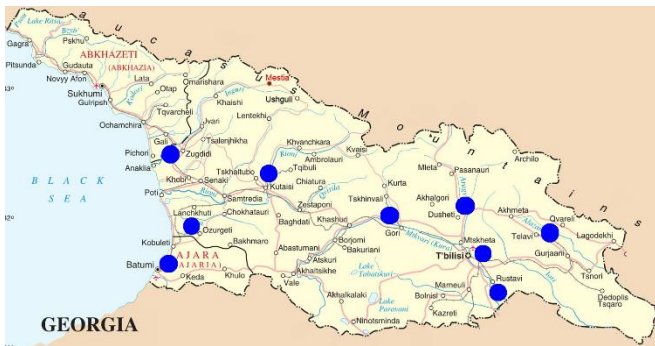




## #GeorgianElections2017 Final Newsletter #7 (June-November 2017)

### About the GYLA's monitoring mission

**The Georgian Young Lawyers' Association (GYLA) monitored the local self-government elections of 2017** through its head office in Tbilisi and regional offices in eight regions of Georgia: Adjara, Guria, Imereti, Shida Kartli, Kvemo Kartli, Kakheti, Mtskheta-Mtianeti, and Samegrelo.



The GYLA's monitoring in the framework of the 2016-2018 electoral cycle aims to contribute to objective, fair and effective investigations, to assist the establishment of fair trial and uniform practice and to ensure inclusive and competitive electoral environment for women, persons with disabilities and ethnic minorities, as well as to contribute to the transparency of electoral processes, specifically, to inform Georgian citizens and the international community of violations and trends related to the 2017 local self-government elections, and to emphasize the shortcomings that accompany

electoral processes. The monitoring also aims to identify problems in the electoral legislation and to advocate relevant legislative changes after the elections.

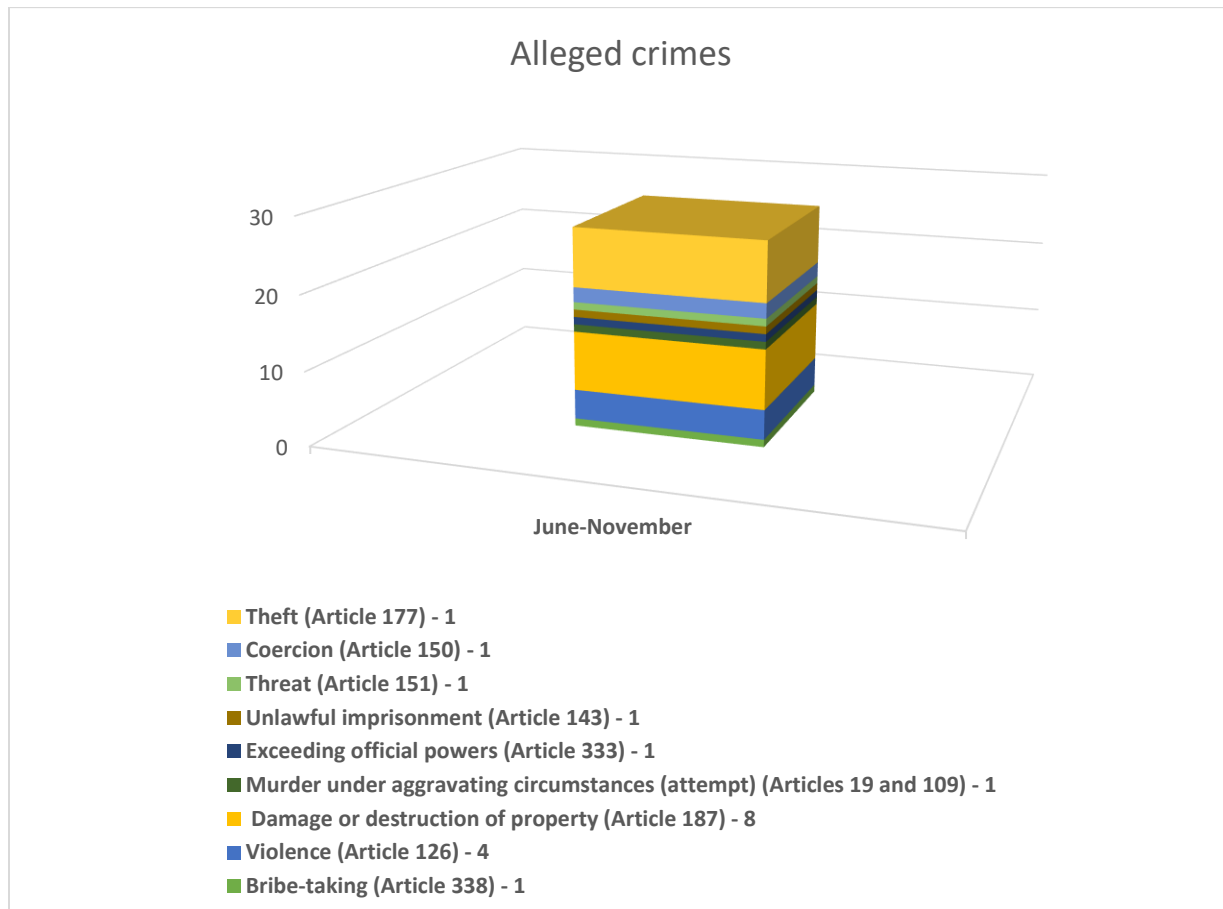
In the case of identification of violations, the organization submitted relevant information and filed complaints in the Election Administration, the Interagency Commission for Free and Fair Elections, the State Audit Office, and other relevant agencies in order to ensure response provided for by law.

The present newsletter deals with incidents, developments, and violations that can exert a certain influence on the electoral environment. The GYLA has requested additional information in connection with some issues related to alleged violations and incidents cited in the newsletter, and we are going to inform the public about the results of its analysis in the framework of ongoing studies.

**The present newsletter was prepared in the framework of the project “Promoting more competitive, fair and inclusive electoral environment for the 2016-2018 electoral cycle in Georgia”, which is being implemented with the support of the USAID.**

## Objective, Independent and Affective investigation

The GYLA monitored the response of law enforcement agencies to election-related crimes during the local self-government elections of 2017. The organization observed 19 ongoing criminal cases related to the elections. Law enforcement agencies launched/conducted investigations into the following types of alleged crimes:



It is noteworthy that we have identified a high number of incidents involving damage or destruction of property, which indicates that the Ministry of Internal Affairs must take measures to prevent such crimes.

As in the 2016 parliamentary elections, the problems identified in the elections of 2017 included the practice of the so-called **pre-investigation inspections**, which is not provided for by law. The [final report of the Interagency Commission for Free and Fair Elections](#) reveals that such inspections were conducted in connection with five incidents. One of the cases showed that the so-called pre-investigation cases are assigned special numbers and registered, which points to the systematic nature of this practice.

We haven't identified any cases where the so-called pre-investigation inspection ended with launching an investigation, which deepens doubts that such inspections are intended for refraining from launching investigations and for excluding alleged cases of crimes from statistics.

### *General problems*

- It should be noted that none of the alleged crimes identified by the GYLA were qualified under Article 162<sup>1</sup> of the Criminal Code (violence or threat of violence at a polling station, at a place where an election commission is located or in the adjoining area, or during an event of canvassing or election campaign). According to the statistics provided in the report of the Interagency Commission, only 1 case was qualified under the said article, and even in this case criminal prosecution has not been launched against anyone. Such statistics indicate that there was no need to include the said article in the Code.
- The GYLA has not identified any alleged crimes with a political discriminatory motive. There was one case (an attack that took place in the village of Uraveli, Akhaltsikhe Municipality) in which it was stated that the crime didn't involve a political motive. In this regard, we consider it necessary to raise the consciousness of law enforcement agencies to ensure that crimes committed with a discriminatory motive will be properly qualified and punished.
- Despite the fact that not a long time has passed since the said crimes, the majority of cases are/will be problematic because of protraction of investigation. Due to the specific nature of some of the crimes, the possibility of conducting a meaningful investigation decreases with the passage of time (certain evidence is lost, witnesses might forget details that are important for the case, etc.).

### *Preventive measures*

- We should give a positive assessment to the fact that the Ministry of Internal Affairs was mobilized and took preventive measures on the polling day. However, on the downside, it should be mentioned that police officers deployed near polling places were not informed about the procedures of entering a polling place and about persons who are authorized to be present at a polling station. In a number of cases, after the polling procedure was over, police officers closed the entire building in which several polling places were located, and observers had to argue with police officers and negotiate their way into the polling place they wanted to enter.
- We should give a positive assessment to the order of the MIA which instructed police officers to film a video in the case of an incident.

**The GYLA continues to study the cases and will later present an in-depth study to the the public.**

## Administration of justice in electoral disputes and existing challenges

According to the results of examination of electoral disputes during the 2017 local self-government elections that were analyzed by the GYLA, the complaints filed by the GYLA's observers during the first and second rounds – on the polling days and during the post-election period – dealt with the following:

- processing of personal information of voters by representatives of electoral subjects;
- inappropriate exercise of rights and violations of lot-casting procedures by members of precinct election commissions (PECs);
- violations related to polling procedures;
- restriction of observers' rights;
- violations related to vote count and summarization of polling results.

It should be noted that the complaints filed after the polling days mainly dealt with various inaccuracies in the summary protocols of PECs. In particular, the following issues still remained problematic in these elections:

- non-uniform completion of summary protocols;
- absence of signatures and seals of commissions;
- discrepancies in reconciliation figures (higher or lower number of valid ballot papers);
- drawing up of amendment protocols in violation of the law, **at which time administrative proceedings were not conducted in full and circumstances related to the case were not investigated completely.**

As for electoral disputes conducted by other subjects,<sup>1</sup> complaints filed in district election commissions (DECs) mainly dealt with violations of polling procedures, inappropriate completion of summary protocols, and violations of voters' rights.

### *General trend*

The examination of electoral disputes has mainly revealed that although election administrations and courts confirmed violations of the electoral legislation, they failed to grant complaints **concerning invalidation of summary protocols and recounting of precinct results, arguing that the violations had not exerted substantial influence on the polling results, and only**

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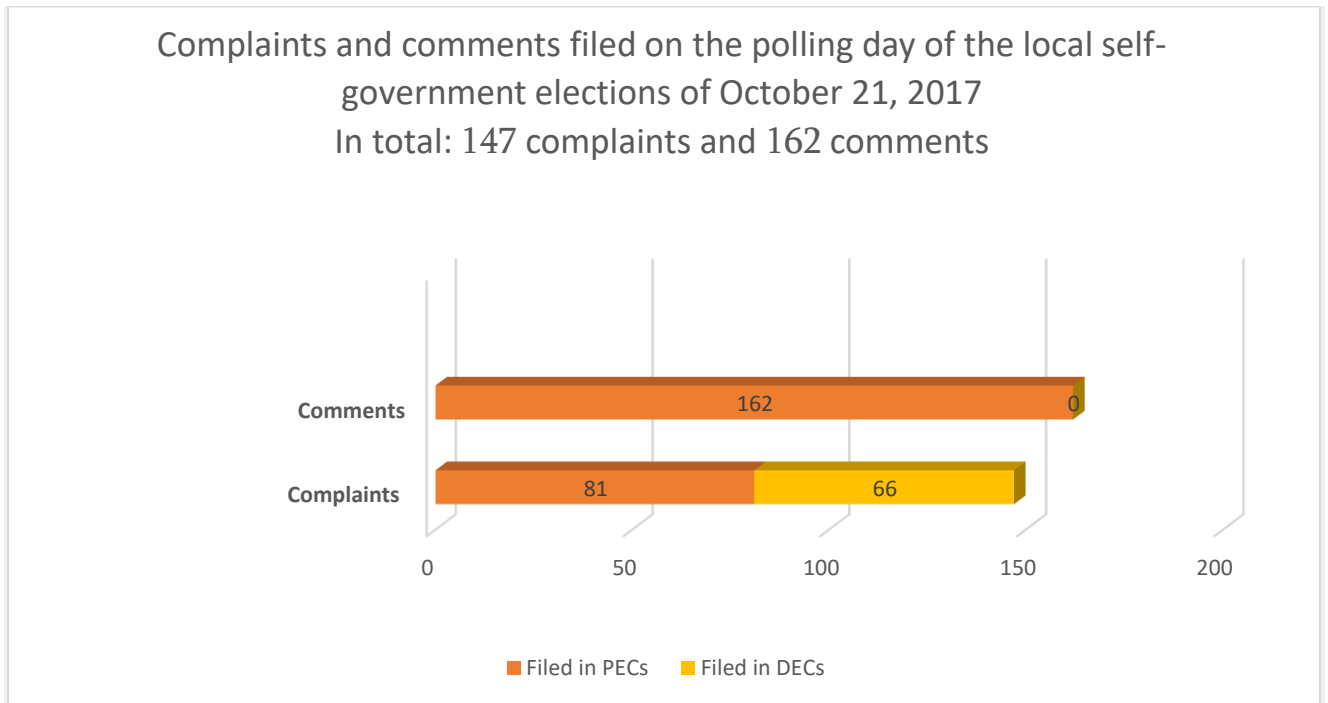
<sup>1</sup> During the monitoring process, the GYLA's observers studied 67 electoral disputes (Kvemo Kartli, Kakheti and Adjara) conducted in DECs by electoral subjects (3 complaints) and observer organizations (64 complaints).

limited themselves to imposing disciplinary liability. The decrees of election administrations didn't contain appropriate justification, and circumstances important for the case had not been properly investigated/assessed.

### *The statistics of complaints/comments and legal proceedings*

The statistics of complaints/comments filed by the GYLA's observers in election commissions and courts and of decisions taken with regard to these complaints:

#### **First round:**

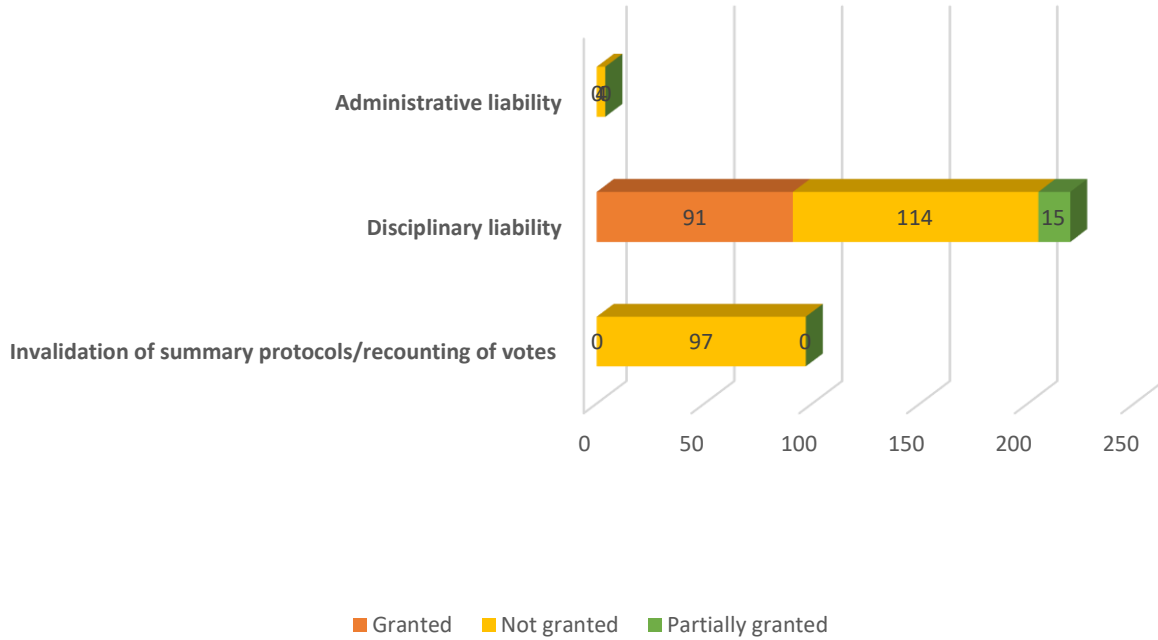


**In 2 cases** out of the complaints filed in DECs (270 complaints in total), the GYLA demanded invalidation of polling results,<sup>2</sup> **in 39 cases** – invalidation of summary protocols of PECs, **in 58 cases** – recounting of polling results, **in 220 cases** – disciplinary liability of members of PECs, and **in 4 cases** – administrative liability of members of PECs.<sup>3</sup>

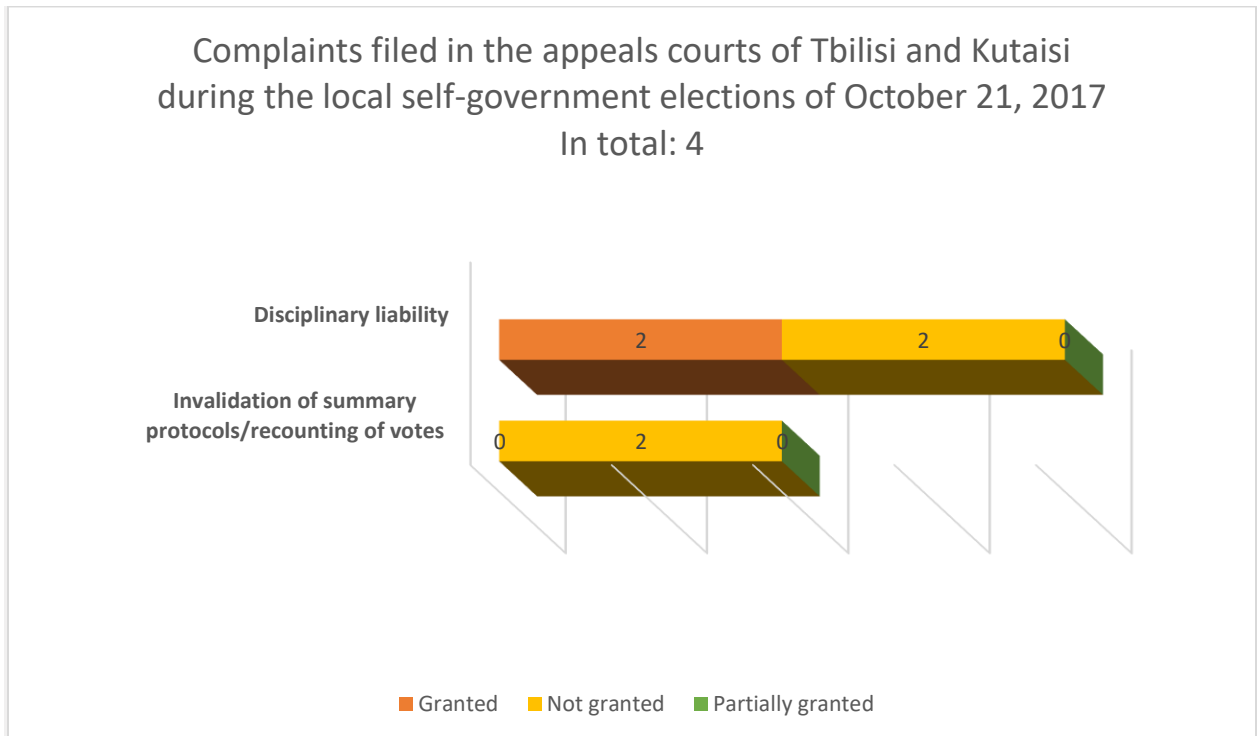
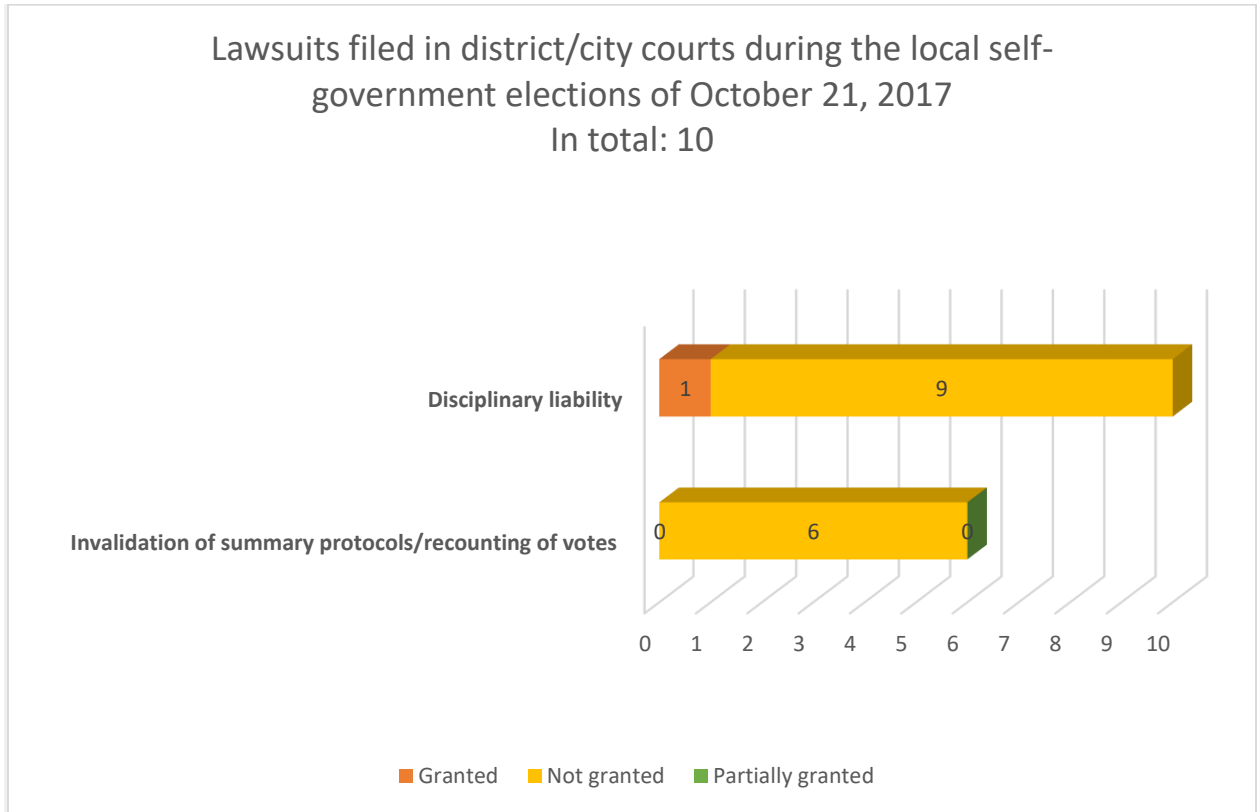
<sup>2</sup> The complaints concerned a higher number of valid ballot papers in the summary protocols of PECs No. 102 and No. 22 of Electoral District No. 79 of Batumi.

<sup>3</sup> The GYLA's observers made several demands in a single complaint, due to which the number of demands exceeds the number of complaints.

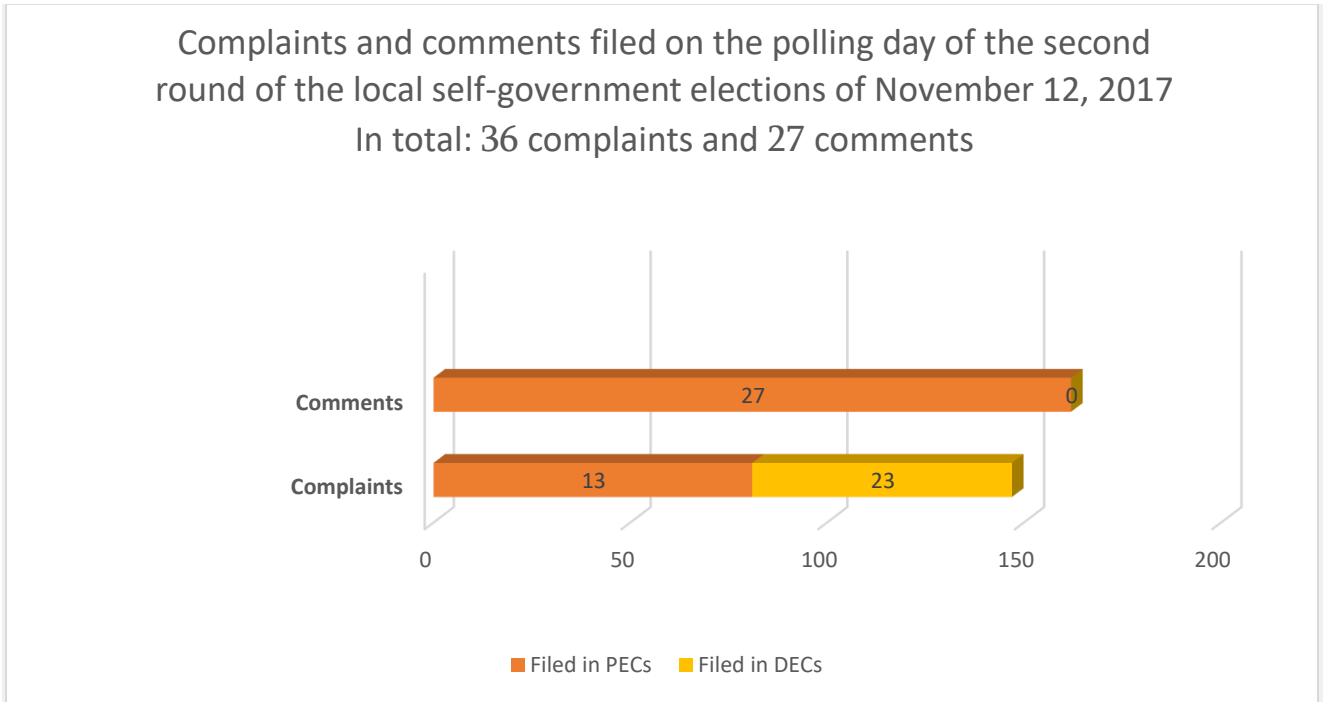
Complaints and demands filed in DEC during the local self-government elections of October 21, 2017  
In total: 321 demands



The GYLA appealed the negative decisions of DEC's in court.



**Second round:**



**In 1 case** out of the complaints filed in DECs during the second round, the GYLA demanded recounting/verification of invalid ballot papers,<sup>4</sup> **in 1 case** – invalidation of the results of ballot papers from a mobile box,<sup>5</sup> **in 1 case** – identification of registrars according to registrar’s seals on 16 invalid ballot papers and imposition of disciplinary liability on them,<sup>6</sup> and **in 22 cases** – disciplinary liability of members of PECs.

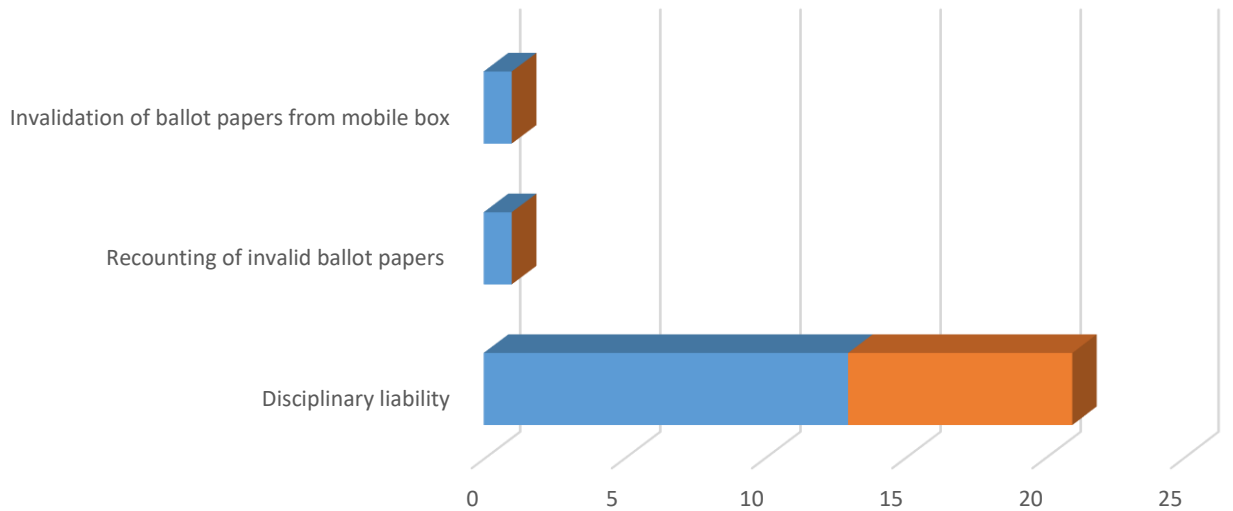
<sup>4</sup> PEC No. 59 of Electoral District No. 60 of Ozurgeti

<sup>5</sup> PEC No. 13 of Electoral District No. 60 of Ozurgeti

<sup>6</sup> PEC No. 16 of Electoral District No. 60 of Ozurgeti



### Complaints and demands filed in DEC during the second round of the local self-government elections of November 12, 2017



	Disciplinary liability	Recounting of invalid ballot papers	Invalidation of ballot papers from mobile box
Granted	13	1	1
Not granted	8	0	0

Together with the statistics of concrete violations and electoral disputes, we would like to **emphasize several trends** that were observed at the time of examination of electoral disputes in election administrations as well as in district/city courts and appeals courts.

#### *Malpractice in administrative proceedings in DEC:*

- **Shortcomings related to administrative proceedings:** In connection with the disputes conducted by both the GYLA and other subjects, it has been revealed that DEC failed to conduct administrative proceedings in compliance with procedures provided for by the electoral legislation. For example:
  - When issuing decrees, they failed to observe the requirements of administrative proceedings (DECs of Tianeti, Krtsanisi, Marneuli and Dmanisi), because the decrees didn't contain appropriate justification and were adopted in violation of the main principle of administrative proceedings that an administrative body must thoroughly investigate all the circumstances important for the case and take a decision on the basis of evaluation and analysis of these circumstances. For example, on the day after the polling day, PECs drew up amendment protocols<sup>7</sup> of summary

<sup>7</sup> The establishment of this trend was made easier by the addition of Subparagraph D<sup>1</sup>, Paragraph 2 of Article 26 to the Election Code of Georgia this year, which allows PECs to draw up an amendment protocol of a summary protocol of polling results *if there are explanatory letters of members of the relevant PEC and/or other legal and factual grounds*.

protocols without the participation of the relevant member of the PEC. The amendment protocols were drawn up only on the basis of the memory of members of the PECs rather than on the basis of opening and thorough analysis of electoral documentation (log-book). DEC's regarded explanatory letters of PEC members as undisputable and, sometimes, only evidence, including in cases when the explanatory letter contained contrary evidence with regard to discrepancies in the reconciliation figures in the summary protocol.

- DEC's cast lots on issues that had not been substantively investigated.
- **The trend of refusing to grant complaints:** In a number of cases, despite the gravity of violations, election administrations failed to grant the complaints in full and only imposed disciplinary liability on commission members. The arguments that election commissions relied on were that, in their opinion, *the identified violations were not gross violations of the electoral legislation and they had not exerted an influence on the free expression of voters' will and on the results of the polling day and the elections*. Regardless of the gravity of violations, DEC's gave preference to applying light measures of disciplinary liability and didn't apply more adequate measures provided for by law. In spite of the fact that concrete violations were confirmed by relevant evidence, DEC's failed to satisfy demands made in complaints and didn't investigate the evidence properly, especially with regard to demands to invalidate the summary protocols of PEC's and to recount the polling results.

**The same was the case with regard to examination of complaints filed by other subjects.** DEC's rejected most of the complaints on the basis of the same argument that the identified violations were not grave violations that could exert a significant influence on the final results of the elections. DEC's disregarded the requirements of the Election Code of Georgia despite the fact that they didn't deny that members of PEC's had committed misconduct, stating that their guilt was not so grave as to justify the imposition of even light disciplinary liability.

- **Few cases of proactive examination of complaints:** DEC's rarely showed the initiative to proactively study possible violations and to respond in an appropriate manner in the absence of a complaint of an interested person.

### *Legal proceedings in courts*

**The courts often failed to grant complaints related to invalidation of summary protocols and recounting of PEC results,** including in cases of gross violations. They agreed with the arguments of election commissions that **the identified violations were not gross violations of the electoral**

**legislation and that the violations had not exerted an influence on the free expression of voters' will and on the results of the polling day and the elections.**

**DECs No. 6 of Samgori and No. 12 of Gurjaani were exceptions from this trend.** A decision of DEC No. 6 of Samgori was the only decision during the 2017 local self-government elections which directed a PEC to recount results in compliance with the GYLA's demand. As for DEC No. 12 of Gurjaani, it decided to examine and grant the GYLA's motion regarding joint examination of complaints filed with regard to one and the same issues and satisfied the filed complaints.

We should also mention the decisions of the **Tbilisi Court of Appeals**<sup>8</sup> and the **District Court of Mtskheta**.<sup>9</sup> In one case, the appeals court partially granted the GYLA's complaint, explaining that **the chairpersons of PECs No. 60 and No. 41 of the Saburtalo District had failed to appropriately assess and prevent actions of representatives/observers of electoral subjects intended for recording identifying personal data of voters who cast votes in the elections, which representatives/observers of electoral subjects are not entitled to do.** And in another case, **the court invalidated decrees no. 16 and no. 17 of PEC No. 19 of the Tianeti District, because they had been issued in violation of requirements of the General Administrative Code and the Election Code.**<sup>10</sup>

### **Additional information**

The Georgian Young Lawyers' Association observed the post-election period **in 52 DEC**s (including 5 DEC's during the second round). In the cases of identification of violations that took place on the polling days, the GYLA filed relevant complaints/lawsuits in both PECs/DECs and courts. In addition to the strategic litigation, the GYLA's observers studied the electoral disputes conducted by other subjects (local observer organizations and representatives of electoral subjects) in DEC's and courts. In two cases, the GYLA represented<sup>11</sup> electoral subjects in court.<sup>12</sup>

It should also be noted that assessment of the election in its entirety only on the basis of the polling days would be incorrect and incomplete. After the summarization of monitoring results, the GYLA is going to release a full report and a study analyzing the complete picture of the elections, including the pre-election period, the polling days, examination of disputes, and summarization of election results. On the basis of the said documents, the GYLA will give relevant recommendations to the Election Administration and the authorities.

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<sup>8</sup> The city of Tbilisi, October 28, 2017 (Case No. 3B/7325-17; Case No. 330310017002143594)

<sup>9</sup> The city of Mtskheta, October 25, 2017 (Case N-3/266 -17)

<sup>10</sup> <https://gyla.ge/en/post/sadamkvirveblo-organizaciebi-moutsodeben-samartaldamcav-organoebstianetis-saolqo-da-20-saubno-saarchevno-komisiis-qmedebebit-dainterndnen#sthash.NrS3U6Ta.dpbs>

<sup>11</sup> Representation of Tamaz Mechiauri, the mayoral candidate in Electoral District No. 19 of Tianeti, during which the court granted our demand and abolished [decrees](#) no. 16 and no. 17 of DEC No.19 of Tianeti.

<sup>12</sup> In District No. 83 of Khelvachauri, in connection with the case of the electoral bloc Bakradze, Ugulava – European Georgia, the court decided that, despite fake signatures of commission members on the amendment protocol, the number of signatures establish a quorum even without these fake signatures and that the demand should not be granted (Case No. 820310017002147679 (3-166)).

## Inclusive and competitive electoral environment

It is a strategic direction for the GYLA to study the situation of realization of political rights in Georgia and to determine the extent to which the passive and active suffrage of the citizens of Georgia is exercised and whether the existing legal framework ensures the creation of a competitive, fair, and inclusive electoral environment.

With the aim of evaluating the inclusive environment before the 2017 local self-government elections, the GYLA observed both the pre-election environment and the polling days.

It should be noted that intra-party discussions on the selection/nomination of candidates continued until the deadline for registration of mayoral/majoritarian candidates, and nomination of women for leading positions and their participation in politics still remained a challenge in these elections.<sup>13</sup>

As of the reporting period, the realization of political/electoral rights of ethnic minorities and persons with disabilities (PwDs) also remains a challenge.

With the aim of protecting the political/electoral rights of PwDs and familiarizing decision-makers with the problems and findings revealed during the study:

- The GYLA has got actively involved in the task force on promoting inclusive electoral environment in the framework of the CEC, where – together with the Election Administration and other NGOs – we discuss the challenges and needs, which will improve the rights situation of PwDs. For example, this year the task force has created the standard of behavior of PEC members in relation to PwDs, adapted the CEC’s website for visually impaired voters, and activated a service of providing information in sign language for deaf and hearing impaired voters.<sup>14</sup>
- In addition to the foregoing, the GYLA has created a separate platform for sharing the findings and challenges revealed as a result of the study on inclusive environment. The organization created a thematic group promoting inclusive environment which brings together representatives of the Election Administration, the Public Defender, and the Personal Data Protection Inspector, as well as of other NGOs. The group is designed to discuss existing challenges and to plan realistic steps for creating inclusive and competitive electoral environment.<sup>15</sup>

<sup>13</sup> <https://gyla.ge/ge/post/qalta-politikuri-monatsileobis-samushao-jgufis-ganckhadeba#sthash.Xc98maFX.dpbs>

<sup>14</sup> <http://cesko.ge/eng/list/show/111356-tsisko-kru-da-smenadaqveitebul-amomrchevlebs-informatsias-jestur-enaze-miatsvdis>

<sup>15</sup> <https://gyla.ge/en/post/2016-tslis-saparlamento-archevnebzemighebuli-gamocdileba-da-samomavlo-nabijebi-2017-tslis-adgilobrivi-tvitmmartvelobis-archevnebstvis#sthash.VFFGBe0x.dpbs>

- The GYLA has held a number of networking meetings across Georgia with representatives of electoral subjects, candidates, media, and local NGOs. At the time of the meetings, together with other electoral issues, our representatives talked about the challenges related to the situation of political/electoral rights of PwDs and about the obligation of stakeholders in the electoral process to carry out activities in relation to PwDs within their competence.
- For the first time in the GYLA’s monitoring mission, during the monitoring of the polling days of the 2017 elections, we emphasized the extent to which PwDs exercised their constitutional right to participate actively in the elections and the obstacles faced by beneficiaries of support as individuals casting votes in the elections.

### **Pre-election environment**

With the aim of assessing the pre-election environment, we held up to 30 networking meetings with representatives of the media, local NGOs, election administrations, and electoral subjects across the country. The participants of the meetings assessed the situation in terms of realization of political/electoral rights of women, PwDs, and ethnic minorities using special questionnaires.

About 30% of the participants believed that the pre-election environment was favorable for candidates who were women, PwDs, and representatives of ethnic minorities. However, it should be noted that the participants emphasized a number of challenges – specifically, the information vacuum, existing stereotypes, the language barrier, etc. – which, in their opinion, are hindering factors in the realization of electoral rights.

### **Polling day**

The GYLA’s observers monitored the polling days of the 2017 local self-government elections by means of special questionnaires.

We identified the following violations when assessing the degree of inclusiveness of the electoral environment:

- Various actors used hate speech against nominated women candidates;
- The polling places were not properly adapted, which interrupted the voting procedure for voters with disabilities;
- Despite the code of conduct and ethics developed by the Election Administration, we identified a number of violations by members of PECs, which were manifested in remarks and comments addressed to voters with disabilities. For example, a chairperson of a PEC did not allow a voter without a disability to enter a voting booth designed for voters with disabilities, saying that he/she

would not allow him/her to enter a voting booth designed “for them”. In addition, members of PECs used the word “invalid” in a diminishing context (PECs No. 1 of Saburtalo District and No. 15 of Chugureti District).

- The language barrier was one of the major challenges that ethnic minorities faced in exercising their political rights.

**Detailed information about the observation of inclusive electoral environment will be provided in the framework of relevant studies in which** we will analyze the extent to which the aforementioned groups are involved in political and electoral processes and examine the hindering circumstances.



PECs No. 68 and No. 70 of Saburtalo District No. 3 where voters with disabilities were registered, according to the GYLA's observer. According to the [information](#) disseminated by the CEC, the said PECs were supposed to be equipped with ramps.

**Work in thematic groups and advocacy of recommendations developed in response to challenges identified during the 2017 local self-government elections**

*With the aim of analyzing the findings and challenges identified during the 2017 local self-government elections, the GYLA continues to work on recommendations in thematic groups involving interested persons.*

*The work in thematic groups aims to look for ways of resolving challenges in terms of realization of electoral and political rights that were identified in legislation and practice during the elections. This will contribute to the establishment of a competitive, fair, and inclusive electoral environment in Georgia.*

*One of the important components for the establishment of a free and fair electoral environment is to analyze the experience gained during the previous elections. This enables us to identify the challenges that exist in legislation and practice and to plan future steps. And systemic analysis will help us eliminate the inaccuracies and shortcomings which, in combination, cause the establishment of malpractice.*

*Based on the practical experience gained in the previous elections, the GYLA has identified its own findings and developed recommendations in the following five thematic areas:*

- *violations in the pre-election period, on polling days, and in the post-election period (canvassing, the use of administrative resources, etc.);*
- *activity of agencies involved in elections (the Election Administration, the State Audit Office, the Interagency Commission, etc.);*
- *promotion of objective, fair, independent, and effective investigations in cases where measures of criminal and administrative liability are taken against politically active persons;*
- *promotion of access to fair trial and establishment of uniform practice;*
- *promotion of inclusive and competitive electoral environment for women, PwDs, and ethnic minorities.*

***We offer all individuals interested in the electoral process to get involved in the thematic groups and collaborate with us. In addition, in order to advocate the developed recommendations across Georgia, we continue to hold the series of meetings with representatives of political parties, media, NGOs, and the Election Administration.***



საინფორმაციო ტექნოლოგიების მომსახურება შესაძლებელი გახდა ამერიკელი ხალხის მხარდაჭერის წყალობით, რომელიც აშშ-ის საერთაშორისო განვითარების სააგენტოს (USAID) მეშვეობით იქნა გაწეული. საინფორმაციო ტექნოლოგიების გამოყენებით მოსაზრებები ეკონომიკის საპროცესო უფლებების დაცვის მიზნით ასევე შესაძლებელია არ გამოხატავდეს USAID-ის და აშშ-ის მთავრობის შეხედულებებს.

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