission for Democracy through Law (Venice commission), Code of Good Practice in Electoral Matters, p. 22, available at: <https://rm.coe.int/090000168092af01>, updated: 06.02.2024.

²⁰ European Commission for Democracy through Law (Venice commission), On the Compatibility of Remote Voting and Electronic Voting with the Standards of the Council of Europe, p. 3, available at: [https://www.venice.coe.int/webforms/documents/CDL-AD\(2004\)012.aspx](https://www.venice.coe.int/webforms/documents/CDL-AD(2004)012.aspx), updated: 06.02.2024.

²¹ Ibid.

²² Ibid.

²³ Recommendation Rec (2004)11 of the Committee of Ministers to member states on legal, operational and technical standards for e-voting, Strasbourg, 30 September 2004, available at: [https://www.coe.int/t/dgap/goodgovernance/Activities/KeyTexts/Recommendations/00Rec\(2004\)11_rec_adopted_en.asp](https://www.coe.int/t/dgap/goodgovernance/Activities/KeyTexts/Recommendations/00Rec(2004)11_rec_adopted_en.asp), updated: 06.02.2024.

²⁴ Council of Europe adopts new Recommendation on Standards for E-Voting, available at: https://www.coe.int/en/web/portal/news-2017/-/asset_publisher/StEVosr24HJ2/content/council-of-europe-adopts-new-recommendation-on-standards-for-e-voting, updated: 06.02.2024.

²⁵ Guidelines on the implementation of the provisions of Recommendation CM/Rec (2017)5 on standards for e-voting, Council of Europe, available at: <https://rm.coe.int/1680726c0b>, updated: 06.02.2024.

This approach influences the level of trustworthiness associated with the electoral process.²⁶ The election administration is responsible for informing the public through educational campaigns during the pre-election period.²⁷

In countries where electronic elections are conducted, it is essential for the electoral legislation or regulations of the electoral administration to clearly outline the procedures for using the technology in detail.²⁸ The legislation should regulate procedures for installing, activating, operating, stopping, and closing the system, as well as procedures for storing, counting, and summarizing the votes.²⁹

In addition, legislation should define the possibility of recounting votes, as well as observation and the rights and duties of observers. From a security standpoint, it should include provisions for criminal liability for attacking the system. While general provisions on computer crimes may exist in criminal legislation, it is advisable, as per OSCE recommendations, to include specific norms addressing attacks on election technologies.³⁰ The process of using electronic means in elections should also comply with the legislation on personal data protection.³¹

²⁶ OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIRH), International Election Observation Mission Republic of Albania – Parliamentary Elections, 25 April 2021, Statement of Parliamentary Findings and Conclusions.

²⁷ OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIRH), International Election Observation Mission Republic of Albania – Parliamentary Elections, 25 April 2021, Statement of Parliamentary Findings and Conclusions.

²⁸ OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIRH), Guidelines for Reviewing a Legal Framework for Elections, p. 66, available at: <https://www.osce.org/files/f/documents/f/8/104573.pdf>, updated: 06.02.2024.

²⁹ Ibid, p. 66.

³⁰ Ibid, p. 67.

³¹ Ibid, p. 68.

2. WHAT DOES THE GEORGIAN MODEL OF ELECTRONIC ELECTIONS MEAN?

The Georgian model of electronic elections entails the utilization of voter verification and electronic vote counting devices (E-Voting), along with the transmission of certain information to higher election commissions via tablet computers.³²

The registrar will verify the data of the voter who came to vote with an electronic verification device, in which only the list of voters of that particular polling station will be loaded.

In the Georgian context, electronic elections do not include remote voting methods such as Internet voting (I-Voting), SMS voting, or mail-in ballots. Additionally, the Georgian system does not utilize touch screen devices (DRE) to register voters' choices.³³ Rather, it, like "traditional" voting³⁴ implies the use of a ballot for voting, during which the voter marks the desired candidate with a special marker, the ballots are placed in the counting machine and automatically summed by the device. There are used Optical mark recognition (OMR).³⁵ The primary advantage of this model is the presence of a paper trail, which allows for physical verification of the results and enhances the reliability of the process. Additionally, in the event of a technical malfunction or machine failure, it is possible to revert to traditional voting methods and ensure continuity in the election process.³⁶

According to GYLA, considering the current circumstances, risks, and international best practices, the model implemented in Georgia is a viable option. However, it's important to note that significant steps still need to be taken by the Central Election Commission and government bodies to properly educate the public about the use of electronic technologies in the electoral process.ⁱ

³² Resolution N7/2023 of February 6, 2023 of the Central Election Commission of Georgia - on determining the rules and conditions for conducting voting using electronic means, available at: <https://www.matsne.gov.ge/ka/document/view/5713266?publication=0>, updated: 06.02.2024.

³³ Direct Recording Electronic (DRE) Voting System.

³⁴ Under the previous voting procedure, voters would go through the marking process and sign the voter's list before receiving the ballot paper. Inside the voting booth, voters would make their selections on the ballot paper before folding it and placing it into a designated envelope. This envelope would then be deposited into the ballot box. Vote counting was conducted manually.

³⁵ Optical scanner for vote counting (Optical Mark Recognition, OMR).

³⁶ Resolution N7/2023 of February 6, 2023 of the Central Election Commission of Georgia - on determining the rules and conditions for conducting voting using electronic means, article 7, available at: <https://www.matsne.gov.ge/ka/document/view/5713266?publication=0>, updated: 06.02.2024.

3. LEGAL FRAMEWORK OF ELECTRONIC ELECTIONS AND IMPLEMENTATION PROCESS

3.1. The political context

The introduction of electronic technologies in Georgia started from the local self-government elections of 2021.³⁷ It is true that the election administration had a small-scale experience of using technology in a pilot mode, but the general reform required the consent of the legislative authorities,³⁸ the broader reform necessitated approval from legislative authorities.

The acute political crisis following the 2020 parliamentary elections and the opposition's lack of confidence in the election results once again emphasized the necessity of reforming the electoral legislation. Among various important changes, the implementation of electronic technologies on polling day has been identified as one approach to enhancing trust in the electoral process.

In February 2021, a memorandum was signed between the opposition party "Citizens" and "Georgian Dream" to reform the electoral legislation.³⁹ The introduction of innovative technologies in elections represents a significant step forward in enhancing public trust and improving the efficiency of the electoral process. By leveraging these technologies, Georgia aims to streamline Election Day procedures and expedite result dissemination. The memorandum underscores the importance of a collaborative approach, involving consultations with international partners to ensure the successful implementation of these technologies within stipulated parameters.⁴⁰

The memorandum outlined several key aspects regarding the introduction of electronic technologies: 1) Electronic voting machines would be used to scan and recognize the ballots filled out by voters, facilitating the voting process; 2) In order to prevent second-hand voting, placing barcodes (RFID-stickers) on ballots, taking into account the compatibility with other technologies provided by the memorandum; 3) Availability of electronically readable voting results at the precincts, which will make it possible to obtain these results in the shortest possible time; 4) voter registration through fingerprint; 5) as necessary, to equip election precincts with video cameras and live broadcast of all election procedures.⁴¹

Based on the memorandum, on February 4, 2021, a working group was established in the Parliament with the purpose of preparing a draft of amendments to the Election Code.⁴² GYLA also participated in the meetings of the working group.⁴³

On March 2, 2021, the package of changes was sent to the Venice Commission and the OSCE/ODIHR. The joint report was published on April 30.⁴⁴

³⁷ 41 314 registered voters in Krtsanisi electoral district were given the opportunity to vote using electronic technologies.

³⁸ During the mid-term elections of Zugdidi municipality on May 13, 2018, the election administration initiated the pilot use of electronic vote counting devices for the first time. This project was implemented in collaboration with the Canadian international organization DELLIAN Project. The Central Election Commission (CEC) extended the use of vote counting machines within the pilot project to the interim elections of the Sakrebulo in Tkibuli and Tskaltubo on May 19, 2019.

³⁹ Latsabidze M. Newsletter No. 16, January, 2021 (Tbilisi, Association of Young Lawyers of Georgia), p. 2-3, the official website of the Georgian Young Lawyers' Association, available at: <https://bit.ly/3GMMKHq>, updated: 06.02.2024.

⁴⁰ "The main points of the Georgian Dream-Citizens Memorandum", information portal "Civil.ge", January 30, 2021, available at: <https://civil.ge/ka/archives/394599>, updated: 06.02.2024.

⁴¹ Ibid.

⁴² Kruashvili N. Newsletter №17, February, 2021 (Tbilisi, Georgian Young Lawyers' Association), p. 5-9, Official webpage of Georgian Young Lawyers' Association, available at: <https://bit.ly/3rSNJ4M>, updated: 06.02.2024.

⁴³ Ibid.

⁴⁴ Kruashvili N. Newsletter No. 19, January, 2021 (Tbilisi, Georgian Young Lawyers' Association), p. 10, the official website of the Georgian Young Lawyers' Association, available at: http://217.147.239.51/files/news/%E1%83%A4%E1%83%9D%E1%83%9C%E1%83%93%E1%83%98/2021/-19_geo.pdf, updated: 06.02.2024.

It should be noted that the recommendations of the OSCE/ODIHR and the Venice Commission (published so far) did not mention the introduction of electronic technologies as a means of addressing the existing problems.

In the presented conclusion, the Commission emphasized the provision of the Code of Good Practice in Electoral Matters, which stipulates that “electronic voting should be used only if it is safe and reliable”.⁴⁵ According to the joint conclusion, a detailed and comprehensive legal framework for the use of new technologies should be developed, taking into account international good practices.⁴⁶ Attention was also focused on the importance of planning the process and conducting preliminary preparatory work, which includes, among other things, properly informing the voters and providing the election administration with appropriate training.⁴⁷ Audit and inspection mechanisms should also be included in the process.⁴⁸

The Venice Commission made it clear that the transition to an electronic voting and counting system should not be seen as a panacea to solve all the problems identified in the 2020 parliamentary elections.⁴⁹

The working group worked until May 17.⁵⁰ The package of changes was formulated based on the April 19 political agreement⁵¹ concluded between the ruling party and the opposition, which was developed as a result of the mediation process initiated by the President of the European Council, Charles Michel. Michel’s 12-point plan, on the other hand, meant the implementation of an ambitious electoral reform.⁵² The introduction of electronic technologies was not specifically mentioned in the document. However, according to one of the clauses, considering the additions and amendments outlined in the agreement, the parties committed to supporting the bill submitted to Parliament on March 2.⁵³

On June 28, 2021, with 86 votes in favor and 3 against, the Parliament approved the amendments to the Election Code in the third reading.⁵⁴

3.2. Legal framework and implementation

As a result of the reform, the Central Election Commission (CEC) was empowered to conduct voter registration, voting, vote counting, and results summary procedures using electronic means for the 2021 local government elections.⁵⁵ The rules, conditions, and list of election constituencies for using these new technologies were determined by the CEC resolution.⁵⁶ The electoral reform, *inter alia*, envisaged changes in the electoral system, the institutional framework of the electoral administration, the pre-election campaign, the voting process, and its summary and election disputes.

⁴⁵ Venice Commission, OSCE/ODIHR, Joint Urgent Opinion on Draft Amendments to the Election Code, CDLPI(2021)005(Strasbourg: Council of Europe, 2021), available at: <https://bit.ly/3hFok4R>, updated: 06.02.2024.

⁴⁶ *Ibid.*, para. 75.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*, para. 77.

⁴⁹ *Ibid.*

⁵⁰ “The work on amendments to the electoral legislation in the working group format has been completed”, the official website of the Parliament of Georgia, May 17, 2021, available at: <https://bit.ly/35allFc>, updated: 06.02.2024.

⁵¹ „The future path for Georgia”, Representation of the European Union in Georgia, official website, April 19, 2021, available at: <https://bit.ly/3frBggU>, updated: 06.02.2024.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ “Parliament adopted amendments to the Election Code with 86 votes”, official website of the Parliament of Georgia, June 28, 2021, available at: <https://bit.ly/3ian3Xb>, updated: 06.02.2024.

⁵⁵ Part 1 of Article 203² of the Election Code of Georgia.

⁵⁶ *Ibid.*, part 2.

The voting procedure was held in 31 precincts of the 4th electoral precinct of Krtsanisi using a vote counting optical scanner (PCOS)⁵⁷ On October 2, under the organization of the CEC.⁵⁸ International company Smartmatic International B.V. provided technology and service free of charge within the framework of the pilot project.⁵⁹ In total, 41,314 voters registered in the Krtsanisi electoral precinct for the 2021 local government elections were provided the opportunity to vote using electronic technologies.⁶⁰

Before the elections, the Central Election Commission held simulation voting.⁶¹ GYLA participated in the process as an observer.⁶² One of the simulations featured facial recognition software (FRS).⁶³ The voter who arrived to cast their vote was identified using a specialized electronic program. The aim of this program was to enable unregistered voters to vote at the polling station and prevent what is known as “carousel voting.”⁶⁴ The facial recognition program employed a two-step verification process, initially utilizing a personal identification number followed by a facial scanner. Access to the precinct was granted only upon achieving an 80% match. However, during the simulation, an anomaly occurred where the voter’s photo could not be located within the program, despite being listed.⁶⁵ A dedicated screen was installed within the precinct election commission, allowing individuals present in the precinct to monitor information about arriving voters. This screen displayed the voter’s identity and the duration of time spent within the precinct.⁶⁶

The voter fingerprint identification mechanism outlined in the February 2021 memorandum, as well as the facial recognition system utilized by the Central Election Commission (CEC) during the simulated voting, were ultimately not implemented.

During the October 2 elections, the voting process in the Krtsanisi district utilized electronic vote counting machines. However, in the 18th, 24th, and 32nd precincts of the electoral precinct, ballots were of a larger size, preventing them from being processed by the designated machines. Consequently, the voting process in these precincts proceeded using traditional methods without the use of electronic devices.⁶⁷ This case clearly showed how important it is to fully plan the elections conducted using electronic technologies, because even a small error can significantly disrupt the functioning of the device.

According to the observations of the GYLA mission, the utilization of electronic vote counting machines in these elections did not result in a reduction of the time allotted for voters to cast

⁵⁷ Optical scanner of polling station SAES1800 plus in offline mode.

⁵⁸ 2021 activity report of the LEPL Electoral Systems Development, Reforms and Training Center, p. 39, Official Webpage of CEC, available at: <https://www.electionreforms.ge/geo/attachment/10/angarishebi>, updated: 06.02.2024.

⁵⁹ Ibid, p. 13.

⁶⁰ Ibid.

⁶¹ The official Facebook page of the Central Election Commission, June 12, 2021, available at: <https://bit.ly/3kfNayl>, updated: 06.02.2024.

The pilot project for electronic vote counting during the October 2 elections included mock elections conducted in the Krtsanisi electoral precinct. This information was published on the website of the Central Election Commission on September 22, 2021, available at: <https://bit.ly/3InJpXQ>, updated: 06.02.2024.

⁶² Latsabidze M. and others, Monitoring Report on Pre-Election Environment, Election Day, Post-Election Period and Midterm Elections of 2021 Local Self-Government Elections, (Tbilisi, Georgian Young Lawyers’ Association, 2022), official website of Georgian Young Lawyers’ Association, available at: <https://shorturl.at/epuLU>, updated: 06.02.2024.

⁶³ The introduction of the Automatic Fingerprint Identification System (AFIS) was also debated across the political spectrum.

⁶⁴ Latsabidze M. and others, Monitoring Report on Pre-Election Environment, Election Day, Post-Election Period and Midterm Elections of 2021 Local Self-Government Elections, (Tbilisi, Georgian Young Lawyers’ Association, 2022), official website of Georgian Young Lawyers’ Association, available at: <https://shorturl.at/epuLU>, updated: 06.02.2024.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

their votes, nor did it impact the deadline for summarizing the election results.⁶⁸

In the interim elections of the Batumi City Council on April 2, 2022,⁶⁹ along with the vote counting procedures, the voters' verification process was carried out using electronic devices.⁷⁰ The pilot project was implemented in the fourth majority district, which included 14 polling stations.⁷¹ GYLA was observing the elections as well.

Each verification machine⁷² (VIU Desktop) included desk list information for 1 registrar, and at least 1 verification machine was used for every 800 voters.⁷³ The chairman of the precinct election commission, in the presence of authorized individuals within the polling building, initiated the voter verification process using the verification machines. Subsequently, the initial reports generated by the machines were printed and handed over to the commission's secretary for safekeeping.⁷⁴ The chairman of the commission instructed one of the members of the registrar commission to print out the list of voters (with the voter's serial number, last name and actual status) from the verification machine given to him, which was displayed in a visible place together with the demonstration protocol.

Voters' identification was possible both with an electronic ID card, which the registrar would place⁷⁵ in a special MRZ (Machine-Readable Zone) reader,⁷⁶ and also by manually reflecting the non-electronic ID card or passport data of a Georgian citizen in the device. Before voting, the voter went through the marking procedure and signed the receipt⁷⁷ printed by the machine, which was placed in an opaque box.⁷⁸

In certain precincts, special monitors were installed to provide voting instructions to voters, ensuring clarity and guidance throughout the voting process.⁷⁹

According to GYLA, the main challenge of the Batumi Sakrebulo by-elections on April 2 was related to the risks of violating the secrecy of voting.⁸⁰ One of the reasons for this measure was the occurrence of marker liquid leakage on the back of the ballot, which resulted in the possibility of discerning the voter's choice based on the location of the marked circle.⁸¹ The insufficient adherence to recommended rules of conduct by certain voters was also considered problematic.⁸² Among them was the incorrect placement of the ballot in the frame-envelope, which increased the risk of privacy violations at the time of voting.⁸³

⁶⁸ Ibid.

⁶⁹ In the majority precinct No 4.

⁷⁰ Resolution No. 19/2022 of the Central Election Commission of Georgia dated February 18, 2022.

⁷¹ There were 20,635 registered voters.

⁷² VIU Desktop– in offline mode.

⁷³ Resolution No. 19/2022 of the Central Election Commission of Georgia dated February 18, 2022, Section 4 of Article 4.

⁷⁴ Ibid, clauses "c" and „c¹“ of part 1.

⁷⁵ Resolution No. 19/2022 of the Central Election Commission of Georgia of February 18, 2022, Article 5, Part 1, Clause "b".

⁷⁶ The readable zone of the citizen's electronic identity card - a device that perceives the voter's personal card and searches for the corresponding person in the unified list of voters loaded in the verifier.

⁷⁷ Ibid, Point "b" of Part 1 of Article 5.

⁷⁸ Ibid.

⁷⁹ Latsabidze M. and others, Monitoring Report on Pre-Election Environment, Election Day, Post-Election Period and Midterm Elections of 2021 Local Self-Government Elections, (Tbilisi, Georgian Young Lawyers' Association, 2022), official website of Georgian Young Lawyers' Association, available at: <https://shorturl.at/epuLU>, updated: 06.02.2024.

⁸⁰ Ibid.

⁸¹ The ink marks were particularly problematic, since only two candidates took part in the elections held in Batumi's majority precinct #79.04.

⁸² Latsabidze M. and others, Monitoring Report on Pre-Election Environment, Election Day, Post-Election Period and Midterm Elections of 2021 Local Self-Government Elections, (Tbilisi, Georgian Young Lawyers' Association, 2022), official website of Georgian Young Lawyers' Association, available at: [available at: https://shorturl.at/epuLU](https://shorturl.at/epuLU), updated: 06.02.2024.

⁸³ Ibid.

In these elections, the results of the electronic vote counting machines and the manual counting of the ballots by the commissions coincided with each other by 99.6 percent.

It's worth noting that unlike the automated vote counting process during the April 2 elections, where the machine only recognized the coloring of the circle as a valid vote, the election commissions took into account the voter's intention during manual counting.

In the by-elections of the Senaki municipality council on October 1, 2022, the voter verification procedure was conducted for the first time using synchronized verification machines.⁸⁴ Synchronization of devices involves connecting them together locally, without the Internet, which allows the voter to register with any free registrar.⁸⁵

GYLA views this development positively and anticipates that the synchronization of machines will expedite the voter verification process, especially considering the anticipated increase in voter activity and the enlargement of precincts during the parliamentary elections of 2024. At the same time, it should be taken into account that the voter spends as much or, in some cases, more time⁸⁶ placing the ballot in the electronic vote counting machine than it would take to drop it in the old-style ballot box, thus increasing the risk of queues at the voting machines. Therefore, it is crucial that the commissions are adequately prepared to manage the influx of people, from identification to departure from the precinct, during periods of heightened voter turnout. This ensures a smooth process and prevents delays or queues from forming at the polling stations. To address these challenges, it is imperative for the election administration to proactively implement effective measures to manage anticipated difficulties. This may involve increasing the number of electronic votes counting devices as needed, ensuring sufficient resources are available to handle the expected volume of voters efficiently.ⁱⁱ

In the elections in Senaki, electronic vote counting machines initially deemed 25 ballots invalid. However, after manual counting, it was determined that 8 of these initially invalidated ballots were valid and were subsequently included as legitimate votes.⁸⁷ In this instance, the primary reason for the invalidity of the ballots was the incorrect marking of the circle on the ballot paper. This included markings made from the outside of the circle or other expressions of intent that did not align with the clear and categorical marking required by the apparatus for recognition.⁸⁸

3.3. Amendments to the electoral legislation in December 2022

In March 3, 2022, Georgia formally submitted an official application for EU membership. Subsequently, in June, the European Commission published a report card outlining 12 priorities that the Georgian government must address to qualify for candidate status for EU membership.⁸⁹ One of the conditions outlined was the improvement of the electoral legislative

⁸⁴ The report of the mid-term elections of the Senaki municipality council on October 1, 2022, the official website of the Central Election Commission, available at: <https://cesko.ge/ge/archevnebi/2022/sakrebulo-2022-oqtomberi/senakis-archevnebis-angarishi>, updated: 06.02.2024.

⁸⁵ Ibid.

⁸⁶ If the machine returns the ballot twice, it is considered spoiled and a new ballot is given to the voter, which involves additional procedures and time.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Chkhetiani. L. Newsletter No. 33, June (Tbilisi, Georgian Young Lawyers' Association, 2022), p. 5-6, the official website of the Georgian Young Lawyers' Association, available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://gyla.ge/files/2020/33geo.pdf>, updated: 06.02.2024.

framework, addressing the deficiencies highlighted by the OSCE/ODIHR and the Venice Commission. To implement this recommendation, a working group was established within the legislative body of Georgia. However, some parliamentary factions chose not to participate, and the ruling majority artificially restricted the involvement of civil society organizations by allowing only two organizations to participate.⁹⁰ In October 2022, during the first reading, the Parliament adopted draft laws aimed at amending the Election Code and the organic laws “On Political Unions of Citizens.” The draft laws were sent to the Venice Commission and the OSCE/ODIHR for evaluation,⁹¹ which issued an opinion on December 19.⁹² In the joint document, pertaining to electronic elections, the recommendation emphasizing the importance of clearly delineating the legal framework was reiterated.⁹³ According to the conclusion, the proposed changes lacked a comprehensive regulatory framework, leaving the determination of rules and conditions primarily to the Central Election Commission (CEC).⁹⁴

GYLA concurs with the recommendations of the OSCE/ODIHR and the Venice Commission regarding the problematic nature of the overly broad provisions of the law and the delegation of essential matters to be regulated by legal acts of the Central Election Commission (CEC).⁹⁵ Certain crucial matters, such as the method of voter verification at polling stations, should be explicitly outlined in the election code. As the reform progresses to its final form and transitions towards fully electronic voting, addressing this issue becomes increasingly imperative.

In the conclusion, particular emphasis was placed on the necessity of accountability measures for public officials and election administration representatives in the context of electronic technologies. Additionally, it underscored the importance of implementing criminal sanctions in cases of misuse or abuse of the new voting technology.⁹⁶

The draft law adopted in the first reading proposed abolishing the rule of voter marking. However, considering the recommendations of the OSCE/ODIHR and the Venice Commission, the existing regulation remained in force. Additionally, a new procedure aimed at preventing multiple voting, which involves marking voters using portable ballot boxes, was added to the existing regulation.⁹⁷

On December 22, 2022, with the amendments to the election legislation, the audit of elections conducted using electronic means became mandatory.⁹⁸ The procedure includes specific measures to be carried out by precinct election commission chairpersons on the day of voting. The completion of these measures will be confirmed by filling out a specially designed form.⁹⁹ After completing all the voting procedures, the filled form, together with the electoral documentation defined by the legislation, is sent to the higher district election commission.

⁹⁰ Non-governmental organizations call on Georgian Dream to join the ISFED working group, information portal “civil.ge”, August 22, 2022, available at: <https://civil.ge/ka/archives/505397>, updated: 15.02.2024.

⁹¹ <https://parliament.ge/media/news/parlamentis-tavmjdomaris-tserili-venetsiis-komisias-da-euto-odirs>.

⁹² Venice Commission, OSCE/ODIHR, Joint opinion on draft amendments to the Election Code and the Law on Political Associations of Citizens, CDL-AD(2022)047(Strasbourg: Council of Europe, 2022), available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)047-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)047-e), updated: 06.02.2024.

⁹³ *Ibid.*, para. 42.

⁹⁴ *Ibid.*

⁹⁵ December 2022 change assessment document.

⁹⁶ Venice Commission, OSCE/ODIHR, Joint opinion on draft amendments to the Election Code and the Law on Political Associations of Citizens, CDL-AD(2022)047(Strasbourg: Council of Europe, 2022), para. 45, available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)047-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)047-e), updated: 06.02.2024.

⁹⁷ *Ibid.*, para. 41.

⁹⁸ Article 76⁶ of the Election Code of Georgia.

⁹⁹ *Ibid.*

The procedure for confirming the audit was determined by the decree of the CEC,¹⁰⁰ and its prerogative was assigned to the deputy chairman of the precinct election commission.¹⁰¹

Unlike the initial version of the draft law, the appearance of this entry in the adopted law partially fulfilled the recommendation of the Venice Commission and OSCE/ODIHR, which, in order to ensure the credibility of the process, provided for the definition of the procedural steps of verification and recount in the legislation.¹⁰²

A temporary rule for the use of non-electronic ID cards¹⁰³ was enacted, according to which it became possible to vote with a non-electronic ID card in the elections held before the elections of the Parliament of Georgia on October 26, 2024.¹⁰⁴

In the general parliamentary elections of 2024, voters should be able to vote only if they present an electronic identity card (ID-card) of a Georgian citizen or a passport of a Georgian citizen.¹⁰⁵ The purpose of this initiative was to mitigate the risks associated with multiple voting, expedite the voter registration process, and enhance the credibility of the electoral process.¹⁰⁶

The state has a duty to conduct an active campaign aimed at providing Georgian citizens with electronic identity cards. In this regard, the involvement of the Ministry of Justice is crucial.

Finally, on December 22, 2022, the draft law was adopted by the Parliament in the third reading with some changes.¹⁰⁷ A new Chapter VIII¹ was added to the Election Code with the title - "Voting using electronic means". The recommendations from international organizations and the State Inspector's Service (SIA) regarding the problematic nature of regulating all essential issues solely through legal acts of the Central Election Commission (CEC) were not incorporated into the amendments. Consequently, the authority to determine crucial aspects of electronic technology usage remained within the purview of the CEC.

The Election Code stipulated that at least 70% of the voters should have the opportunity to participate in the general parliamentary elections of 2024 using electronic means.¹⁰⁸ The Election Code established the relevant criteria according to which elections should be held using electronic technologies: in all election precincts on the territory of the self-governing city, in all election precincts on the territory of the administrative center of the municipality,

¹⁰⁰ The second paragraph of Article 76⁶ of the Election Code of Georgia.

¹⁰¹ Decree No. 32/2023 of the Central Election Commission of Georgia on determining the procedure for confirming the audit of voting/elections conducted using electronic means for the by-elections of the Parliament of Georgia, extraordinary elections of mayors of municipalities, and Sakrebulo by-elections to be held on April 29, 2023, available at: <https://shorturl.at/wPW45>, updated: 06.02.2024

¹⁰² Venice Commission, OSCE/ODIHR, Joint Urgent Opinion on Draft Amendments to the Election Code, CDLPI(2021)005(Strasbourg: Council of Europe, 2021), para. 77, available at: <https://bit.ly/3hFOk4R>, updated: 06.02.2024.

¹⁰³ With an ID card that does not have an electronic carrier of information.

¹⁰⁴ Article 184¹ of the Election Code of Georgia (old edition).

¹⁰⁵ Paragraph 19 of Article 63, subparagraphs "a" and "b" of paragraph 2 of Article 65, subparagraph "g" of the first paragraph of Article 76⁵.

¹⁰⁶ On November 18, 2023, the Parliament of Georgia adopted a draft law in the third reading, according to which citizens will be able to vote in elections with non-electronic ID cards. In parallel with the changes implemented in the Election Code, the Legal Affairs Committee of the Parliament of Georgia supported the initiative to cancel the non-electronic ID cards issued before July 28, 2011 in the first reading.

¹⁰⁷ "Parliament adopted amendments to the "Election Code of Georgia" and the organic laws "On Political Unions of Citizens", website of the Parliament of Georgia, December 22, 2022, available at: <https://bit.ly/3CKikWW>, updated: 06.02.2024.

¹⁰⁸ The first part of Article 76³ of the Election Code of Georgia.

and also in those election precincts determined by the CEC decree.¹⁰⁹ In addition, it was determined that the maximum number of voters in the polling station where elections will be conducted using electronic technologies should not exceed 3,000,¹¹⁰ which is an increase of 1,500 compared to the previous limit.

GYLA highlighted the challenges related to enlarging the polling stations, including concerns about the district election commissions' ability to provide suitable spaces for the election precincts and how smoothly the precinct election commissions will manage serving this increased number of voters. Additionally, there are questions about the effectiveness of using electronic technologies in the election process.¹¹¹

In February, according to the decision of the CEC, the coverage area of electronic elections was further increased and it was determined that in the parliamentary elections of 2024, approximately 90% of voters will benefit from electronic technologies.¹¹² According to the decree of the CEC,¹¹³ the parliamentary elections of 2024, except for cases stipulated by law, will utilize electronic means at all polling stations within the administrative centers of municipalities in all self-governing cities and self-governing communities. Additionally, electronic voting will be implemented in election precincts within these municipalities (excluding the administrative centers) where the number of registered voters exceeds 300 and the distance between the precinct and district election commissions does not exceed 20 kilometers.¹¹⁴

The chapter on electronic elections also includes provisions regarding the validation of the ballot. Specifically, only the ballot with the corresponding circle in front of the name of one electoral subject is considered valid, irrespective of any other markings or inscriptions on the ballot (if such markings/inscriptions are present). Along with the emergence of the recording, the approach of the CEC changed as well, which was usually based on the guiding principle defined by the Code of Good Practice¹¹⁵ and considered as a valid vote any marking that could determine the voter's will. By adopting a categorical approach, the Election Code extended the strictly defined counting rule applied by electronic devices to manual counting as well. Consequently, the discretion of precinct election commissions to determine the validity or invalidity of a ballot through deliberation is restricted, resulting in a standardized approach to each candidate. However, this approach also allows the commission to declare a ballot invalid even if an objective observer could recognize the true intention of the voter, despite any deviation from the marking rule specified by the law.

In the scenario where the current electronic voting model is fully implemented nationwide (with manual counting of ballots reserved for exceptional cases and summary reports generated by electronic machines - according to the receipt printed by an electronic machine), the rationale for invalidating marked ballots would be clear, aligning with the electronic scanner

¹⁰⁹ Ibid, Article 76¹.

¹¹⁰ Ibid, part 4.

¹¹¹ "Assessment of December 2022 Amendments to Electoral Legislation", website of ISFED, 31 January 2023, available at: <https://isfed.ge/geo/angarishebi/saarchevno->, updated: 06.02.2024.

¹¹² „In the 2024 parliamentary elections, almost 90% of voters will vote using electronic technologies”, CEC official website, February 6, 2023, available at: <https://cesko.ge/ge/siakhleebi/pres-relizebi/singleview/11031836-2024-tslis-parlamentis-archevnebshi-amomrchevelta-titkmis-90-khmas-elektronuli-teknologiebis-gamoqenebit-mistsems>, updated: 06.02.2024.

¹¹³ CEC Decree No. 05/2023 of February 6, 2023 on the determination of election precincts, where the 2024 elections of the Parliament of Georgia will be held using electronic means, available at: <https://cesko.ge/ge/kanonmdebloba/tseskos-samartlebrivi-aqtebi/gankargulebebi/singleview/11031837-gankarguleba-052023-06022023>, updated: 06.02.2024.

¹¹⁴ Ibid.

¹¹⁵ European Commission for Democracy through Law (Venice Commission), Code of Good Practice in Electoral Matters, available at: <https://rm.coe.int/090000168092af01>, updated: 06.02.2024.

principle. However, with the rule of manually counting ballots still in place, this categorical approach may become a topic of debate.

Also, it is worth noting that elections in some polling stations¹¹⁶ are still conducted in the traditional manner, without the utilization of electronic technologies. In those precincts where elections are conducted traditionally, the criteria for determining the invalidity of a ballot paper are still governed by the previous rule outlined in Article 69, Clause 3 of the Election Code of Georgia. According to this norm, a ballot is considered invalid if it lacks the signature and special seal of the voter registrar, or if it's impossible to determine which electoral entity the voter voted for; More than the prescribed number of ballot papers were found in a special envelope; A special envelope is not a prescribed pattern; The ballot was found in the ballot box without a special envelope; Or the ballot paper was intended for another polling station. Thus, in this case, unlike the wording given in the chapter on electronic elections, the need for uniform marking is no longer a criterion for determining the validity of the ballot, and its validity, in each specific case, is still determined by the commission's judgment.

In the case of non-electronic precincts, having a different approach to voting and ballot invalidation may be subject to political manipulation. Especially if the statistics of invalidity of ballots in electronic and non-electronic precincts will be different, for which the election administration should be ready. Different regulations may also be confusing for both voters and representatives of election commissions, as the CEC will have to develop different information campaigns and training modules for them. 10% of voters is quite an important number, which can have a significant impact on the final result of the election. Thus, it is essential that the CEC pays special attention to the organization of the election process at non-electronic precincts with a high standard and that they are not considered "second-rate". **Based on the practice of frequent changes in the electoral legislation in Georgia, in order to avoid the expected risks, it is important that the CEC focuses on these circumstances and ensures that the parties involved in the elections are properly informed about the regulation related to a specific issue.**

On February 6, 2023, the CEC adopted a resolution "On determination of the rules and conditions for conducting voting using electronic means"¹¹⁷. This resolution served as the basis for conducting the interim/extraordinary elections in 2023, and the parliamentary elections of 2024 will also be conducted in accordance with the rules and conditions outlined in the same resolution.¹¹⁸

¹¹⁶ Approximately 10% of voters.

¹¹⁷ Resolution No. 07/2023 of the Central Election Commission of Georgia of February 6, 2023 on determining the rules and conditions for conducting voting using electronic means, available at: <https://cesko.ge/ge/kanonmdebloba/tsekos-samartlebrivi-aqtebi/dadgenilebebisadasd21/singleview/11031834-dadgenileba-072023-06022023>, updated: 06.02.2024.

¹¹⁸ "Market research related to the purchase of election technologies and related services", CEC official website, February 15, 2023, available at: <https://cesko.ge/ge/siakhleebi/pres-relizebi/singleview/11031863-saarchevno-teknologiebisa-dashesabamisi-momsakhurebis-shesqidvastan-dakavshirebuli-bazris-kvleva>, updated: 06.02.2024.

EVALUATION OF THE KUTAISI SAKREBULO BY-ELECTIONS OF APRIL 29, 2023

1. GYLA observation mission

On April 29, 2023, by-elections for the Parliament of Georgia took place in the majoritarian constituencies of Senaki, Khobi, and Poti. Additionally, extraordinary mayoral elections were held in the self-governing communities of Terjola and Tsageri municipalities. Midterm elections for municipal councils, conducted under the majoritarian electoral system, were held in the self-governing city of Kutaisi and the self-governing communities of Tianeti, Akhaltsikhe, Gurjaani, and Tkibuli municipalities.¹¹⁹ A total of 165 polling stations were opened for the interim/extraordinary elections.¹²⁰

In total, as part of the limited long-term and short-term observation mission, GYLA observed the Election Day in the first majoritarian district of Kutaisi, where the voting to elect the majority member of the Sakrebulo was conducted¹²¹ across 11 polling stations¹²². 5 GYLA observers were involved in the short-term mission. On the Election Day, 3 of them were distributed among 6 precincts.¹²³ There was 1 central headquarters in Tbilisi, where 2 employees of the organization worked. GYLA monitored the pre-election environment in all electoral constituencies through regional offices.¹²⁴

During the selection of election precincts, the GYLA observation mission prioritized observing the introduction and piloting of new technologies. This included monitoring the readiness of the election administration, informing voters, the progress of voting, counting, and publication of results. Specific polling stations were determined for observation based on the number of registered voters and their territorial location.

2. Pre-election period and political context

The by-elections and extraordinary elections of April 29, 2023 were held in conditions of low competition. The ruling party had a competitor represented by the initiative group in the municipality of Terjola¹²⁵ and the corresponding majoritarian district of Tkibuli.¹²⁶ In Poti, Khobi and Senaki majority constituencies, “Georgian Dream” was competing with “Free Georgia” political union (party leader - Kakha Kukava).¹²⁷ Only the candidates of the ruling party participated in the by-elections of the City Council in the respective majoritarian constituencies of

¹¹⁹ April 29, 2023 extraordinary/by-election report, Central Election Commission Official Website, available at: <https://cesko.ge/ge/archevnebi/2023/-2023-sakrebulo-shualeduri/2023-wlis-29-aprilis-shualerudiriggareshe-archevnebis-angarishi-1>, updated: 06.02.2024.

¹²⁰ Ibid.

¹²¹ April 29, 2023 Extraordinary and By-Elections report, official website of the Central Election Commission, available at: <https://cesko.ge/ge/archevnebi/2023/-2023-sakrebulo-shualeduri/2023-wlis-29-aprilis-shualerudiriggareshe-archevnebis-angarishi-1>, updated: 06.02.2024.

¹²² Among them, one - on the territory of a penitentiary institution.

¹²³ №59.36; №59.37; №59.38; №59.43; №59.44; №59.45 precincts.

¹²⁴ Kutaisi, Telavi, Dusheti and Zugdidi offices.

¹²⁵ Mayoral candidates nominated for the April 29, 2023 extraordinary elections of municipal mayors, CEC website, available at: <https://bit.ly/3m0kqXX>, updated: 06.02.2024.

¹²⁶ Majority candidates nominated for the April 29, 2023 by-elections of the City Council, CEC website, available at: <https://bit.ly/3KVF2Qs>, updated: 06.02.2024.

¹²⁷ Majority candidates nominated for the by-elections of the Parliament of Georgia on April 29, 2023, CEC website, available at: <https://bit.ly/41n2Z8H>, updated: 06.02.2024.

Gurjaani, Tianeti, Akhaltsikhe and Kutaisi.¹²⁸ Also, only “Georgian Dream” presented a candidate in Tsageri mayor elections.¹²⁹

The need to hold elections of the majority members of the city councils was put on the agenda by the termination of the powers of the deputies.¹³⁰ Giorgi Nemsadze, the mayor of Tsageri municipality from “Georgian dream”, resigned on the basis of personal applications.¹³¹ The mayor of Terjola, Lasha Gogiashvili (“Georgian Dream”) died as a result of a car accident,¹³² and the reason for holding parliamentary by-elections in Poti, Khobi and Senaki majority districts was also the death of Irakli Khakhubia, a member of the Georgian Parliament from the ruling party.¹³³

The official pre-election period for the April 29 extraordinary and by-elections, as stipulated by the law¹³⁴ began on February 28, 2023, which was 60 days before the voting day.¹³⁵ The pre-election campaign was conducted in a peaceful environment. The Regional offices of GYLA in Kutaisi, Zugdidi, Telavi and Dusheti, within the framework of the long-term monitoring mission, did not detect any cases of violation of the legislation.

Interest in the April 29, 2023 elections was heightened by the piloting of electronic technologies, which served as another test ahead of the 2024 parliamentary elections. However, **due to the low competition and turnout,¹³⁶ it is challenging to accurately pinpoint the issues that may arise with the increased number of voters in the precincts and the escalating tensions associated with the general elections.**

During the pre-election period, the Central Election Commission conducted information campaigns with voters,¹³⁷ trainings with members of the commission¹³⁸ and working meetings with representatives of local non-governmental organizations on the use of electronic technologies.¹³⁹

In accordance with the changes adopted in December 2022, for the elections of April 29, the district election commissions not only selected the members of the precinct election commissions but also appointed their heads.¹⁴⁰

¹²⁸ Majority candidates nominated for the April 29, 2023 interim elections of the City Council, CEC website, available at: <https://bit.ly/3KVF2Qs>, updated: 06.02.2024.

¹²⁹ Mayoral candidates nominated for the April 29, 2023 extraordinary elections of municipal mayors, CEC website, available at: <https://bit.ly/3mokqXX>, updated: 06.02.2024.

¹³⁰ “Decree No. 158 of the Kutaisi Municipality Council of December 28, 2022; Minutes of the Tianeti Municipality Council Meeting No. 8 of August 30, 2022; Minutes of the Akhaltsikhe Municipality Council Meeting No. 10 of October 28, 2022; Decree of Tkibuli Municipality Council of November 30, 2022 N G-75. 75223343; Decree of Gurjaani Municipality Council No. G-91. 9122339001 of December 5, 2022.

¹³¹ Minutes of the Tsageri Municipality Council Meeting No. 20 of November 28, 2022.

¹³² Terjola Municipality Council Decree No. C-29. 22291001 of October 18, 2022.

¹³³ Resolution of the Parliament of Georgia No. 1950-IX MS-XMP of November 2, 2022.

¹³⁴ Article 45 of the Election Code of Georgia.

¹³⁵ Schedule of election events for the by-elections of the City Council on April 29, 2023, CEC website, available at: <https://bit.ly/3Nm2O8j>, updated: 06.02.2024.

¹³⁶ “Activity of voters as of 20:00”, CEC official website, April 29, 2023, available at: <https://cesko.ge/ge/archevnebi/2023/saqartvelos-parlamentis-2023-wlis-shualeduri-archevnebi/-amomrchevelta-aqtivoba-aprili-2023-3>, updated: 06.02.2024.

¹³⁷ “Voters were introduced to electronic technologies within the framework of the information campaign “We are talking to voters” CEC website, available at: <https://bit.ly/43ZGdpq>, updated: 06.02.2024.

¹³⁸ “The training of election administration trainers for the interim and extraordinary elections of April 29 has begun”, CEC website, available at: <https://bit.ly/46clss5>, updated: 06.02.2024.

¹³⁹ “Another working meeting was held with representatives of local non-governmental organizations”, CEC website, available at: <https://bit.ly/42TnDOH>, updated: 06.02.2024.

¹⁴⁰ “Information statement on the election of members of the Precinct Election Commission”, official website of the Central Election Commission of Georgia, March 15, 2023, available at: <https://cesko.ge/ge/siakhleebe/pres-relizebi/singleview/11032075-29-aprilis-shualeduririggareshe-archevnebisvis-saubno-saarchevno-komisiebis-tsevrebi-airchies>, updated: 06.02.2024.

In the process of selection of the members of the election commissions, extended requirements (grounds) regarding their official incompatibility were taken into account. This excluded the election of a person who was a member of the commission appointed by the party in the last two elections as a member of the district and precinct election commission, ran for office himself or was a representative of the election subject; Also, a person who has been a donor to any party since the beginning of the last election year.¹⁴¹

3. Recruitment of election commissions

According to the data published by the CEC, 1347 applicants submitted applications to fill 1312 vacant positions for professional members in 164 precinct election commissions (including 492 managers),¹⁴² and for 30 temporary membership positions in district election commissions¹⁴³ 35 applicants submitted applications.¹⁴⁴ 29 candidates participated in the interview process. This indicates that the selection process for candidates at both levels occurred without genuine competition. It's worth noting that none of the 29 candidates garnered the support of two-thirds (12 votes) of CEC members.¹⁴⁵ They were appointed by a simple majority within the framework of the anti-deadlock mechanism.

4. Voting Day and Electronic Technologies

In the April 29 extraordinary/by-elections, voting took place in 117 polling stations using voter verification, voting, and electronic ballot counting machines, while the process in the remaining 48 polling stations was conducted in the traditional manner.¹⁴⁶ In the case of traditional precincts, the ballots were digitized and uploaded to the appropriate platform.¹⁴⁷ Participation in elections by electronic means was available to 91% of registered voters in extraordinary/by-elections. On April 30, the election precincts to be recounted were identified by drawing lots. Re-counting of ballots was carried out within the period stipulated by the law, on May 1, 2023 (the third day after the election).¹⁴⁸ All ten district election commissions recounted the data of 28 precinct election commissions in specially created counting centers.¹⁴⁹ After the recount, the election results did not change.¹⁵⁰

¹⁴¹ Section 17¹ of Article 20 of the Election Code of Georgia.

¹⁴² Minutes of the meeting of CEC No. 5/2023.

¹⁴³ 3-3 seats were vacant in 10 District Election Commissions.

¹⁴⁴ "CEC elected temporary members of district election commissions", CEC official website, February 24, 2023, available at: <https://cesko.ge/ge/siakhleebi/pres-relizebi/singleview/11031964-tseskom-saolko-saarchevno-komisiebis-droebiti-tsevrebi-airchia>, updated: 06.02.2024.

¹⁴⁵ Minutes of the meeting of CEC No. 5/2023.

¹⁴⁶ Decree No. 16/2023 of the Central Election Commission of Georgia dated February 20, 2023, available at: <https://cesko.ge/ge/kanonmdebloba/tsekos-samartlebrivi-aqtebi/gankargulebebi/singleview/11031874-gankarguleba-162023-20022023>; Decree No. 17/2023 of the Central Election Commission of Georgia dated February 20, 2023, available at: <https://shorturl.at/dL012>; Decree No. 15/2023 of the Central Election Commission of Georgia dated February 20, 2023, available at: <https://cesko.ge/ge/kanonmdebloba/tsekos-samartlebrivi-aqtebi/gankargulebebi/singleview/11031873-gankarguleba-152023-20022023>, updated: 06.02.2024.

¹⁴⁷ Interim/extraordinary election report of April 29, 2023, official website of the Central Election Commission, available at: <https://cesko.ge/ge/archevnebi/2023/-2023-sakrebulos-shualeduri/2023-wlis-29-aprillis-shualerudiriggareshe-archevnebis-angarishi-1>, updated: 06.02.2024.

¹⁴⁸ Ibid, para. 18.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

GYLA recommends amending the legislation to empower the Central Election Commission (CEC) to ensure the digitization of all election ballots, including those in areas where electronic devices are used for voting, in order to enhance the credibility of the electoral process.

Voter turnout in the Kutaisi majority district was quite low¹⁵¹ and it was 21% of registered voters in this district.¹⁵² Despite the low voter activity and competition, GYLA observers noted technical issues with electronic devices and shortcomings in informing voters and training members of the Precinct Election Commission.

During the election, GYLA observers identified instances where voter **tracking** and gatherings occurred within a 100-meter radius of polling stations. Additionally, there were instances of violations of voting secrecy, primarily involving attempts to reinsert ballots into the machine and damage to the ballots. However, no complaints about procedural violations were submitted by GYLA observers during the voting day, and they did not observe any incidents that would disrupt the peaceful conduct of the election process.

4.1. The course of the election process using electronic technologies

Identification of voters at polling stations was conducted using synchronized verification machines, which were connected to each other without the need for internet access. These machines contained the list of voters specific to each polling station.¹⁵³ In accordance with the general rule, at least 1 verification machine was provided for every 700 voters.¹⁵⁴ The number of machines deployed depended on the number of registered voters at each polling station. For precincts with up to 500 registered voters, two verification machines were allocated. For precincts with 500 to 1500 voters, three machines were provided. Precincts with 1500 to 2500 voters received four machines, while those with 2500 to 3000 voters were equipped with five machines.¹⁵⁵

At least 2 main ballot boxes were provided for each precinct, with a special electronic vote counting device installed on it.¹⁵⁶

From the precinct opening until the commencement of voting, the chairperson of the commission printed the voter lists (initial report) from each machine. These reports, along with the demonstration protocol, were displayed prominently. For identification, voters had the option to use an electronic ID card, which the registrar would insert into a special reader, or a non-electronic ID card or passport of a Georgian citizen, whose data the registrar would manually enter into the machine for verification. Prior to voting, the voter underwent the

¹⁵¹ №59.01.

¹⁵² 25761 people.

¹⁵³ The lists are uploaded by the Election Processes Management Department of the CEC.

¹⁵⁴ Resolution No. 07/2023 of February 6, 2023 of the Central Election Commission of Georgia on determining the rules and conditions for conducting voting using electronic means, Article 4, Part 1, Subpoint B, available at: <https://cesko.ge/ge/kanonmdebloba/tsekos-samartlebrivi-aqtebi/dadgenilebebisadasd21/singlevew/11031834-dadgenileba-072023-06022023>, updated: 06.02.2024.

¹⁵⁵ April 29, 2023 by-election/extraordinary Election Report, the official website of the Central Election Commission, p. 17, available at: <https://cesko.ge/ge/archevnebi/2023/-2023-sakrebulo-shualeduri/2023-wlis-29-aprilis-shualerudirig-gareshe-archevnebis-angarishi-1>, updated: 06.02.2024.

¹⁵⁶ Resolution No. 07/2023 of the Central Election Commission of Georgia of February 6, 2023 on determining the rules and conditions for conducting voting using electronic means, available at: <https://cesko.ge/ge/kanonmdebloba/tsekos-samartlebrivi-aqtebi/dadgenilebebisadasd21/singlevew/11031834-dadgenileba-072023-06022023>, updated: 06.02.2024.

marking procedure and signed the receipt printed by the machine. These receipts were then placed in an opaque sealed box on the registration desk.

After receiving the ballot and the frame-envelope, the registrar provided instructions to the voter on how to complete them and use them, including marking the test circle on the ballot in a designated area. Subsequently, the voter entered the private voting booth, marked the ballot using a special marker, and placed it into the frame-envelope to maintain secrecy of choice. The voter then followed the prescribed procedure to insert the ballot into a designated machine and handed the frame-envelope to the box supervisor.

Before the start of the voting process, the chairman of the commission received a “zero extract” from each vote counting machine, which confirmed that no voter had cast a vote through the machine at that moment.

After the completion of the voting procedures, the final report on the voter was printed from the verification machine.

After printing out the extract of the preliminary results from the electronic vote counting machines, the Precinct Election Commission counted the ballots manually, based on which, the summary protocols were filled.

At the elections of April 29, for the first time, the voters using the transfer box also went through the marking procedure.

The summarized preliminary results, along with the minutes detailing the voting outcomes, were transmitted directly to the Central Election Commission (CEC) via a tablet computer, bypassing the District Election Commission.

4.2. Problems of informing the voters and preparing the election administration

Cases were identified when the voter had difficulty understanding and using the new voting rule correctly.¹⁵⁷ Many of them needed the assistance from members of the Precinct Election Commission when placing their ballot in the counting machine. Despite the detailed instructions provided by the commission members, some voters folded their ballots after making their choices, which posed challenges when attempting to insert them into the machine.¹⁵⁸ The responses of commission members varied in different districts when encountering similar cases. In some precincts, a folded ballot paper was deemed spoiled, and a new one was issued to the voter. In other precincts, assistance was provided to straighten the folded ballot paper, and attempts were made to insert it into the electronic vote counting machine.

It is crucial to establish a consistent practice on the part of the Central Election Commission across all precinct election commissions to ensure equal protection of the voter’s right to vote throughout the country.

A GYLA observer revealed a case where a voter immediately left the precinct¹⁵⁹ after repeated attempts to place a ballot in the electronic device, and the device did not receive the ballot again. It was not possible to return the citizen, and the ballot was considered spoiled.

It is crucial for the commission member responsible for overseeing the use of special frame-envelopes and supervising the special electronic vote counting machine to ensure that the voter remains present until the ballot is successfully placed in the ballot box.

¹⁵⁷ Precincts No 59.37 and No 59.38 of Kutaisi.

¹⁵⁸ Precinct No. 59.38 of Kutaisi.

¹⁵⁹ Precinct No 59.37 of Kutaisi.

Kutaisi polling station No. 59.38 was opened about 15 minutes late, because the technologies could not be activated in time. This caused a queue at the polling station.

A technical worker (IT worker) represented by the CEC was present at all precincts covered by GYLA observers, who helped the members of the Precinct Election Commission with technical issues related to electronic devices. In certain polling stations, particularly at the start of the voting process, there was a notable active involvement of representatives from higher election commissions in organizing the voting procedures. In case of a certain delay, they gave instructions and participated in the process of solving this or that problem. Although their presence and involvement at the precincts played a positive role in terms of the effective organization of the voting process, it also raised doubts about the expected challenges in the conditions of general elections. GYLA believes that due to the increased scale of the elections, it will be challenging to mobilize a sufficient number of human resources. Consequently, precinct election commissions will need to manage the process independently. **To ensure the smooth conduct of elections using electronic technologies, it is crucial for the Central Election Commission to provide comprehensive training to all members of the election commission at every level. This training should equip them with the skills to independently and effectively address any disruptions caused by technological failures at the polling stations on the day of the election.**

4.3. Malfunctions related to the functioning of electronic devices

The observer of the organization revealed a case in one of the areas when the special MRZ (Machine-Readable Zone) readers of the verification machines¹⁶⁰ could not perceive the electronic ID cards and the registrars had to enter the data manually.¹⁶¹ A technical issue was detected in 2 out of 4 devices functioning in the area. Although this did not result in a delay in the voting process, such a risk persists, especially considering the increase in voter turnout. Overall, observations of the voter verification process indicate that the failure of electronic ID cards to be recognized by the verification machines is, in some instances, due to damaged documents rather than a technical malfunction of the machine.

In the April 29 elections, citizens had the option to vote using non-electronic (laminated) ID cards and passports.

GYLA observers did not report any instances of vote counting devices being out of order.

4.4. Cases of violation of the privacy of the vote

An important challenge identified by GYLA observers during the voting process is related to the risks of violating the secrecy of the vote. As mentioned, some voters folded the ballot paper due to past practices, leading to its damage. In such cases, the secrecy of the vote was compromised both when the voter attempted to unfold the folded ballot and when the member of the precinct election commission cut off the corner of the ballot and retained it separately.¹⁶²

¹⁶⁰ The readable zone of the citizen's electronic identity card - a device that perceives the voter's personal card and searches for the corresponding person in the unified list of voters loaded in the verifier.

¹⁶¹ №59. 37 precincts.

¹⁶² №59.38 precinct.

Also, cases were revealed when the voter incorrectly placed the ballot in the frame-envelope and tried to straighten it after leaving the voting booth, in which case the privacy of the vote was violated.¹⁶³ This risk was particularly high during the process of placing the ballot directly in the electronic vote counting machine. In some cases, the voter placed the ballot at the wrong angle, which is why the machine did not receive it. During repeated attempts, it became possible to see the will show by voters.¹⁶⁴ Furthermore, there were instances where a voter left the ballot box without enclosing the ballot in a framed envelope, potentially exposing their choice to others present in the precinct.¹⁶⁵

It is essential for the election administration to implement all necessary measures to safeguard the secrecy of voters' ballots, including thorough information dissemination to voters. During the training sessions for members of the Precinct Election Commission, particular emphasis should be placed on highlighting the significance of this matter.

4.5. Voter tracking

Although the ruling party was able to win without significant competition,¹⁶⁶ the mobilization of coordinators/foreigners and voter tracking in the vicinity of the polling stations was still a problematic trend.

In the vicinity of Kutaisi election precinct No. 38, persons who supposedly had electoral lists were tracking voters and marking their names. According to the observers of the organization, police representatives were mobilized at the precincts, but this did not prevent the gathered groups from conducting voter tracking and creating a surveillance environment for the citizens who came to vote.

¹⁶³ №59.38 precinct.

¹⁶⁴ №59.38 precinct.

¹⁶⁵ №59.37 precinct.

¹⁶⁶ "Georgian Dream" candidates received 100% of the votes in the by-election of the municipal councils of Kutaisi, Gurjaani, Tianeti and Akhaltsikhe. Also, the candidate of the ruling party received 100% of the votes in the mayoral elections held in Tsageri municipality. In Tkibuli majority constituency, two candidates participated in the elections, where "Georgian Dream" candidate Giorgi Kereselidze collected 97% of votes, and independent candidate Giorgi Gagoshidze - 13%. According to the results of parliamentary majoritarian elections in Poti, Khobi and Senaki districts, the candidate of "Georgian Dream" Giorgi Khakhubia collected 95% of the votes, and Besik Tsuleiskiri ("Free Georgia") - 5%.

EVALUATION OF THE OCTOBER 1, 2023 EXTRAORDINARY AND BY-ELECTIONS

1. GYLA observation mission

On October 1, 2023, the elections of the Gori-Kaspi majority deputy of the Parliament of Georgia and the mayor of Gurjaani were held.¹⁶⁷ A total of 133 polling stations were opened.¹⁶⁸ Of these, the voting process was conducted in 103 precincts using voter verification and vote counting machines, and¹⁶⁹ in 30 precincts - using the traditional method.¹⁷⁰

GYLA observed the elections in both constituencies with a limited long-term and short-term observation mission, employing mobile groups. Alongside monitoring activities within the polling stations, mobile group observers also kept watch on events occurring outside the precincts. A total of 8 observers from the organization covered 21 polling stations.¹⁷¹ Only precincts where voting was to be conducted using electronic technologies, as well as precincts where more voters were registered, were selected as a priority. The organization monitored the pre-election environment in all electoral districts through regional offices.¹⁷²

The primary focus of GYLA's observation mission, similar to the elections held in April, was to monitor the introduction and piloting of new technologies. This included overseeing the preparedness of the election administration, providing information to voters, monitoring the progress of voting, counting, and the publication of results.

2. Pre-election period and political context

The October 1 election, similar to the April 29 extraordinary and by-elections, took place amidst low competition. During a briefing on August 14, the Chairman of "Georgian Dream," Irakli Kobakhidze, announced Giorgi Sosiashvili as the ruling party's candidate for the Gori and Kaspi majority district, and Giorgi Machavariani as the mayoral candidate for Gurjaani.¹⁷³ The parliamentary opposition has not presented any candidates. They cited the approach of the general elections and the consolidation of the opposition's resources as the reason for this.¹⁷⁴

In the mayoral elections of Gurjaani, only the candidate of "Georgian Dream" was represented, while in the majority district of Gori and Kaspi, the ruling party's candidate, Mamuka Tuskadze (from the political movement of Georgian citizens "for social justice"), was competing.¹⁷⁵

¹⁶⁷ October 1, 2023 by-elections/extraordinary election report, official website of the Central Election Commission, available at: <https://cesko.ge/ge/archevnebi/2023/saqartvelos-parlamentis-2023-wlis-oqtombris-shualeduri-archevnebi/2023-wlis-1-oktombris-shualeduririggareshe-archevnebis-angarishi-1>, updated: 06.02.2024.

¹⁶⁸ Ibid.

¹⁶⁹ "On October 1st, interim parliamentary and mayoral elections will be held" CEC official website, September 30, 2023, available at: <https://cesko.ge/ge/siakhleebi/pres-relizebi/singleview/11032927-pirvel-oktombers-parlamentis-shualeduri-da-meris-riggareshe-archevnebi-gaimarteba>, updated: 06.02.2024.

¹⁷⁰ Ibid.

¹⁷¹ №12.19, №12.22, №12.18, №12.06, №12.07, №12.08, №12.02, №12.01, №12.04, №15.32.02, №15.32.09, №15.30.03, №15.30.04, №15.32.07, №15.32.04, №15.30.01, №15.32.05, №15.30.01, №15.32.08 precincts.

¹⁷² GYLA Telavi and Gori offices.

¹⁷³ "Georgian Dream" nominated candidates in the by-elections, information portal "Radio Tavisupleba", August 14, 2023, available at: <https://www.radiotavisupleba.ge/a/32547029.html>, updated: 06.02.2024.

¹⁷⁴ Odikadze N. Newsletter No. 47, August (Tbilisi, Georgian Young Lawyers' Association, 2023), pp. 3-4, official website of the Georgian Young Lawyers' Association, available at: chrome-extension://efaidnbmninnipocajpcgicglfindmkaj/https://gyla.ge/files/47_geo.pdf, updated: 06.02.2024.

¹⁷⁵ October 1, 2023 by-elections / extraordinary elections report, official website of the Central Election Commission, available at: <https://cesko.ge/ge/archevnebi/2023/saqartvelos-parlamentis-2023-wlis-oqtombris-shualeduri-archevnebi/2023-wlis-1-oktombris-shualeduririggareshe-archevnebis-angarishi-1>, updated: 06.02.2024.

In the first case, the reason for calling the elections in February 2023 was the resignation of Giorgi Khojvanishvili, a member of the “For Georgia” party, of his own will,¹⁷⁶ and in the second case, in June of this year, the mayor of Gurjaani (“Georgian Dream”), Zurab Utiashvili, also left his position of his own free will.¹⁷⁷

The official pre-election period began on August 2.¹⁷⁸ In the absence of real competition, GYLA has not detected any cases of violation of the electoral legislation.

3. Staffing of election commissions

According to the data published by the CEC, 1092 applications were registered to fill 1064 vacant positions for professional members in 133 precinct election commissions (including 399 managers).¹⁷⁹ In the case of temporary members of district election commissions, 13 applicants submitted applications to occupy 9 vacant seats.¹⁸⁰ In the case of temporary members of district election commissions, 13 applicants submitted applications to occupy 9 vacant seats. 11 of them participated in the interview. Similar to the elections held in April, this indicated that the process of selecting candidates at both levels was conducted without real competition. It is worth noting that only two of the 11 candidates managed to get the support of 2/3 (12 votes) of the CEC members.¹⁸¹ The rest were appointed through the anti-deadlock mechanism. **In the opinion of GYLA, it is desirable to remove legislative barriers regarding the terms of staffing of district and precinct election commissions. Also, the period of receiving and processing applications should be increased. This process should not depend on the official announcement date of the election.**

4. Legislative changes

Before the elections, the Central Election Commission (CEC) adjusted the regulation regarding the placement of the ballot in the counting machine, changed the design of the frame-envelope, and defined the procedure for forwarding information in case of a technical error.

According to the amendment presented at the session of the CEC on August 5, the procedure for placing the ballot in the counting machine was clarified. According to the resolution, if the special electronic vote counting device returns the ballot paper, it is possible to place it in the device again. If it returns again, it is considered spoiled.¹⁸² In the presence of the voter, a corner of the ballot will be cut off, “spoilt” will be written, the chairman of the precinct election commission will sign and it will be kept separately. On the instructions of the chairman of the commission, the registrar is obliged to replace the damaged ballot paper with a new one for the voter.¹⁸³

¹⁷⁶ “Party “For Georgia” deputy leaves the parliament and the party”, information portal “Civil.ge”, February 6, 2023, available at: <https://civil.ge/ka/archives/524284>, updated: 06.02.2024.

¹⁷⁷ “The mayor of Gurjaani resigned”, information portal “Radio Tavisupleba”, June 9, 2023, available at: <https://www.radiotavisupleba.ge/a/32452119.html>, updated: 06.02.2024.

¹⁷⁸ Part 1 of Article 45 of the Election Code of Georgia.

¹⁷⁹ Initially, 1,233 applications were registered, of which 122 contestants canceled their registration, nine applications were defective, and 10 contestants refused to participate.

¹⁸⁰ Letter No. 03-02/1367 of the Central Election Commission of Georgia dated December 15, 2023.

¹⁸¹ Minutes of the session of CEC No. 25/2023.

¹⁸² Resolution No. 07/2023 of February 6, 2023 of the Central Election Commission of Georgia on determining the rules and conditions for conducting voting using electronic means, Article 6, Paragraph 2, Sub-paragraph “h”, available at: <https://www.matsne.gov.ge/ka/document/view/5713266?publication=6>, updated: 06.02.2024.

¹⁸³ Ibid.

Also, the resolution determined that “the voter places the ballot using a special frame-envelope in the machine installed on the main ballot box in such a way that the front side of the ballot is placed from below.”¹⁸⁴ The design of the frame-envelope has also been changed to facilitate such behavior. An arrow (hint) with the inscription “Place the ballot in the machine” will be displayed on only one side of the envelope, indicating the voter to the recommended course of action.

According to the amendment adopted at the session of the CEC on August 23, the procedure for forwarding information in the presence of a technical fault was determined.¹⁸⁵ According to the regulation, in case of tablet device or application failure, it will be possible to send the extract of the preliminary results by other technical means available to the person determined by the chairman of the precinct election commission.¹⁸⁶ In case of internet connection problem inside the precinct election commission (building), sending the extract and photocopy of the minutes summarizing the voting results will be allowed from the outer perimeter of the precinct election commission.¹⁸⁷

5. Voting Day and Electronic Technologies

85.3% of the total number of voters registered at 133 polling stations took part in the elections conducted using electronic technologies on October 1.¹⁸⁸

5.1. Problems of informing the voters and preparing the election administration

After activating the counting machine at Gurjaani Precinct No. 19, the members of the commission did not check whether the machine received a ballot paper without a special QR code. The members of the commission told the GYLA observer that this regulation was no longer in force. After the instruction of the observer, they checked the correctness of the note with the District Election Commission and performed this procedure.

In the same precinct, a case was revealed when a voter was given two ballots instead of one. The ballots were taped together, which was probably not noticed by the registrar. The machine did not receive them. The ballots were considered spoiled and a new ballot was given to the voter.

Despite the detailed explanations provided by members of the Precinct Election Commission, some voters still encountered challenges in fully understanding the process and required assistance when placing their ballots in the scanner.

After the completion of the trainings of the members of the Precinct Election Commission, the CEC provided them with information regarding the new regulation related to the spoiled ballot. According to the amendment, if the ballot is considered to be spoiled, along with oth-

¹⁸⁴ Guidelines for the members of the Precinct Election Commission approved by the Resolution N45/2023 of the Central Election Commission of Georgia on August 2, 2023.

¹⁸⁵ Resolution No. 07/2023 of the Central Election Commission of Georgia of February 6, 2023 on determining the rules and conditions for conducting voting using electronic means, Article 10¹, available at: <https://www.matsne.gov.ge/ka/document/view/5713266?publication=6>, updated: 06.02.2024.

¹⁸⁶ Ibid, point 2.

¹⁸⁷ Ibid, point 4.

¹⁸⁸ “On the first of October, the interim elections of the Parliament and the mayor will be held”, official website of the CEC, September 30, 2023, available at: <https://cesko.ge/ge/siakhleebi/pres-relizebi/singleview/11032927-pirvel-oktombers-parlamentis-shualeduri-da-meris-riggareshe-archevnebi-gaimarteba>, updated: 06.02.2024.

er procedures stipulated by the law, the ballot should be folded and fastened with a metal binder (so-called stapler).¹⁸⁹ In all areas monitored by GYLA, the commissions performed the procedure in accordance with the new regulation.

District No. 32.09 of Gori was located in a small room. This did not hinder the voting process. Also, the building in which this polling station was located did not have a ramp.

In the conditions of the increased number of members of the commission, as well as the enlargement of the technical staff and precincts, in order to conduct the voting process smoothly and effectively observe the process, it is important for the CEC to ensure the organization of precincts with appropriate space.

5.2. Malfunctions related to the functioning of electronic devices

The electronic device for counting votes was out of order for some time in precinct No. 19 of Gurjaani, however, this fact did not hinder the voting process and voting continued with the second device. The technical staff ensured that the faulty machine was put into operation.

Also, the special MRZ (Machine-Readable Zone) reader of one of the verification machines at the precinct #19 of Gurjaani could not perceive electronic ID cards and, in order to identify the voters, the registrar entered the data manually. The chairman of the commission called the support technical team, after which the problem was solved.

One of the 4 verification machines was out of order at Gori No. 2 precinct. The device was excluded from the synchronization process and voter verification continued without it. The voting process was not interrupted.

To ensure the smooth conduct of the election process using electronic technologies, it is imperative for the Central Election Commission to provide comprehensive training to all levels of election commission members and support personnel. This training should equip them with the necessary skills to effectively address any disruptions caused by technology failures at polling stations on Election Day.

5.3. Cases of violation of the privacy of the vote

In the elections of October 1, there were also cases of violation of the secrecy of the vote, specifically, traces of marking with a marker were visible on the back of the ballot.

This kind of practice carries a significant risk in terms of violating the confidentiality of the vote and requires an appropriate response from the CEC.

In addition, individual cases were identified when the violation of confidentiality was caused by the voter's own actions (carrying the ballot from the voting booth to the ballot box without placing it in a frame-envelope). **To maximize the secrecy of the vote, the election administration must undertake comprehensive measures, including conducting awareness campaigns that extend beyond urban centers to encompass villages and other rural settlements in the regions. Special emphasis should be placed on the importance of maintaining secrecy during the training sessions for members of the Precinct Election Commission.**

¹⁸⁹ Resolution No. 07/2023 of February 6, 2023 of the Central Election Commission of Georgia on determining the rules and conditions for conducting voting using electronic means, Article 6, Paragraph 2, Sub-paragraph "h", available at: <https://www.matsne.gov.ge/ka/document/view/5713266?publication=6>, updated: 06.02.2024.

5.4. Illegal tracking of voters at the polling stations

In the October 1 extraordinary/by-elections, despite the absence of real competition, mobilization of coordinators/foreigners and voter tracking continued to be a problematic trend.

At Gurjaani polling station #7, the GYLA observer revealed a case when a representative of the “Georgian Dream” party was taking a video of the verification machine placed on the registrar’s table with a mobile phone. After noticing the observer, he stopped filming.

GYLA observers also revealed cases of gathering of people and tracking of voters in the surrounding areas of Kaspi No. 3, Gori No. 2 and No. 9, Gurjaani No. 18, No. 19 and No. 22 precincts.

On the perimeter of Gori election precinct #9, the coordinator of “Georgian Dream” was talking to an unidentified person on the phone and asked him to bring his employees. People gathered in the vicinity of Gurjaani Precinct No. 18 were contacting voters by mobile phone and telling them to come to the precinct. Also, the GYLA observer witnessed cases of voters being brought to the precinct by means of vehicles. Similar facts were revealed at the election precinct #19 of Gurjaani. According to the information of the GYLA observer, the representative of “Georgian Dream” in Kaspi Precinct Election Commission No. 3 spent his/her time communicating with the people gathered at the perimeter outside the election precinct. He/she was probably involved in the voter mobilization process.

According to the Venice Commission’s Electoral Code, voter lists must be published, but the list of those who came to the polls must not.¹⁹⁰ The reason for this is that the voter’s failure to show up at the polling station on the day of the election may indicate their political choice.¹⁹¹ According to GYLA, despite the fact that mobilizing voters to vote is a legal activity, it still has a negative context. With the current practice, in many cases, mobilization will turn into pressure, and in this regard, people employed in the public sector, public law legal entities and non-entrepreneurial (non-commercial) legal entities are especially vulnerable.

According to the election legislation, it is prohibited to physically obstruct the movement of voters, gather people or register voters within 100 meters of the polling station on Election Day.¹⁹² **In order to deal with this challenge, effective enforcement of established norms, detection of law breakers and imposition of appropriate fines on them are essential.**

6. Audit of extraordinary /by-elections held on October 1 and the electronic means used in these elections

On the initiative of CEC, on October 1, an audit was conducted of the interim/extraordinary elections held using electronic means and the compliance of the electronic means used in these elections.¹⁹³

¹⁹⁰ Code of Good Practice on Electoral Matters. Guidelines and explanatory report, European Commission through Law (Venice Commission) Adopted by the Venice Commission at its 51st and 52nd sessions (Venice, 5-6 July and 18-19 October 2002), CDL-AD (2002) 23, Strasbourg, 30 October 2002, p. 14, Website of the Venice Commission, available at: <https://rm.coe.int/090000168092af01>, updated: 06.02.2024.

¹⁹¹ Ibid, p. 22.

¹⁹² Georgian Election Code, Part 12 of Article 45.

¹⁹³ “Chairman of the CEC introduced the audit report of the October 1 elections to the parties involved in the elections”, October 27, 2023, available at: <https://cesko.ge/ge/siakhleebi/pres-relizebi/singleview/11033011-tseskos-tavmjdomarem-archevnebshi-chartul-mkhareebis-1-oktombris-archevnebbe-chatarebuli-auditis-angarishi-gaatsno>, updated: 06.02.2024.

The first stage of the audit included the visit of the auditors to Georgia, preparatory work and drawing up of an action plan, while the second stage included the direct audit and preparation of the report.¹⁹⁴

In general, the audit service included the preparation of an audit report and recommendations on the following issues: 1) compliance of elections (voting) conducted using electronic means with international electoral principles;¹⁹⁵ 2) technical and software functionality of the used electronic means (election technologies),¹⁹⁶ specifically, whether the hardware and software used in the elections met the tender conditions and technical specifications;¹⁹⁷ 3) Conformity of the elections (voting) conducted using electronic means with the electoral legislation of Georgia.¹⁹⁸

CEC Chairman Giorgi Kalandarishvili provided the information about the audit to his colleagues at the October 6 CEC meeting.¹⁹⁹ Ana Kobakhidze, an opposition member of the CEC, expressed dissatisfaction at the session and accused Kalandarishvili of untimely delivery of information to CEC members.²⁰⁰ According to Kobakhidze,²⁰¹ he found out the information about the implementation of the audit at the meeting of October 6.²⁰² In response, Giorgi Kalandarishvili noted that the management of the process was not the responsibility of the composition of the Central Election Commission, but the relevant structural unit - the Finance Department, and the Chairman of the CEC, due to his administrative functions, was aware of everything.²⁰³ Kalandarishvili clarified that the CEC members did not participate in this process, because there was no need for it, although they had information about the audit a few months ago, during the discussion on the budget.²⁰⁴ Also, according to Giorgi Kalandarishvili, if his colleagues wanted, he was ready to share information with them at every stage.²⁰⁵

On October 29, the CEC presented the results of the audit of the elections conducted on October 1, 2023 using electronic technologies.²⁰⁶ The presentation organized by the CEC was attended by representatives of political parties and non-governmental organizations, journalists, as well as authorized persons of electronic equipment supplier (Smartmatic International B.V.) and auditing (Pro V&V) companies.²⁰⁷ The audit report was published on the website

¹⁹⁴ "Meeting of the Central Election Commission", October 6, 2023, CEC official YouTube page, available at: <https://www.youtube.com/watch?v=ZEMHOu4uH0I&t=2395s>, updated: 06.02.2024.

¹⁹⁵ "Audit report - independent audit service of compliance of the Central Election Commission of Georgia (CEC), CEC website, available at: <https://cesko.ge/ge/archevnebi/2023/saqartvelos-parlamentis-2023-wlis-oqtombris-shualeduri-archevnebi/auditis-daskvna>, updated: 06.02.2024.

¹⁹⁶ Voter verification machines VIU Desktop 818-100; Sound counting special electronic devices PCOS SAES-1800Plus; tablet computer VIU Tablet 100; hardware software; Source code review.

¹⁹⁷ "Audit report - independent audit service of compliance of the Central Election Commission of Georgia (CEC), CEC website, available at: <https://cesko.ge/ge/archevnebi/2023/saqartvelos-parlamentis-2023-wlis-oqtombris-shualeduri-archevnebi/auditis-daskvna>, updated: 06.02.2024.

¹⁹⁸ Ibid.

¹⁹⁹ "Meeting of the Central Election Commission", October 6, 2023, official YouTube page of the CEC, available at: <https://www.youtube.com/watch?v=ZEMHOu4uH0I&t=2395s>, updated: 06.02.2024.

²⁰⁰ Ibid.

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

²⁰⁶ "Chairman of the CEC introduced the audit report of the October 1 elections to the parties involved in the elections", October 27, 2023, available at: <https://cesko.ge/ge/siakhleebi/pres-relizebi/singleview/11033011-tseskos-tavmjdomarem-archevnebsi-chartul-mkharebs-1-oktombris-archevnebsze-chatarebuli-auditis-angarishi-gaatsno>, updated: 06.02.2024.

²⁰⁷ Ibid.

of the Central Election Commission.²⁰⁸

According to the conclusion, the audited hardware and software used in the elections were in accordance with the tender requirements, technical specifications and Georgian legislation.²⁰⁹

As a result of the audit report, 3 recommendations were issued:²¹⁰ 1) It is desirable to review the process of testing the machines, since the machines used in the October 1st pilot election are only part of the equipment that will be used for the elections held throughout the country.²¹¹ 2) If a member of the commission included in the special list, who does not have the right to vote in their precinct, still appears at the precinct, it is preferable that the verification device emits a sound signal.²¹² 3) The verification machine shall emit a sound signal if the voter included in the portable ballot box list appears at the polling station.²¹³

According to the Chairman of the CEC, the audit will be conducted again for the 2024 general parliamentary elections.²¹⁴

GYLA believes that for the parliamentary elections of 2024, the audit should be carried out in two stages - before the elections and after the elections. This is necessary to check, on the one hand, the technical, software functionality and compliance of the electronic means (election technologies) to be used,²¹⁵ and, on the other hand, that no changes have been made to the audited technologies and software before the elections.²¹⁶

In addition, it is important that despite the need for organizational involvement of the CEC members in the planning and ongoing process of the audit of the elections held using electronic means, they should be provided with complete information regarding this process by the relevant department of the CEC.

²⁰⁸ "Audit report - independent audit service of compliance of the Central Election Commission of Georgia (CEC), CEC website, available at: <https://cesko.ge/ge/archevnebi/2023/saqartvelos-parlamentis-2023-wlis-oqtombris-shualeduri-archevnebi/auditis-daskvna>, updated: 06.02.2024.

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Ibid.

²¹³ Ibid.

²¹⁴ "Meeting of the Central Election Commission", October 6, 2023, official YouTube page of the CEC, available at: <https://www.youtube.com/watch?v=ZEMHOu4uH0I&t=2395s>, updated: 06.02.2024.

²¹⁵ Compliance with international electoral principles and Georgian electoral legislation.

²¹⁶ The information disseminated by the CEC secretary, Giorgi Javakhishvili, at the meeting of October 6, 2023.

4. RECOMMENDATIONS

Based on the experience of piloting electronic technologies in 2021-2023, the findings of the Kutaisi Sakrebulo mid-term elections on April 29, 2023 and the observation mission of mid-term and extraordinary elections on October 1, GYLA has developed recommendations that serve to improve election processes.

Problems of informing the voters and preparing the election administration

- In order for the election process to run as smoothly as possible using electronic technologies, it is important for the Central Election Commission to fully train the members of the election commission at all levels, so that they can independently eliminate the disruption caused by the technology failure at the polling stations on the day of the election.
- In order to inform the population and prevent the risks of spreading misinformation²¹⁷ in relation to electronic technologies, it is important that the CEC's ongoing campaign to inform voters expands and covers the population living in the regions as much as possible.
- It is important, in order to deal with the difficulties expected as a result of the enlargement of the precincts and the increase in voter activity, the election administration should take necessary and effective measures in advance so that the precinct election commissions can handle the flow of voters without delaying the process and creating queues at the polling stations. If necessary, increase the number of electronic votes counting devices in the precincts.
- In the conditions of the increased number of members of the commission, as well as the enlargement of the technical staff and precincts, in order to conduct the voting process smoothly and effectively observe the process, it is important for the CEC to ensure the organization of precincts with appropriate space.
- The member of the commission responsible for supervising the use of special frame-envelopes and the special electronic vote counting machine, in accordance with the established rules, should delay the voter until the ballot is placed in the ballot box.
- The Ministry of Justice of Georgia and the Central Election Commission of Georgia should conduct an active campaign to equip the citizens of Georgia with electronic ID cards.
- In order for the voter's right to vote to be equally protected throughout the country, it is important to introduce a uniform practice in accordance with the established rules in terms of handling spoiled, damaged and folded ballots at the level of all precinct election commissions.

²¹⁷ There is a risk associated with electronic technologies being misused to intimidate people. For example, misinformation campaigns may falsely claim that it is possible to establish a connection between the voter and their expressed will, thereby suggesting that the vote cast is not secret.

Challenges related to the violation of vote privacy

- In order to protect the secrecy of voters' votes as much as possible, the election administration should take all necessary measures, including providing information to voters. During the trainings of the members of the Precinct Election Commission, special emphasis should be placed on the importance of this issue.

Legislative regulation, election disputes

- The essential issues related to electronic elections should be clearly written in the Election Code. For example, what means will be used to verify the voters at the polling station, etc.
- In order to effectively respond to cases of misuse of election electronic technology, the provisions of accountability of public officials and election administration representatives should be written, clear and adequate sanctions should be defined both in the election code and in the criminal legislation.
- In order to effectively and fairly judge election disputes, the qualifications of judges should be raised in connection with the use of electronic technologies in elections.

Revealing the will of the voters

- In relation to the authenticity of the will expressed on the ballot, in the guidelines for precinct and district election commissions, the norm should be clearly defined and a uniform practice should be established in accordance with the legislation.
- Within the framework of the information campaign of the CEC, the reasons for the invalidity of the ballot shall be clearly explained to the citizens.
- Based on the practice of frequent changes in the electoral legislation in Georgia, in order to avoid the expected risks, it is important for the CEC to focus on the criteria for the invalidity of election ballots and the scope of reasoning of the Precinct Election Commission, to provide the parties involved in the elections with comprehensive information regarding the regulation surrounding a specific issue.

Audit of electronic elections

- Regardless of the need for organizational involvement of the CEC members in the planning and ongoing process of the audit of the elections held using electronic means, they should be provided with complete information regarding this process by the relevant department of the CEC.
- For the parliamentary elections of 2024, the audit should be carried out in two stages - before the elections and after the elections. This is necessary to check, on the one hand, the technical, software functionality and compliance of the electronic means (election technologies) to be used, and, on the other hand, that no changes have been made to the audited technologies and software before the elections.

Digitization of ballots

- In order to increase the credibility of the process, it is better to make a change in the legislation, on the basis of which the CEC will ensure the digitization of all ballot papers, including those in those areas where the elections will be held using electronic devices.

Controlling the will of the voters

- Totally prohibit voter tracking by an unauthorized person, including through lists belonging to public information, both inside and outside the voting room. Law enforcement bodies should respond effectively to violations of the restrictions provided for in Article 45, Clause 12 of the Election Code of Georgia (regulation related to the perimeter).
- In order to prevent influence on the will of voters on the Election Day, it is necessary to declare the day before the election as a day of silence.

Remarks

ⁱ During the communication with GYLA, the CEC emphasized the implementation of an information campaign by the election administration in public institutions, educational institutions, metro stations, shopping malls and on public holidays. Attention was also focused on training projects such as election administrator courses, election development school and election camps. According to GYLA, it is important that the CEC's information campaigns cover even more the villages and settlements in the regions along with the big cities. Furthermore, it is also important that as a result of information campaigns, the population will have an objective idea about the goals and limits of the introduction of electronic election technologies.

ⁱⁱ According to the information provided by the CEC to GYLA, the election administration plans to return certain (enlarged) precincts to their old borders, as well as to add the 3rd ballot counting device to the precincts. The return of precincts to their old boundaries is likely to affect precincts where traditionally high voter turnout was recorded.