



## GEORGIAN YOUNG LAWYERS' ASSOCIATION

# 5 JANUARY 2008 SPECIAL PRESIDENTIAL ELECTIONS AND PLEBISCITE OBSERVATION MISSION<sup>1</sup>

## *MONITORING REPORT*

*17 January 2008*

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**British Embassy  
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## I. INTRODUCTION

After the break-up of the peaceful demonstration on 7 November 2007 and the shutting down of independent television companies by the authorities, a state of emergency was announced.<sup>1</sup> On 8 November 2007, the President of Georgia stated his readiness to hold out-of-turn presidential elections and a plebiscite on 5 January 2008. On 16 November 2007, the state of emergency was lifted, President Saakashvili resigned and the Parliament of Georgia formally determined the date of elections on 25 November. After declaring 5 January 2008 as the Election Day, a pre-election campaign started.

The Georgian Young Lawyers' Association (GYLA), which since its establishment has been actively involved in monitoring of elections of different levels, On 12 November, together with two observing organizations (Transparency International – Georgia and the International Society for Fair Elections and Democracy), published “**10 preconditions for holding fair and free elections in Georgia.**”<sup>2</sup>

Observation of the 5 January 2008 elections by GYLA became possible with the financial assistance of the National Endowment for Democracy (NED) and embassies of the United Kingdom, the Netherlands and the Federative Republic of Germany.

## II. MISSION FORMAT

Since its establishment, the Georgian Young Lawyers' Association (GYLA) has been actively involved in monitoring elections of legislative, executive, and local authorities. The purpose of the GYLA Observation Mission is to study to what extent the Election Administration, political subjects, media sources, public officials and State authorities observe the election legislation and established standards in a pre-election period, on the Election Day and in the process of summarizing election results and reviewing complaints.

On 12 November 2007, the governing board of GYLA issued a decision to the effect that GYLA would be monitoring 5 January 2008 elections pre-election period in Tbilisi and 7 regional centers (Kutaisi, Batumi, Ozurgeti, Telavi, Rustavi, Gori and Dusheti) as well as the Election Day in Tbilisi, Kutaisi and Batumi-Khelvachauri.

## III. PRE-ELECTION PERIOD MONITORING<sup>3</sup>

In monitoring the pre-election period, GYLA observers focused on both legislative and practical shortcomings affecting free and fair competition among presidential candidates.

### *a) A list of buildings and availability of places for pre-election campaign*

In accordance with **Article 74(6)** of the Election Code of Georgia:

“The District Election Commission, based on a list of buildings made available by local self-governance and governance bodies, for the election subjects and in agreement with them, draws up a schedule of elections campaign events (if the events overlap or the subjects fail to agree, the order of the events shall be decided by casting lots).”

**Article 76** of the Election Code prohibits use of official powers in an election campaign. According to paragraph 3 of the mentioned article, use of official powers, inter alia, implies the following:

“Use of occupied buildings by the State authorities and local self-governance bodies as well as by organizations financed from the State Budget of Georgia, for activities that contribute to presentation and/or election of a candidate, provided that other election subjects have no possibility to use buildings of similar purpose on the same conditions.”

Unlike the local self-governance bodies elections in 2006, this time the self-governance bodies sent information to the Election Administration on premises allocated for campaigning, as required by law. This information was placed by the CEC on its website.

In the course of monitoring several cases were identified, which may **be assessed as violation of the Election Code and therefore required scrutiny and assessment from the part of the Election Administration.** In particular:

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<sup>1</sup> See “GYLA Commenced Human Rights Week with Freedom of Assembly”, 10.12.2007, available at <http://www.gyla.ge/?display=news&view=617&lang=eng>

<sup>2</sup> See “10 preconditions for holding fair and free elections in Georgia”, available at <http://www.gyla.ge/?display=news&view=607&lang=eng>

<sup>3</sup> See GYLA's preliminary report of the pre-election monitoring published on 3 January 2008 at <http://www.gyla.ge/?display=news&view=628&lang=eng>

- **28 November, meeting in a session hall of the Tbilisi Sakrebulo** – former President of Georgia Mikheil Saakashvili met IDPs from Abkhazia within his pre-election campaign. Together with him, Koba Subeliani, Minister for Refugees and Accommodation, and Gigi Ugulava, Tbilisi Mayor, were also meeting the IDPs. In our view, this meeting was part of a pre-election campaign/propaganda.<sup>4</sup> It is worth noting that Tbilisi Sakrebulo hall is not mentioned in the list of premises available for campaign purposes that the Tbilisi Municipality sent to the CEC.<sup>5</sup>
- **11 December, Levan Gachechiladze**, a candidate for presidency from the United Opposition Movement and representatives of the National Council visited **Telavi**. The opposition members started meeting with their electorate in the Telavi Culture House but, due to insufficient area of the premises, moved to the Telavi State Theatre. **However, the Theatre administration refused to let the opposition in and did not open the door for the reason that repair works were under way in the Theatre. It should also be noted here that, on 10 December, the candidate for presidency Mikheil Saakashvili met voters in this very Theatre.** Candidate Saakashvili did not encounter any obstacles from the part of the Theatre administration in meeting his electorate in the large hall of the Theatre, irrespective of the ongoing repair works. The Telavi State Theatre is financed from the budget of the Telavi Municipality.
- **21 December, Zestaponi**, according to the statement of the election headquarters of the candidate for presidency Arkadi Patarkatsishvili, on 21 December, they were not let in the Ferroalloy Plant Culture House to give a presentation of their supporters' group, although the event was pre-agreed with the administration of the Culture House.

### **b) Participation of the central and local public officials in the pre-election campaign**

In the course of the pre-election campaign monitoring, the GYLA found that **one of the most serious violations has been participation of central and local public officials in the pre-election campaign in violation of the law.**

Article 73(5) of the Election Code reads:

*"5. The following persons have no right to participate in a pre-election campaign:  
(h) Public officials of State and local governance bodies, when performing official duties."*

Furthermore, pursuant to Article 76 of the Election Code, public officials holding simultaneously **political posts**, are not subject to any limitations in terms of election campaigning, provided they are **registered candidates**. Monitoring revealed participation in pre-election campaigning by both public officials holding political posts (such as a Members of Parliament, Ministers, City Mayor) and other public officials (such as Governors) who were not registered candidates and therefore, in these particular elections, were subject to a general obligation not to participate in pre-election campaign while on duty or when under obligation to perform official duties in time prescribed by law and sub-laws.<sup>6</sup>

- **On 3 December**, the GYLA sent a formal letter to the Central Election Commission requesting that public officials – **Koba Subeliani, Minister for Refugees and Accommodation and Gigi Ugulava, Mayor of Tbilisi** – be fined under administrative rule for violating the Election Code by participating in a campaign meeting on 28 November while on duty. On 7 December, Chairman of the CEC formally rejected the GYLA's request, without having discussed the matter at a CEC session. The CEC Chairman's reply was appealed in the City Court. On 18 December, the Court declared the lawsuit admissible and appointed hearing of merits on 20 December. It is to be noted that, at the court hearing concerning imposition of penalties on Messrs. Ugulava and Subeliani personally, their interests were formally represented by lawyers from the Legal Services of the Mayor's Office and the Ministry. **The first instance court rejected GYLA's lawsuit. The rejecting judgment has not entered into force and GYLA has appealed against it before the Appeals Court (review of the appeals complaint has not taken place this far).**
- **On 13 December, the GYLA sent a second formal letter** to the CEC requesting the fining of a series of central and local public officials (including officials holding political posts from both the governing and the opposition parties and **other public officials such as governors**) for participating in pre-election campaign in violation of the law.<sup>7</sup> GYLA's request was discussed at a CEC session on 19 December and was

<sup>4</sup> See information published on the Tbilisi Municipality official web-page ([http://www.tbilisi.gov.ge/index.php?lang\\_id=GEO&sec\\_id=344&info\\_id=3884](http://www.tbilisi.gov.ge/index.php?lang_id=GEO&sec_id=344&info_id=3884)) starting with the following sentence: "The former President of Georgia and a candidate for presidency Mikheil Saakashvili met IDPs from Abkhazia in the Tbilisi Town Hall within his pre-election campaign",

<sup>5</sup> See information of the CEC website at [http://www.cec.gov.ge/index.php?lang\\_id=GEO&sec\\_id=307&info\\_id=3454](http://www.cec.gov.ge/index.php?lang_id=GEO&sec_id=307&info_id=3454)

<sup>6</sup> Although the first instance court handed down its decision concerning this matter (the case concerning the fining of public officials – Subeliani and Ugulava – having the legal status of officials holding political posts), the decision has not entered into legal force and GYLA is appealing against it to the Appellate Court (for the time of publishing this report case was still pending). Because the given issue is equivocally governed by the Election Code, it must be interpreted in the light of the entire legislation of Georgia.

<sup>7</sup> The violation took place during the pre-election period, from 1 to 10 December, in Tbilisi and in the regions, by the following public officials: Members of Parliament – Marika Verulashvili, Zviad Dzidziguri, Pikria Chikhradze, Gigi Tsereteli; Ministers – Petre Tsiskarishvili, David Bakradze, Maia Miminoshvili; Mayor of Tbilisi – Gigi Ugulava; Chairman of the High Council of the Achara Autonomous Republic – Levan Varshalomidze; Governors – Mikheil Svimonishvili, Akaki Bobokhidze, Zaza Gorozia.

rejected (7 votes vs. 6). GYLA appealed against the rejection decision of the CEC in the part of governors before the City Court. **On 4 January 2008, the first instance Court rejected GYLA's complaint.** As the Court put it, a violation by a public official would be the case if that public official were participating in a pre-election propaganda right in the course of performance of his official duties. The ruling of the Court allows the following interpretation: **where a public official is obliged to be performing official duties during a specific time period but he/she is unable to actually perform these duties because he/she is participating in a pre-election propaganda, there is no violation of the Election Code (!).** The Court decision has not entered into force and GYLA has appealed against it in the Appeals Court.

- **On 26 December**, GYLA addressed a third formal letter to the CEC requesting the administrative fining of the **Kakheti Governor Gia Natsvlishvili** for taking part in a campaign meeting in violation of law on 10 December. The CEC rejected (7 votes vs. 6) this complaint and GYLA appealed to the court (case is pending).

During the pre-election campaign monitoring, a **whole series of public officials publicly declared that they were going on their deserved leave** (an example is Minister Bakradze who performed the functions of a speaker in candidate Saakashvili's election headquarters). Based on freedom of information laws, the GYLA central and regional offices requested public information from all public institutions concerning the use of leave by public officials. According to the official responses received,<sup>8</sup> none of the public officials, in respect to whom GYLA requested the CEC to apply sanctions, has taken an official leave.

### **c) Transfer of material values or giving promises to voters ("voter's subornation")**

Article 73(9)(a) reads:

*"9. From the date of publication of a relevant legal act appointing elections until the date of publication of final results of elections, the following shall be prohibited:*

*(a) Transfer of money, gifts and other material values, sale of goods at discounted price, provision or distribution of any goods free of charge (except campaign materials envisaged by this Law) as well as making a voter interested by promising transfer of money, securities or other material values, by election subjects and their representatives, in person or through a third party;"*

Paragraph 9<sup>1</sup> of the same article reads:

*"9<sup>1</sup>. An election subject who, in person or through his/her representative or any other physical or juridical person acting in his/her favour, committed the conduct indicated in paragraph 9 of this Article, if proven, shall be deprived of registration through a court decision."*

- **On 20 December**, GYLA addressed the Tbilisi City Court concerning violation of the mentioned provisions requesting **cancellation of registration for presidential candidates Mikheil Saakashvili and Arkadi (Badri) Patarkatsishvili.**

I. At the request of the "Unified National Movement" election campaign fund, a journal supporting pre-election campaign of presidential candidate Mikheil Saakashvili from the "Unified National Movement" was printed. The journal was released on 30 November 2007 in 250,000 (two hundred fifty thousand) copies and was distributed free of charge among masses of citizens. The journal consisted of 90 pages (exclusive of the extra cover pages). Page 48 of the journal, titled "New Year Gift", contained **three tickets to the "Firefly Park"**, which could be used by citizens to use all of the entertainment facilities available in the Park free of charge. According to the tickets, each ticket also included free access to the Park and one free meal during the day. Further, on 8 December, presidential candidate Mikheil Saakashvili, within his pre-election campaign events, visited the family of Abutidzes and presented a personal computer as a gift to Mariam Abutidze; this fact was aired on various television channels. Also, the candidate used this fact in one of his political commercials.

II. On 18 December 2007, various TV channels (Rustavi-2, Imedi) aired presidential candidate Arkadi (Badri) Patarkatsishvili's statement made through Radio Imedi, in which Patarkatsishvili, if elected as President, vowed to provide voters with monetary assistance and other benefits **from his own funds.** In particular, the presidential candidate stated: "Until we have assurance that tariffs are correctly calculated and the levied money is effectively spent, **I will, from my own funds,** cover the expenses for electricity of 100 kilowatts per month per each household ... I will also pay for natural gas in the same amount and will fully compensate for the water tax..."

<sup>8</sup> By the time of the publishing present report, a number of public institutions did not responded on GYLA letters (in violation of the legal terms for issuing public information). It should be referred here, that no response has been received from the office of the State Minister for Conflict Resolution (Mr. David Bakradze)

**By decision of 22 December, the Court rejected GYLA's lawsuit; in particular:**

- The Court considered free tickets to the "Firefly Park" as "a means of advertisement";
- The Court considered that the presenting of a personal computer was not a violation since, according to the Court, such conduct, in order to amount to a violation, should have "some mass nature (should include multiple actions) creating to a certain extent a probability of influencing the results of the elections, which had not occurred in the given instance."
- Although the Court noted that candidate Patarkatsishvili's statement did include a violation of Article 73(9) of the Election Code, "[it] has been negated by authorized representatives of Arkadi (Badri) Patarkatsishvili and no longer creates a probability of influencing the expression of the voters' will in favour of candidate Arkadi Patarkatsishvili." Also, the Court noted that if the candidate would repeat the same statement, his representatives will no longer be in a position to "negate" such a statement."<sup>9</sup>

In the course of the pre-election monitoring, GYLA identified **other instances** as well, which may be considered as conduct prohibited by Article 73(9) of the Election Code – transfer of (or a promise to transfer) a material value to a voter.<sup>10</sup>

- In the pre-election period, **in Batumi**, boxes full of food products were distributed to the population from the "National Movement" headquarters located in Batumi at Era Street, in front of the Museum. The Party activists were themselves distributing food telling the citizens to support their candidate.
- In the pre-election period, **in Dusheti**, one sack of flour and a parcel was distributed per family; this event was organized by representatives of the local governance body and the "National Movement".
- On **3 December, in Batumi**, people were invited to have a free minibus ride to "Benze" area, for the purpose of meeting Mikheil Saakashvili. In this regard, Nodar Dumbadze, member of the Batumi Sakrebulo stated: "I am financing minibus city transport. Funds were allocated from the State Budget, which belongs to the National Movement."
- On **11 December, in Batumi**, people in the "National Movement" central election headquarters were registering pensioners with the promise that the registered pensioners would in a couple of days be provided with food products.
- On **13 December, in Batumi**, Nodar Dumbadze, Member of Sakrebulo, arranged a meeting with participants of the "Patriotic Camp Project" telling them that their parents would receive letters of appreciation and, if the participants would go ahead "helping" a qualified presidential candidate – Mikheil Saakashvili, they would be given the possibility to be appointed leaders in "patriotic camps" and receive appropriate compensation.
- On **26 December, in Batumi**, people in the "National Movement" central election headquarters were drafting lists of potential beneficiaries of gifts (vouchers, medicines, handicap chairs, etc.), collecting personal data of citizens (name, personal number, address, etc.) and promising that they would receive everything home. A list of pensioners who would receive 25-Lari vouchers was being drawn up in the "National Movement" headquarters, for which the pensioners were standing in line to get registered. The same procedure was taking place on **27 December** in one of the offices of the "National Movement" located on the opposite of 90 Lermontov Street (Lermontov Street No. 15). In particular, according to the information received, families with many children were receiving flour.

**d) Other events of using the "administrative resource" and influencing citizens**

GYLA's pre-election monitoring format includes study of events of using "administrative resource" by political subjects when directly so prescribed by the Election Code. At the same time, in light of the large scale of nature of the "usage of administrative resource", GYLA joins the concerns about initiating special social projects only within the pre-election context, which were expressed by the Transparency International – Georgia in its interim reports.<sup>11</sup>

**Article 76** of the Election Code determines the instances when use of "administrative resource" is prohibited. In particular, paragraph 1 of the mentioned article reads: "It is prohibited to use, for the pre-election campaign and

<sup>9</sup> See GYLA's lawsuit and the corresponding decision of the Court, available at <http://www.gyla.ge/?display=news&view=626>

<sup>10</sup> A significant part of this information has been communicated for response to the "Governmental working group for free and fair elections" created by the Acting President of Georgia. By the time of publishing this report, no reaction followed from the working group with regard to the above-stated information.

<sup>11</sup> In this regard it is important to note that, in its decision of 22 December (concerning removal from registration of candidates Saakashvili and Patarkatsishvili), the Court stated: "It is further explained that any conduct involving a promise (either in oral or written form) to the effect that, if elected, the candidate will provide certain material value to voters from his/her personal funds (it is of no importance whether the voter will receive these material values from the relevant candidate directly or indirectly, in particular, by transferring funds first to the State Budget and then distributing them or in a form of some charity act), shall, by its nature, be equated to an agreement on voting for a specific candidate in exchange of a certain promise and shall thus be deemed as violation of Article 73(9) of the Organic Law of Georgia "The Election Code of Georgia" and of Article 1641 of the Criminal Code of Georgia (voter's subordination)"

campaigning, of material and technical resources of an organization financed from the State Budget.” The article further describes specific instances of use of official resources by certain public officials.

We studied a **number of facts** revealed during our monitoring, which must also be reacted upon by the Election Administration and other public authorities, as required by the law. These facts, *inter alia*, are the following:

- On **3 December**, presidential candidate Mikheil Saakashvili visited **Adjara**. When meeting with the population, he met Mrs. “Elene”,<sup>12</sup> originally from Moldova and having a Russian citizenship. The candidate publicly “solicited” before the Ministry of Justice about **“giving her a passport and arranging her citizenship.”** By Decree of Acting President of Georgia No. 677 dated 10 December 2007, Ms. Elnara Gabibova, citizen of the Russian Federation born in the Republic of Moldova, was granted a Georgian citizenship. Using the freedom of information legislation, GYLA is currently studying the issue.
- **10 December, Telavi.** Presidential candidate Mikheil Saakashvili met with the population in the Telavi State Theatre. The population was mobilized by minibuses, in advance, from various villages. People from Gurjaani District were also brought with minibuses to meet with the presidential candidate. **As pupils of Telavi public schools told a GYLA representative, school teachers took the children directly from on-going lessons to a meeting with the presidential candidates; children taken to the meeting were mostly from higher grades.** The children stated that they walked from their school to the Telavi State University to meet the presidential candidate, as they were told and instructed by the school administration. **They further reported that in the morning a list of pupils present in the school was drawn up to make sure that none of them escape home and be present at the planned meeting with the presidential candidate.**
- **12 December, Dusheti.** Presidential candidate Mikheil Saakashvili met the Dusheti population. Public schools were mobilized. Nearly from all Sakrebulo pupils and teachers were brought to the town centre; in fact, the normal school process did not take place that day. At about 12:30pm, everyone in the Dusheti Municipality was told to leave the building; Saakashvili’s guards stationed on the roof. It should be mentioned that, **in addition to the Sakrebulo, the mentioned building also accommodates local offices of the Public Register Agency and the Civil Register Agency of the Ministry of Justice, Tax Inspection, Educational Resource Centre, and other public institutions.** Gathering people to attend this meeting was organized by David Namgalauri, Chairman of the Sports Department, using Saakashvili’s escort as transport. Saakashvili’s meeting with the population lasted 20 minutes.
- **30-31 December**, residents of **Ozurgeti** were provided with **information booklets prepared by the local self-governing body. The booklet has a title “We started”.** The booklets, emphasizing that the “Unified National Movement” has been in charge of the Ozurgeti Municipality since a year, narrated about what had been done during that one year. According to the booklets, they are authored by the Ozurgeti Municipality and Gamgeoba (executive body). We can therefore assume that the booklets are a sort of an annual report of the Ozurgeti Municipality, however, each page of the booklet displays a “hidden” election number of a political subject (number 5 in a circle); the booklet says that works are conducted in 5 directions; out of these five directions, directions 1 to four are numbered with Roman numbers, while number 5 is given in Arabic, in a circle. Last but not least, each booklet included advertisement papers displaying Mikheil Saakashvili who wishes the population a happy new year and toys on a new year tree displaying number 5 encircled.
- **Kutaisi.** After the Election Day was appointed, the Kutaisi Sakrebulo broadened the Kutaisi Mayor’s powers entitling him to independently use reserve funds (Deputy Chairman of Sakrebulo stated that this measure had not been linked with the elections; the Kutaisi Branch of GYLA is currently studying lawfulness of the mentioned decision).
- In the pre-election period, according to information obtained by GYLA monitors in **Batumi and Telavi**, heads of certain local branches of government were instructing their employees to circle number “5” on the Election Day on 5 January.

#### ***e) Informational support to the pre-election campaign; the media***

**Within the frames of pre-election monitoring, GYLA studied compliance by media sources with legal requirements** (except for “time-keeping”, on which GYLA did not focus). It should be mentioned that a violation widespread during the 2006 local self-governance bodies elections – absence of an indication on political commercials whether the given commercial is “free” or “paid” – was not revealed this time. During the pre-election period, GYLA had been requesting from the CEC on weekly basis information provided to the CEC by media sources. Here, too, unlike the last elections, the media sources were formally complying with legal requirements (presentation of specific information). This information will be used for the study of the legality of the spending election funds by the election subjects.

<sup>12</sup> The candidate himself calls the lady “Elene”, as shown in news broadcast on media channels

- As regards the current stage, it is important to pay attention to **the case of Radio Hereti** in Kakheti, whose legal interests are represented by GYLA's Telavi Branch.

On **19 November**, **Radio Hereti broadcasted information** according to which **Gocha Mamatsashvili** (former Telavi Gamgebeli and Chairman of Sakrebulo, currently Deputy Minister of Environment and Natural Resources) together with David Adeishvili, Prosecutor-General's brother (Governor of Kakheti appointed by President), would be leading Mikheil Saakashvili's election headquarters in Kakheti. This information was followed by critical comments expressed by Nika Vardoshvili, Chairman of the Telavi Branch of the Labour Party. Mikheil Saakashvili's election headquarters refused to comment on this information – this fact was also emphasized in the mentioned radio report. Radio Hereti employees have a **secret audio recording of a conversation between Ramaz Samkharadze, Director-General of the Hereti Broadcasting Company and Isako Tskipurishvili, a person closely related to the "United National Movement."** The conversation was recorded on 30 November 2007. According to the secret recording, Isako Tskipurishvili, with the assistance of his relative and Chairman of the Chamber of Control, was contacted with representatives from the central Government, in particular Kirkitadze, who sent Isako Tskipurishvili to solicit before Ramaz Samkharadze. According to the recording, Isako Tskipurishvili was telling Ramaz Samkharadze not to criticize the "United National Movement" on Radio Hereti. In case of in compliance, it was stated on behalf of the Government that Hereti will be deprived of broadcasting license and would be shut down.

On 5 December, in regard to the mentioned fact, the Public Defender of Georgia gave a press-conference urging Nino Burjanadze, Acting President, to take Radio Hereti issue under her special attention. **Broadcasting without appropriate license by Hereti became an issue for the National Communications Commission only one year later.** The Commission representatives stated that Radio Hereti failed to pay 20% of the license fee within the term set by the Commission, until 20 May 2007 and, therefore, no license was issued. **Radio Hereti, 2 days before the deadline, on 18 May 2007, wired money to the bank details of the State Treasury stipulated in the Commission's decision. The Radio journalists presented documentation confirming the mentioned wire transfer at the 5 December press conference.** The National Communications Commission stated that Radio Hereti did not submit a document confirming payment of the license fee to the Commission's accounting office and the broadcasting license would be issued to Radio Hereti within 7 days following submission of the payment confirmation document, in this instance within 7 days following 3 December. However, according to Commission's representative, the radio company cannot escape legal liability for broadcasting without an appropriate license. **Currently there is a legal dispute with the Communications Commission.**

#### *f) Transparency of election funds*

Within the pre-election monitoring, GYLA monitored activities of the political subjects' election funds to ascertain their compliance with the law. In the 2006 elections of local self-governance bodies, monitoring of election funds revealed a whole range of violations by all of the political subjects participating in the elections, but there had been no response measures from the side of the Election Administration.

According to the Election Code:

- Article 46(4), a political subject, **within 2 days following the opening of its fund**, shall inform the Election Administration thereon;
- Article 48(4), the Election Administration shall be informed, **once a month following the opening of an election fund**, about the sources, amount and date of receipt of any contributions;
- Article 48(6), an election subject who, according to the initial data, has received a certain number of votes set by the law shall, **no later than on the 8th day after the Election Day**, submit a full report of the election fund together with an auditor's conclusion to the Election Administration;
- Article 48(8), if based on the information submitted by an election fund the Election Administration reveals a violation, the Commission is entitled to issue a written warning, demand elimination of shortcomings and, if the revealed violation is substantial, **address the court "and demand summarizing election results without counting in the votes received by the given election subject";**
- Article 86, the CEC shall summarize **results of a presidential election not later than on the 8th day following the Election Day.**

These provisions make it clear that election funds' obligation for the 5 January 2008 elections to submit initial information on received contributions to the CEC actually arises after the Election Day – 5 January (because the election subjects' election funds were mostly opened after 5 December). At the same time, if a "winning" subject uses the 8-day term up till the very last day, the CEC will in fact have no time to analyze the received documentation before summarizing the final results of the elections (also not later than on the 8th day). **Such arrangement hinders the election funds transparency during an election period and makes the study by the CEC of their expenditures fictitious.**



Before the formal appointment of the Election Day (25 November), at the discussion of draft amendments and addenda to the Election Code in the Parliament of Georgia, **GYLA proposed setting special accounting deadlines for the election subjects due to the coming out-of-turn elections. The Parliamentary Committee rejected the proposal.**

For the purpose of ensuring transparency of election funds and the effective discharge of its functions by the CEC, **on 17 December, GYLA** addressed the CEC with a letter and a draft CEC resolution envisaging the obligation for election subjects to submit initial information to the CEC before the Election Day, in particular, by 24 December. **The CEC rejected the proposal and voted against the draft resolution (7 votes against 6).**

It should also be noted that election funds of the “National Movement”, the “New Rights”, and the “Labour Party” expressed their “**good will**” and **voluntarily** submitted the initial information concerning their received contributions to the CEC on 24 December.

GYLA will analyze the initial information as well as any subsequent reports submitted by the election funds and prepare a special report on the monitoring of the election funds.

#### **IV. THE ELECTION DAY**

**As decided by the GYLA governing board, GYLA held its observation on the Election Day in Tbilisi, Kutaisi, Batumi and Kelvachauri election precincts.**

GYLA’s observation was based on a set of different observation methods such as observation directly at election precincts during the entire Election Day, mobile groups going to and observing each election precinct within a specific election district in order to reveal occurrence or non-occurrence of violations, and representation in District and Central Election Commissions by participating in drafting legal documents and decision-making process and providing legal expertise. Before the closure of election precincts, our mobile group members selected relatively problematic precincts to stay and continue observation of ballot counting and summarizing there.

In addition, a hotline was operational in GYLA during the entire Election Day, which the citizens could use to provide information on election violations. If necessary, our relevant mobile group could visit the site and take measures to respond to any violations revealed on the spot.

**In Tbilisi**, 166 observers from GYLA, assisted by 10 mobile groups each consisting of 2 observers, were observing various election precincts.

**In Kutaisi**, 66 GYLA observers observed the election process at 66 election precincts. They were assisted by 11 observers formed in mobile groups.

**In Batumi and Kelvachauri**, elections were observed by 75 observers from GYLA, assisted by 5 mobile groups of observers.

GYLA observers were constantly present at district election commissions (Tbilisi election districts, Kutaisi, and Batumi) and the Central Election Commission.

GYLA and its partner organizations, within their Observation Mission format, during the Election Day, conducted several briefings (at 10:00, 13:00, 15:00, 16:00, 18:00 and 21:00 hours) at the **Media Center**. Press and other media sources were provided information about violations found by the GYLA observers and communicated through the hotline by the relevant time of the day.

#### ***Hotline***

A hotline was open in the GYLA central office during the Election Day (two telephone numbers). Furthermore, citizens were notifying information related to election violations to the GYLA offices in Kutaisi and Batumi.

According to information received by our offices during the Election Day through the hotline, the reported violations can be summarized as follows:

1. Imperfect voters’ lists. In particular, most of those who contacted us through the hotline reported presence of dead people in the voters’ lists.
2. Violation of voting procedures prescribed by law; in particular, presence of several people simultaneously in a voting booth, continuing propaganda at election precincts, defective execution of the marking procedure, etc.

### ***Violations observed on the Election Day***

GYLA observers found the following violations at election precincts on the Election Day:<sup>13</sup>

- ***Unlawful presence of security guards and law enforcement officials at election precincts and within the voting buildings***

1. **Security guards.** At election precincts nos. 1, 14, 32 and 33 of the Mtatsminda Election District, security guards were refusing to leave the election precinct. At election precinct no. 10 of the Krtsanisi District, after its closure (after 20:00 hours), security guards remained inside.
2. **Police officers.** Police officers were present at and refused to leave the election precinct no. 63 of Samgori District. The same situation was observed at precinct no. 10 of Krtsanisi district, precincts nos 11, 12 and 9 of Samgori district. At precinct no. 5 of Nadzaladevi district, police officers voted regardless the fact that they were not registered at all in Tbilisi.

- ***Representatives of election subjects at election precincts***

In violation of the applicable legislation, more than allowed number of representatives of presidential candidates and political parties were present at election precincts (for example, at precinct no. 51 of the Didube district, precincts nos. 5, 26-36 of Chugureti district, precinct no. 10 of Krtsanisi district).

- ***Propaganda at election precincts***

In violation of the applicable legislation, election propaganda continued in some precincts (within the buildings), hindering free expression of voters' will in the voting process:

1. At precincts nos. 58-63 of Samgori district and precinct no. 13 of Isani district, persons wearing the "National Movement" hats and coats were propagating in favor of their candidate.
2. At precinct no. 1 of Krtsanisi district, a National Movement member was propagating in the entrance of the precinct.
3. At precinct no. 14 of Krtsanisi district, representatives of political parties were propagating on the precinct territory.

- ***Admittance of observers to election precincts***

At some precincts, GYLA representatives encountered problems with entering the precinct and properly observing the election process. For example, at precincts nos. 41 and 61 of Saburtalo district, GYLA representatives were not let in during several hours; at precinct no. 1 of Krtsanisi district, a GYLA observer was threatened to be evicted after he expressed his claim and wrote a complaint concerning an improperly sealed ballot box.

- ***Voters' lists***

One of the most serious shortcomings of the current presidential elections was voters' lists. For instance, at precinct no. 42 of Krtsanisi district and precinct no. 1 of Chugureti district, voting under additional lists was not possible at all. In Tbilisi Prison no. 4, there was no list of prisoners with the right to vote. Voters' lists also were a problem in Kutaisi where at election precinct no. 81 there were additional lists that included people who were not Kutaisi residents and were registered in Tbilisi or other towns.

- ***Violation of voting procedures***

Many problems arose in relation to voting procedures as well. Problems mainly concerned:

- **Procedures relating to a control paper** (at precinct no. 43 of Didube district, the first voter data were entered into the control paper when the first voter had not yet come to the precinct; at precinct no. 3 of Khelvachauri district, one of the election commission members forgot to sign the control paper, however the paper was still cast into the ballot box and the commission members did not consider it worth to open the ballot box).
- **Voters' lists and procedures of voting under additional lists** (at precinct no. 2 of Chugureti district, photocopies of ID cards of those voting under additional lists were not made and duly archived; at precinct

<sup>13</sup> Violations mentioned herein concern the voting procedure from 7:00 till 20:00 hours on the Election Day; for full analysis of violations found, please see part VI of the current report – *Review of GYLA's complaints by the Election Administration and courts*

no. 72 of Batumi district, 10 voters were added to an additional list without requiring them to submit appropriate written applications).

- **Ballot boxes** (in Kutaisi district, a great majority of ballot boxes were not sealed by laces with individual code numbers; at precinct no. 1 of Chugureti district, a seal of a mobile ballot box could not be found; instead the box was sealed with an adhesive tape. The same thing occurred at precinct no. 1 of Krtsanisi district. At precinct no. 10 of Vake district, like in precinct no. 50 of Batumi district, the ballot box was not sealed).
- **The voting procedure proper** (at precinct no. 33 of Batumi district, ballots were cast into the ballot box without first wrapping them into special envelopes; at precincts nos. 29 and 30 of Krtsanisi district, several voters simultaneously were let into the voting booth; at precinct no. 21 of Kutaisi district, voting booths were not covered from above and thus secrecy of voting procedure was infringed; at precinct no. 91 of Kutaisi district, people voted after presenting military ID cards and birth certificates instead of ID cards or passports as prescribed by law).
- **The marking procedure** (at precinct no. 21 of Chugureti district, voters' marking was not performed; at precinct no. 8 of Khelvachauri district, no pre-screening of marking signs took place).
- **Procedures relating to distribution of functions among election commission members** (at precinct no. 1 of Vake district and precinct no. 50 of Kutaisi district, functions among the commission members were split without casting lots; at precinct no. 19 of Kutaisi district, functions of the election commission members were altered without making appropriate records in the record book; at precinct no. 53 of Kutaisi district, functions distributed by casting lots were arbitrarily altered).

- ***Qualification of members of precinct election commissions***

Due to legislative amendments right in the pre-election period, inadequate training and replacement of precinct election commission members, our representatives observed many technical and procedural mistakes in the work of commission members as well as exaggerated protraction of certain procedures (ballot counting and summarizing, for instance).

- ***Technical problems***

During the current presidential elections, we observed a number of problems relating to technical shortcomings that hindered proper conduct of the voting process. These technical shortcomings included: defects of devices used to reveal marking signs (frequent malfunction) at precincts nos. 80 and 63 of Saburtalo district, precinct no. 21 of Kutaisi district; malfunction of a photocopier at precinct no. 14 of Mtatsminda district that hindered the procedure of voting under additional lists; at precincts of almost all districts there was a lack of envelopes (especially, special envelopes of different color), while the precinct no. 101 of Gldani district with 1,250 registered voters was provided only with 1,000 envelopes; in parallel with the close of the Election Day, electricity went off massively in precincts nos. 24, 74, 63, 93, 60, 16 and 61 of Kutaisi District, precinct no. 69 of Saburtalo district, precincts nos. 34 and 35 of Vake district. Electricity was back on shortly (in one hour, on average).

## **V. MONITORING OF THE PROCESS OF COUNTING AND SUMMARIZING BALLOTS UNDER ADDITIONAL LISTS**

Amendments to the Election Code dated 7 December 2007 finally shaped article 129<sup>7</sup> of the Code, allowing citizens to vote under additional lists in 5 January 2008 special elections. The Code also entitled precinct election commissions to decide by vote (at least 2/3 of votes of commission members) whether to count ballots under additional lists at the precinct (on the spot) or to send them to the Central Election Commission. The Central Election Commission, on its turn, had the right to decide (at least 2/3 of votes of the CEC members) whether to count the ballots under additional lists or to leave them uncounted.<sup>14</sup>

On 7 January 2008, the CEC voted for counting about 34,000 ballots received from precinct election commission. The Commission's individual order allowed the use of CEC employees' assistance in counting the ballots by the CEC members and afterwards summarizing all results into a specially approved protocol. The CEC counted these envelopes together with others within the period starting 7 January and ending by 2:00am of 11 January. The counting process in the CEC was observed by 3 observers from GYLA. The GYLA observers observed instances where necessary documentation was not received from specific precincts (additional lists with citizens' signatures, photocopies of ID cards or IDP cards). During the entire counting process, the GYLA observers were founding violations and immediately notifying the CEC members thereon, albeit, in many instances, in vain. In the view of GYLA observers, **the process of counting the ballots was not well organized.** Although

<sup>14</sup> During the discussions of the mentioned amendments, GYLA objected to vesting the election commissions with such powers (the possibility to vote for or against counting the ballots). In particular, GYLA stated that the CEC should not have the right to decide by vote whether to count or not to count ballots, without even founding any violation.

the Election Code does not specify the procedure of ballot counting by the CEC, absence of direct provisions does not liberate the CEC (acting, in fact, in the capacity of a precinct election commission) from guidance by Article 59 of the Election Code, which scrupulously determines the counting procedure in a precinct election commission. Ignoring the requirements of Article 59, several people were simultaneously opening envelopes of different size and color; which made it impossible to discern how many ballots were in each envelope. Regardless of the observers requests, in a majority of cases the counters were not checking existence of a registrar's stamp and signature on the ballots, which, according to Article 59(3) of the Election Code, has a crucial role in making decision whether a ballot is valid or void. The Election Code imperatively states that results under additional lists can be counted only if the ballots are accompanied with the relevant additional list and photocopies of ID cards. Further, according to the Code, if the number of signatures is less than the number of envelopes received from precincts, such envelopes from the given precincts shall be considered void and shall not be counted into the final summarizing document. **Having revealed these violations, on 10 January at 16:50 hrs, the GYLA observers officially communicated a complaint to the CEC, requesting that the CEC count and summarize results without counting in the ballots received from about 123 specific precincts in violation of law.**

**At its session on 10 January at 20:00hrs, the CEC decided (7 votes vs. 6) to declare void only the ballots that were not clearly expressing the voters' will.**<sup>15</sup> Therefore, in the early morning of 11 January, at 2:00am, the CEC summarized all results including the ballots under additional lists. **On 11 January, GYLA publicly stated that the mentioned decision was unlawful.**

## VI. REVIEW OF GYLA'S COMPLAINTS BY THE ELECTION ADMINISTRATION AND COURTS

On Election Day, the **GYLA observers lodged about 230 complaints, in strict accordance with the Election Code, with the precinct and district elections commissions** concerning the summarizing of voting results.<sup>16</sup>

After the close of the Election Day until the summing up of results by election districts (starting 6 January and ending 9 January), the GYLA observers stationed in district election commissions were formally requesting review of their complaints. In addition, on 7 January, the four local observing organizations – the founders of the Media Center (*GYLA, the International Society for Fair Elections and Democracy, Transparency International – Georgia and the New Generation-New Initiative*) made a public announcement urging the Election Administration (district election commissions and the Central Election Commission) to review all of the complaints in a timely manner and in full observance of the established legal procedures as well as to summarize the results lawfully and transparently.<sup>17</sup>

Below provided is the information, by respective election districts, concerning the review (by district election commissions, the Central Election Commission and courts) of the complaints we lodged concerning major violations observed at election precincts:<sup>18</sup>

- **No. 1, Mtatsminda district**

At almost all of the precincts of the Mtatsminda district, GYLA observers lodged complaints due to **absence of handover certificates** confirming hand-over of ballots and envelopes. Also, a complaint was lodged with the district commission for refusal by 5 precinct election commissions to accept our complaints.

The district commission was summing up the election results without paying any attention to the observer's views. On this matter, the GYLA observers drafted a statement requesting that the commission hold a session immediately to consider summing up of incorrectly filled in protocols. The district commission upheld the observers' request and held a session. **At the session, GYLA and the association "Green Alternative" demanded the commission to declare summary protocols of precincts no. 6 and 11 void, since they contained significant errors. The district election commission rejected the request.** The commission presented written explanations of precinct commissions that these errors were of a mechanical nature. Based on Article 34(e) of the Election Code, the district commission decided to sum up the protocols and to send the final summary protocol to the Central Election Commission.

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<sup>15</sup> Without taking into account whether or not the ballots were accompanied with additional lists and photocopies of ID cards or IDP cards.

<sup>16</sup> In all of the three towns where the Observation Mission was present, having found any election violations (which could reasonably be immediately rectified by the election commissions), the GYLA observers were orally urging chairs of the commissions to rectify the relevant shortcomings. In case of failure of oral requests, our observers were lodging written complaints. Therefore, the present report does not include the number of oral complaints.

<sup>17</sup> See the observing organizations' joint statement, 7 January 2008, at [http://www.civil.ge/files/files/press%20statement\\_GYLA\\_nGnl\\_ISFED\\_TI%20Georgia\\_Jan%2007\\_eng.pdf](http://www.civil.ge/files/files/press%20statement_GYLA_nGnl_ISFED_TI%20Georgia_Jan%2007_eng.pdf)

<sup>18</sup> The format of the current report does not allow inclusion of a detailed review of all of the complaints (about 230, major types of violations are specified above). It discusses the review of complaints by district election commission, the Central Election Commission and courts, in which GYLA observers demanded declaring the precinct results/summary protocols void.

- **No. 2, Vake district**

Out of the complaints filed by GYLA observers on 5 January in relation to No. 2 Vake district, the following should be mentioned:

- ✓ At precincts nos. 8, 10 and 13, the voting process started without first sealing the main and the mobile boxes. Only at precinct no. 8, GYLA observers found that the ballot box was sealed according to the established procedures some time after (2 hours after the start of the voting process). GYLA observers filed appropriate complaints with the precinct election commissions, before the closure of the voting procedure, as required by law.
- ✓ At precincts nos. 63, 69 and 52, the number of envelopes under additional lists exceeded 15. Although Article 129<sup>1</sup> of the Election Code required their counting separately in this case, the precinct election commissions mixed up these envelopes with ballots under regular lists. In this regard, the GYLA observers lodged a complaint with the district election commission.

**On 7 January, the Vake district election commission rejected our observers' complaints without hearing them on merits (for the reason that the complaints did not specify "Tbilisi" but instead referred to the numbers of elections precincts only and did not specify addresses of the relevant precincts).** The GYLA observers appealed against the district commission's rejection before the Central Election Commission. At 9 January session, the CEC decided not to review the GYLA observers' complaint on merits (7 votes vs. 6). Regardless of the decision not to hear merits indicated in the complaint, GYLA observers requested the CEC to use its powers under Article 29 and to study the allegations of violations in the given precinct on its own initiative. The CEC rejected this proposal too (7 votes vs. 6). GYLA observers challenged the CEC's rejections before the Tbilisi City Court. On 12 January, the Court reviewed and dismissed the appeals complaint (it stated that the shortcomings of the initial complaints submitted to the precinct election commission, namely that they did not specify the place of drafting the complaints ("Tbilisi") and the addresses of the precincts in relation to which the complaints were submitted was a sufficient basis not review the observers' complaints). We challenged the Tbilisi City Court decision before the Tbilisi Appeals Court. On 15 January, the Appeals Court left the City Courts' decision in force.

- **No. 3, Saburtalo district**

On 7 January 2008, a session was held at the No. 3, Saburtalo district election commission to hear complaints relating to the election process. The session was attended by GYLA observers stationed in the No. 3 Saburtalo district as well as representatives of political subjects and non-governmental organizations.<sup>19</sup> At the session, **the district election commission, on its own initiative and based on GYLA's complaints, decided to address the CEC with its individual order requesting annulment of results from 5 precincts (the decision regarding precinct no. 1 was made on the commission's initiative and the decision regarding the remaining 4 precincts – nos. 11, 61, 80 and 82 – were based on GYLA's complaints); the secretary of the commission included this decision into the minutes of the session.** Notwithstanding the decision concerning all of the 5 precincts, the No. 3 Saburtalo district election commission addressed the CEC with its individual order only in respect of the precinct no. 1 (individual order no. 004/1-2008), requesting annulment of results from this precinct, which was upheld (individual order no. 19/2008). As regards the 4 remaining precincts, on 9 January 2008 at 22:35 hrs (when the term of prescription for appeal was already expired), the commission submitted to us an individual order (no. 003/1-2008), which as if was adopted based on the commission session of 7 January 2008 and which contained rejection of GYLA's complaints. **The No. 3 Saburtalo district election commission, for the purpose of legalizing its individual order (no. 003/1-2008), arbitrarily altered the minutes of the 7 January 2008 session and handed an altered minutes to the GYLA observers on 10 January 2008 at 17:30 hrs.** According to the altered minutes, none of GYLA's complaints was upheld at the commission's session. Chairman of the No. 3 Saburtalo district election commission drafted the altered minutes of the 7 January 2008 session in the presence of the GYLA observers on 10 January 2008.

On the same day, 10 January 2008, GYLA lodged a lawsuit with the Administrative Cases Panel of the Tbilisi City Court requesting the Court to declare that individual orders of the No. 3 Saburtalo district election commission approving summary protocols void. At the 12 January court hearing, GYLA observers requested that persons who attended the 7 January commission session be questioned as witnesses; the reviewing judge rejected the motion. The Tbilisi City Court dismissed the lawsuit. On 14 January, **GYLA addressed the Prosecutor-General of Georgia** requesting that the latter initiate prosecution on the fact of falsification of the 7 January 2008 minutes of the district election commission's session.

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<sup>19</sup> Marina Chkonია, representative of presidential candidate Levan Gachechiladze; Manuchar Shishinashvili from the New Rights; Nino Bibileishvili from the Fair Elections; Zhaneta Lezhava from the political party "Freedom"; and Manana Sanadze and Irina Imerlishvili from Trade Unions.

- **No. 4, Krtsanisi district**

Of the subjects of the complaints drafted by GYLA observers, we should mention a fact that took place at precinct no. 30 of the No. 4 Krtsanisi election district. The fact is of significant importance and it had a crucial and substantial impact upon the results of that precinct. In particular, at that precinct, one of the most important and fundamental principles of elections – secrecy of voting and free expression of the voters’ will – was infringed; the voting process took place against background of manifest and systematic violation of the principle of secret voting. More specifically, members of the precinct election commission and other persons were guiding the voters into the voting booth and instructing them how to vote. This precinct is located in Ponichala, an area populated mostly by people whose native language is other than Georgian. Due to lack of knowledge of the official language, voters were unable to read and understand what was written on the ballots; this was becoming “a reason” why voters were given directions how to vote. The violation described above was confirmed on the spot by a witness. In respect of this violation, the GYLA observers lodged complaints at relevant precincts of the No. 4 Krsanisi election district. However, the precinct commission failed to react to the complaints. **Complaints were filed also with the No. 4 Krsanisi district election commission, which, on 7 January 2008, rejected all of them without giving their authors a chance to explain the reasons for submitting the complaints.** Later, in accordance with the procedure prescribed by the Election Code, our observers filed a complaint with the Central Election Commission requesting that complaints submitted at No. 4 Krtsanisi precincts be reviewed and results of the precinct no. 30 be declared void. **At its session no. 5 held on 10 January 2008, the Central Election Commission decided not to review the complaints (7 votes vs. 6).** Regardless of the decision not to hear the complaints, GYLA observers requested the CEC to use its powers under Article 29 and to study the allegations of violations in the given precinct on its own initiative. **The CEC rejected this proposal as well (7 votes vs. 6).** Later, the GYLA observers lodged a lawsuit with the Administrative Cases Panel of the Tbilisi City Court requesting cancellation of the CEC decision and review of their complaints. **By decision of the Court dated 13 January 2008, our observers lawsuit was declared inadmissible and was left unheard.**<sup>20</sup>

- **No. 5, Isani district**

Of the complaints lodged in relation to the No. 5 Isani election district, we would like to mention the violation that took place at **precinct no. 38**. In particular, **the commission allowed citizens whose places of residence fell beyond the given precinct to vote under additional lists**. In this respect, a complaint was lodged with the precinct election commission. The commission did not count the votes received under additional lists and sent them to the CEC. The GYLA observers addressed the CEC with a motion not to count these votes and to declare them void. **At the CEC session on 9 January, GYLA’s observers requested the CEC not include votes from precinct no. 38 into a summary protocol of votes under additional lists. By its decision (7 votes vs. 6), the CEC dismissed the motion.**

- **No. 9, Nadzaladevi district**

Within the No. 9 Nadzaladevi election district, GYLA observers lodged 15 complaints at precincts nos. 5, 15, 19, 39, 42, 80 and 95 (at precinct no. 95 our observers were refused to register one complaint). **None of the complaints was reacted upon by the precinct election commission.** Complaints submitted at precincts nos. 5, 19 and 39 of the No. 9 Nadzaladevi district concerned violations, which, according to the Election Code, could become a valid basis for annulling results received at these precincts.

The violations, by precincts, were the following:

- (a) At election precinct no. 5, voters who, according to their ID cards, were not registered within the territory of precinct no. 5 of No. 9 Nadzaladevi district were entered into additional lists and were allowed to vote on the basis of these additional lists.
- (b) At election precinct no. 9, after the opening of the main ballot box, while comparing the control papers it was found out that the control paper from the main ballot box differed from the control paper kept by the chairmen of the precinct election commission. In particular, the control paper from the main ballot box did not have the first voter’s signature.
- (c) At election precinct no. 39, after the opening of the main and mobile ballot boxes, while comparing the control papers it was found out that the control papers from both ballot boxes differed from the control papers kept by the chairman of the precinct election commission. In particular, after the mobile ballot box

<sup>20</sup> The lawsuit was filed with the Court on 12 January. On 13 January, at 10am, the CEC was planning to hold a session to summarize the results of the out-of-turn presidential elections. According to Article 641 of the Election Code, “it is prohibited to summarize results of elections until the relevant election disputes submitted to courts are resolved.” Before the start of the CEC session, a GYLA representative contacted the City Court and was orally told that GYLA’s lawsuit had not yet been handed to the reviewing judge. At the start of the CEC session, a GYLA observer informed the CEC members regarding the pending dispute before the court. Regardless of this information, the CEC, at 10am, summarized the final results of the elections. On 13 January, in the second half of the day, GYLA received an order of a judge from the Court by mail (the judicial order was dated 13 January), which stated that GYLA’s lawsuit was declared inadmissible.

was opened, the control paper from the ballot box did not have signatures of members of the precinct election commission – the chairman, the deputy chairman and the secretary. Also, deputy chairman of the no. 39 precinct election commission signed the control paper from the ballot box after the mobile ballot box was opened, that is after the election precinct was closed. Further, after the main ballot box was opened, the control paper from the main ballot box did not have signatures of the same officials of the precinct election commission – the chairman, the deputy chairman and the secretary.

When results from the election precincts were received, **the district commission did not allow the observers to see record books and recorded complaints.** The commission decided that record books could be seen at its session that would be appointed after receipt of results from all election precincts; the commission further decided that any complaints could be reviewed at the same session. The No. 9 Nadzaladevi district election commission did not appoint this session on 6 January. Instead, **the commission secretary and the commission chairman decided that on 7 January they would decide when to appoint the session.** The observers were told that later they would receive information concerning the time and place of holding the session, however, notwithstanding our numerous efforts, this information remained inaccessible.

**On 7 January, at 12:30, during another phone conversation, the commission chairman stated that the session was already held on 6 January and complaints submitted by GYLA observers were all dismissed due to being groundless. However, according to an individual order of the district election commission, which became available only on 9 January, the commission session was held on 7 January and the commission left the complaint unheard under Article 62 of the Election Code – lack of necessary requisites on the complaints – which is not true.** The district election commission did not allow any of the observers from other observing organizations to attend the session.

Because the district election commission refused to issue a copy of the mentioned individual order to due technical problems, the date of issue of the individual order remained unclear. On 7 January 2008, we filed a complaint with the Central Election Commission and requesting review of complaints submitted by the GYLA observers during the Election Day. We also stated there that the district election commission breached Article 182(2) of the Election Code by not allowing the authors of the complaint to present their views orally. At its 9 January session, **the Central Election Commission, without discussing the merits of the cases, dismissed the GYLA observers' complaint (7 votes vs. 6).**

On 11 January 2008, GYLA observers addressed the Administrative Cases Panel of the Tbilisi City Court demanding that (a) the Central Election Commission's individual order leaving the complaint unheard be declared void; (b) summary protocols of the voting results (of the presidential elections) from precincts nos. 5, 15, 19 and 39 of the No. 9 Nadzaladevi election district be declared void; (c) summary protocol of presidential election results no. 2 of the No. 9 Nadzaladevi election district and the individual order of the No. 9 Nadzaladevi district election commission no. 4/2008 dated 9 January, which approved the summary protocols of election results, be declared void; and (d) considering the annulled results from the precincts, results from the No. 9 election district be counted anew and a new summary protocol and individual order be issued. **The Administrative Cases Panel of the Tbilisi City Court dismissed all of these motions indicated in our lawsuit.**

- **No. 10, Gldani district**

In election precincts nos. **108 and 109 of the Gldani election district no. 10 opened in Gldani Prison no. 8, voters should have voted only on the basis of special lists** (Articles 10 and 11 of the Election Code). However, the voters voted on the basis of additional lists, in violation of the Election Code, which states that voting under additional lists shall take place only according to the voter's place of registration. To eliminate the violation and taking into account the nature of the violation, GYLA observers drafted complaints to chairmen of both precincts; however the commission members continued to enter the voters into additional lists. The fact of violation was appealed before the Gldani district election commission. Because the results of precincts nos. 108 and 109 were later on counted together with results of precincts nos. 39 and 42 of the same election district, our observers, before 6pm of the subsequent day, lodged a complaint with No. 10 Gldani district election commission and requested annulment of results from precincts nos. 108, 109, 39 and 42. **The district election commission refused to annul results from these precincts** on the motive that complaints filed at precinct level did not include the request for annulment of the results. By decision of 12 January, the Administrative Cases Panel of the Tbilisi City Court declared the observers' complaints filed on 5 January with the Gldani no. 10 election district admissible. However, instead of tasking the Gldani No. 10 election district commission to review the complaints, as was requested in the lawsuit, **the Court, without studying and analyzing evidence, without obtaining any explanations, heard the complaints itself and dismissed all of them.** On 15 January, the Appeals Court disagreed with GYLA's statement that, in reviewing the complaints and handing down the judgement, the first instance court went beyond its established powers. Thus, **the Appeals Court left the first instance court judgement in force.**

- **No. 59 Kutaisi district**

Of the complaints lodged within the No. 59 Kutaisi election district, we would like to pay attention to complaints related to precincts nos. 72 and 81. At these precincts, GYLA observers found that voters who were not registered within the given election precinct were voting at that precinct under additional lists. We submitted appropriate complaints to precinct election commissions. On 9 January, the Kutaisi district election commission reviewed GYLA's complaint concerning these precincts, upheld the complaint and addressed the CEC requesting annulment of votes (ballots) received under additional lists from these precincts. At its session of 10 January, the CEC upheld the decision of the Kutaisi district election commission.

- **No. 79 Batumi and No. 83 Khelvachauri districts**

As regards our motions concerning the No. 79 Batumi election district and the No. 83 Khelvachauri election district submitted on and after the Election Day, GYLA observers lodged complaints requesting annulment of election results in the following precincts: **Batumi election district – precincts nos. 11, 12, 14, 30, 55, 57, 66, 71, 72, 73 and 49; and Khelvachauri district – precincts nos. 8, 16, 35, 58, 5, 7, 18, 20, 22, 25, 37, 38, 53, 16, 17, 18, 6, 51 and 55.** Complaints lodged in respect of these precincts concerned, in addition to major violations on the Election Day, a significant difference between the summary protocols received from precincts and the protocols held in the district election commissions. District elections commissions of the No. 79 Batumi election district and the No. 83 Khelvachauri election district reviewed these complaints on 9 January and dismissed all of them. On 10 January, GYLA appealed against the decisions (dismissing our complaints) of the district election commission before the Central Election Commission. The CEC discussed the appeal concerning the Batumi election district on 11 January and the complaint concerning the Khelvachauri district on 12 January. **GYLA observers submitted to the CEC all the relevant original documentation (including summary protocols from the precincts) and requested that, in case the CEC would declare their complaint inadmissible, the CEC use its powers under Article 29 and to study the allegations of violations indicated in the complaint. The CEC decided to leave the GYLA observers' complaint unheard (7 votes vs. 6) and further decided not to study the submitted facts on its own initiative (7 votes vs. 6).**

GYLA appealed before the **Batumi City Court and the Khelvachauri District Court** requesting cancellation of summary protocols from the No. 79 Batumi election district and the No. 83 Khelvachauri election district, and the review of its observers' aforementioned complaints. **On 12 January, both courts dismissed GYLA's lawsuits.**<sup>21</sup> The dismissal decisions were again appealed before the Tbilisi and Kutaisi Appeals Courts. **On 15 January, both Appeals Courts left the decisions of the first instance courts in force.**

## VII. CONCLUSIONS AND ASSESSMENTS

### PRE-ELECTION PERIOD

The 5 January 2008 out-of-turn presidential election was appointed and the pre-election period proceeded in very tight terms. Presidential Election Day was formally declared on 25 November but the pre-election period actually started earlier, 8 November, after former President Saakashvili made the statement. A significant part of the pre-election period took place during a state of emergency, against the background of virtual restriction of the media sources. TV Company Imedi, closed on 7 November, resumed its work only amid the pre-election period and again suspended broadcasting close to the end. In the meanwhile, the election law was amended twice (22 November and 7 December). These and other factors made an effective monitoring of the pre-election campaign more difficult. GYLA has been conducting the pre-election monitoring in Tbilisi and 7 regional centres (Telavi, Dusheti, Rustavi, Gori, Ozurgeti, Kutaisi and Batumi). The past period of the campaign showed a whole series of violations by political subjects, public officials and other persons, timely response to which should have become a precondition for fair and transparent pre-election period. Violations referred to in this report have constantly been notified by the GYLA representatives to both the Election Administration (by means of letters and complaints) and various State agencies and media sources.

- **A list of buildings and availability of places for pre-election campaign**

The monitoring revealed the following instances: one of the political subjects, Mikheil Saakashvili (before his formal registration as a candidate), held a meeting in **Tbilisi Sakrebulo** (28 November), which was

<sup>21</sup> In explaining its reason for dismissing the lawsuit, the Batumi City Court referred to *violation of procedure established for addressing a court*. Also, in relation to protocols of precinct election commission, its stated: "The Court has further ascertained that the individual order of the No. 79 Batumi district election commission no. 03/2008 dated 8 January 2008 on dismissing the complaint has not been appealed against or disputed by the party; therefore, this document, pursuant to Article 77(29) of the Election Code of Georgia, is a document having a legal force and the Court is of the view that it cannot discuss legality of summary protocols of the precinct election commissions and of the relevant individual order, even to the extent concerning arithmetical errors in the protocols. [Thus,] any reference to this circumstance to the effect that the summary protocol of the district election commission and the relevant individual order be declared void is groundless and unsubstantiated."



not included in the official list of available premises; in **Telavi**, the theatre administration refused one of the opposition candidates to hold a meeting; in **Zestaponi**, supporters of another opposition candidate were not allowed to meet their electorate in the Ferroalloy Plant Culture House.

- ***Participation of the central and local public officials in the pre-election campaign***

Participation in election campaigning in violation of law by public officials of different levels was one of the main problems in the recent period. **Campaign was conducted in violation of law by both public officials holding political posts (members of Parliament from both the governing and the opposition political parties, ministers, and city mayors) and other public officials such as governors** (who, according to the legislation, are not persons holding a political post); the problem is aggravated by the fact that many provisions of the Election Code are ambiguous on this issue and forming a clear-cut legal opinion requires an analysis taking into consideration the legislation as a whole; GYLA addressed the CEC with a number of complaints, which, unfortunately, were rejected by the CEC (7 votes vs. 6 votes). **There are several court litigation cases on-going against the certain CEC decisions** (at the appeals instance).

- ***Transfer of material values or giving promises to voters (“voter’s subornation”)***

In the pre-election period GYLA revealed **direct instances of transfer of (or promises to transfer) material values to voters by two registered candidates – Mikheil Saakashvili and Arkadi Patarkatsishvili**. GYLA, as an observing organization, deemed itself responsible to appeal to court and demand cancellation of both candidates’ registration. On 22 December the court rejected GYLA’s lawsuit. Furthermore, **similar instances were identified by GYLA’s regional offices in Batumi and Dusheti. These instances require immediate reaction from the part of the Election Administration and other appropriate State authorities. No official reaction been observed by the time of publishing the present report.**

- ***Other events of using the “administrative resource” and influencing citizens***

Although GYLA’s monitoring is focused on express prohibitions contained in the Election Code, considering the large scale nature of the “usage of administrative resource”, GYLA joins the concerns about initiating special social projects only within the pre-election context, which were expressed by the Transparency International – Georgia in its interim reports. Monitoring identified several instances that need to be assessed by the Election Administration: **“solicitation” by candidate Saakashvili to the effect to grant Georgian citizenship** to a Moldovan-origin citizen of Russia on 3 December; “specificities” of **school pupils’ and teachers’ participation in campaign meetings in the regions** (Dusheti and Telavi); oral information received from the employees of various State agencies concerning the **propagandist instructions from their direct supervisors** (Batumi and Telavi).

- ***Informational support to the pre-election campaign; the media***

GYLA is monitoring media sources’ compliance with election legislation (except for time-keeping). **No violations are observed concerning inclusion of an indication of “free” or “paid” labels in political commercials.** The media are formally complying with the **obligation to send weekly information** to the CEC. Of special attention is the **Radio Hereti** case, whose legal interests are defended by the GYLA Telavi Office in a dispute with the National Communications Commission.

- ***Transparency of election funds***

The current legislation, considering the campaign terms in this case, **does not allow publicizing the activities of election funds before the Election Day and prevents the CEC from processing final reports submitted after the Election Day before the election results are summarized.** GYLA’s initiative to obligate the funds to submit their initial reports before the Election Day was rejected at the CEC session (7 votes vs. 6). At the same time, three election funds (the National Movement, the Labour Party, and the New Rights) showed their “good will” submitting initial information to the CEC on 24 December. The initial information together with the final reports will be processed and **published in a special report on the monitoring of election funds.**

On 3 January 2008, the Georgian Young Lawyers’ Association published its **preliminary report** on the monitoring of the pre-election period and urged the Election Administration and appropriate State authorities to timely and adequately react to facts stated therein. At the same time, GYLA expressed its readiness to cooperate with these authorities.

It is clear that making pre-election campaigning healthier and turning it into more transparent, fair and democratic process would require inserting significant **amendments into the Election Code currently in force.**

**SINCE ELECTIONS DO NOT START AND END MERELY ON THE ELECTION DAY, DETAILED ANALYSIS OF PRE-ELECTION CAMPAIGN PROCESS IS OF UTMOST IMPORTANCE FOR THE PURPOSE OF ASSESSING ELECTIONS. INFORMATION GIVEN IN THE PRESENT REPORT DRIVES TO THE CONCLUSION THAT THE PRE-ELECTION CAMPAIGN OF THE 5 JANUARY 2008 OUT-OF-TURN PRESIDENTIAL ELECTIONS WAS NOT CONSISTENT WITH ESTABLISHED INTERNATIONAL AND GEORGIAN LEGISLATIVE STANDARDS OF DEMOCRATIC, FAIR OR TRANSPARENT ELECTION PROCESS.**

### **THE ELECTION DAY**

On the Election Day, GYLA observers observed the elections at a series of election precincts in Tbilisi, Kutaisi, Batumi and Khelvachauri. **About 350 lawyers and law students participated in the GYLA Observation Mission activities.** The observation format included permanent monitoring at selected election precincts, use of mobile observer groups, and permanent observation at district elections commissions and the Central Election Commission. **GYLA observers were monitoring, documenting and responding to violations revealed by drafting and pursuing appropriate complaints** (on the Election Day and its subsequent period GYLA lodged about 230 complaints, in some of which, due to the most serious violations, **it demanded annulment of summary protocols or results from up to 35 election precincts**).

ON 7 JANUARY 2008, GYLA ASSESSED THE ELECTION DAY IN TBILISI, KUTAISI, BATUMI AND KHELVACHAURI AS BEING AGGREGATELY POSITIVE: **THE ELECTION DAY WAS REALIZED; THE POPULATION EXPRESSED ITS WILL. AT THE SAME TIME, A SERIES OF SERIOUS VIOLATIONS WERE DISCOVERED THAT REQUIRED TIMELY AND LEGAL RESPONSE FROM THE PART OF THE ELECTION ADMINISTRATION, APPROPRIATENESS OF WHICH, ON ITS TURN, WOULD AFFECT THE SUMMARY ASSESSMENT OF THE ELECTIONS.**<sup>22</sup>

### **PROCEDURES FOLLOWING THE ELECTION DAY: REVIEW OF COMPLAINTS AND THE SUMMARIZING OF RESULTS**

GYLA observers observed the **counting by the CEC of votes under additional lists.** GYLA welcomed the decision that votes under additional lists would be counted by the CEC. At the same time, **major defects were discovered in the course of counting the ballots received from election precincts** – envelopes (ballots) were not accompanied with appropriate additional lists (to confirm existence of signatures of voters who took part in the voting process) and photocopies of ID cards or IDP cards. Having found the mentioned violation, GYLA observers addressed a formal complaint to the CEC requesting that the CEC count and summarize results without counting in the ballots received from about 123 specific precincts in violation of law. The CEC, in violation of substantive norms of law, by 7 votes versus 6, dismissed the complaint and summarized results from the precinct aggregate.

**Through its entire observation experience, GYLA has not encountered such general trend of reviewing election disputes as the one that occurred in relation to the 5 January 2008 special elections.** The present report contains basic information on review of complaints concerning the most serious violations before district election commission, the Central Election Commission and the courts. Out of the most important complaints (concerning results at specific precincts), only one was comprehensively reviewed and upheld (Kutaisi). A significant part of the complaints was declared inadmissible for hearing on merits by the CEC. **A major problem of the existing procedures is the Election Code full of vague and defective provisions.** In addition to refusing the review of complaints due to **“procedural” reasons, the CEC did not use its power to review on its own initiative any of the allegations** concerning the violation of law by precinct and district election commission.

In terms of the review process, accessibility to and effectiveness of **courts of law also became a matter under question against the background of massive dismissal** of complaints for “procedural” reasons.

*Elections are not only a pre-election campaign and the Election Day itself. A very important part of elections is the procedures following the Election Day: review of complaints and the summarizing of results. By saying definite ‘NO’ to deal with the merits of election complaints during last two weeks and unlawful summarization of results, election administration and judicial authorities have failed to remedy the alleged violations and infringed the **principle of Rule of Law**, which constitutes the cornerstone and pre-factor for declaring the elections in whole as fair and democratic.*

IN THE COURSE OF THE 5 JANUARY 2008 ELECTIONS, THE OBSERVING ORGANIZATIONS WERE ALLOWED TO COMMUNICATE DIRECTLY WITH THE LEADERSHIP OF THE ELECTION ADMINISTRATION AND THE WORKING GROUP FORMED BY THE ACTING PRESIDENT. CERTAINLY, THIS PLAYED AN UNDOUBTEDLY POSITIVE ROLE IN THE GIVEN PERIOD. **IN GYLA’S VIEW, THE ELECTION DAY WAS REALIZED AND THE PEOPLE EXPRESSED ITS WILL. AT THE SAME TIME, IN VIEW OF A WHOLE RANGE OF**

<sup>22</sup> The importance of procedures following the Election Day and the necessity to summarize the election result in a lawful and transparent manner, including proper review of complaints, was announced in a joint statement of four observing organizations dated 7 January 2008 (GYLA, the International Society for Fair Elections and Democracy, Transparency International – Georgia and the New Generation-New Initiative) [http://www.civil.ge/files/files/press%20statement\\_GYLA\\_nGnl\\_ISFED\\_TI%20Georgia\\_Jan%2007\\_eng.pdf](http://www.civil.ge/files/files/press%20statement_GYLA_nGnl_ISFED_TI%20Georgia_Jan%2007_eng.pdf)

**VIOLATIONS AND SHORTCOMINGS DURING THE PRE-ELECTION PERIOD AND IN THE COURSE OF HEARING COMPLAINTS AND SUMMARIZING THE RESULTS FOLLOWING THE ELECTION DAY, THE CURRENT ELECTIONS WERE NOT AS DEMOCRATIC, TRANSPARENT AND FAIR AS REQUIRED BY INTERNATIONAL AND LOCAL STANDARDS.**

The Georgian Young Lawyers' Association expresses its readiness to cooperate with the Legislative and Executive Branch of the Government, the Election Administration, political subjects, and local and international organizations with the aim of perfecting the legislation and election processes for the forthcoming Parliamentary elections.

