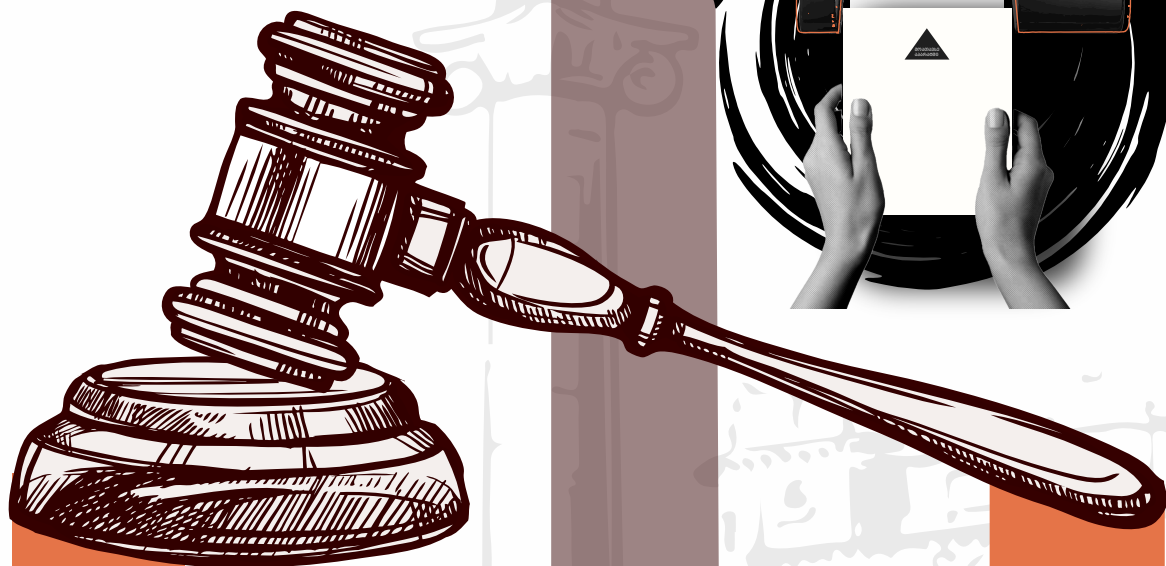


REPORT OF ELECTORAL DISPUTES



The Elections of The Parliament of Georgia
October 26, 2024



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**THE ELECTIONS OF THE PARLIAMENT OF GEORGIA
OF OCTOBER 26, 2024**

**Tbilisi
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INTRODUCTION

In the parliamentary elections of Georgia on October 26, 2024, for the first time in the history of independent Georgia, over 90 percent of voters had to vote using electronic voting tools¹. This was immediately perceived as a significant challenge. The difficulty arose not only from the problematic aspects typical of new technologies but also from the need to adjust voter behavior in line with the formation of a new voting model.

Considering the role and functions of the Parliament of Georgia, the elections of this body are not only significant political and legal events for the country but also social events. In this report, the Georgian Young Lawyers' Association (hereinafter - GYLA) evaluates the election disputes related to the 2024 parliamentary elections, covering both the pre-election period and the period on and after election day. The first part of the report will focus on evaluating issues related to the conduct of campaigning during the pre-election period. This section will review the main trends and substantial flaws that characterize the hearing of such disputes in the election administration and the courts.

As for the disputes conducted after the elections, the report primarily evaluates those related to the secrecy of the vote. Specifically, it analyzes the decisions made by the election administrations and the courts. Additionally, attention is given to the analysis of disputes related to the final results protocol.

It is worth noting that within the scope of this report, both the election disputes conducted by GYLA and, to some extent, those carried out by other observation organizations and political parties, have been evaluated. Relevant information and legal documents regarding these disputes have been obtained through the official website of the Central Election Commission (CEC).

A total of 96 decisions/resolutions made by the district election commissions and the Central Election Commission (CEC), as well as 43 decisions made by the common courts, were analyzed. Based on this analysis, recommendations were developed, the implementation of which will contribute to the improvement of the electoral environment, the creation of an equal and competitive electoral environment, and the enhancement of public trust in elections.

¹ For the elections on October 26, 2024, a total of 3,111 polling stations were in operation. In about 75 percent of these stations, or 2,263 stations, voters used technology to cast their vote. Overall, approximately 90 percent of the electorate at these stations were registered;

METHODOLOGY

The report covers cases considered by the election administrations (district election commissions, CEC), common courts, and the Constitutional Court based on electoral legislation, and does not evaluate disputes ongoing in other bodies (including investigative bodies) that are related to the parliamentary elections of October 26, 2024, and may potentially affect both the electoral process and its outcomes.

The report was prepared using various instruments:

- Analysis of legislation and relevant standards – During the preparation of the report, the relevant legislative framework and standards were analyzed.
- Decisions on electoral disputes – The report is based on the analysis of decisions, orders, and rulings related to electoral disputes filed by GYLA, other local observation organizations, and political parties.

Decisions on electoral disputes filed by other subjects – In addition to the cases filed by GYLA, the electronic database of electoral disputes from the CEC was used to obtain decisions on electoral disputes filed by other entities.

- Public information – GYLA requested public information from the CEC and incorporated relevant information related to the research issues in the report.

1. PRE-ELECTION DISPUTES

During the 2024 parliamentary elections, violations of the norms regulating pre-election campaigning remained an issue of concern.

In the majority of decisions, both the district election commissions and the CEC avoid a thorough examination of the issue, relying solely on the submitted explanations. The decisions lack legal reasoning and proper deliberation. Moreover, the decisions exhibit a biased character.

Similar to the election administration, judicial consideration is also characterized by superficiality and an unequal distribution of the burden of proof.

1.1. Campaigning via Social Media

It is noteworthy that issues related to the conduct of electoral campaigning and participation in it are clearly regulated. The law defines the content of campaigning² and also establishes the circle of individuals who have the right to engage in pre-election campaigning and participation. Specifically, members of the election commission do not have the right to engage in pre-election campaigning or participate in it.³ It is important to note that this restriction applies to members of the election commission in a general form, covering both working and non-working hours.

The primary goal of such a restriction is to form a neutral election administration, which, in turn, is one of the key components for holding fair elections.

1.1.1. Participation of Election Administration Members in Pre-Election Campaigning

Several complaints and lawsuits were filed in the Election Administration and the common court system related to the participation of members of the election commission in pre-election canvassing using social media:

On October 17, 2024, GYLA filed a complaint with the N52 Baghdati District Election Commission, requesting appropriate legal action against three members of the precinct election commissions in the Baghdati district for the suspected violation of the requirements of the Election Code of Georgia. Specifically, the complaint claimed that the members of the election commission were engaging in canvassing in favor of the electoral subject “Georgian Dream” using their personal accounts on social media. The complaint was accompanied by photographic evidence.

All three members of the commissions submitted explanations with a similar justification, claiming that when they placed the “Georgian Dream” electoral subject’s banner on their personal pages, their accounts had been “hacked,” and therefore, they did not participate

² According to Subparagraph z7¹ of Article 2 of the Election Code of Georgia, canvassing is considered to be the appeal to voters in favour of or against an electoral subject/candidate, as well as any public action facilitating or impeding their election and/or containing signs of election campaign, including the participation in organisation/conduct of pre-electoral events, preservation or dissemination of election materials, work on the list of supporters, presence in the representations of political parties.

³ Subparagraph «a» of Paragraph 4 of Article 45 of the Election Code of Georgia.

in canvassing. Based on this, the District Election Commission rejected GYLA's complaint.⁴

GYLA appealed the decision to the Kutaisi City Court. During the court proceedings, GYLA presented additional evidence from the commission members' Facebook pages, which showed that the individuals continued to use social media without interruption even after the disputed post.

The court did not accept GYLA's claim.⁵ On the one hand, the court referred to the principle of fairness, according to which the burden of proof is proportionally distributed between the parties. In the same context, the court explained that despite the photos presented from the "Facebook" page, it was not conclusively proven that the disputed statements/photos were published by the specific individuals, and "the complainant (GYLA) failed to present irrefutable evidence that would dispel any doubts for the court regarding the claim that the explanation provided by the commission members about their social media accounts being hacked was untrue."⁶

However, the court did not specify, within the framework of the adversarial principle, why an oral explanation is considered credible as opposed to other evidence.⁷

An additional example of unconditionally accepting the presented explanation, based on an abstract reference, is the decision of the CEC regarding the complaint filed by the International Society for Fair Elections and Democracy (ISFED). Specifically, according to the complaint, a member of the N6 precinct election commission, established in New York, was actively engaged in pre-election campaigning against the opposition party through the social media platform Facebook. The complaint included a photo as evidence.

The written position presented by the member of the precinct election commission reveals that they have sufficient experience regarding the elections and, as a member of the precinct election commission, is well aware of his/her rights and duties. Regarding the published posts, they state that no electoral campaigning took place on their part.⁸ The CEC, relying solely on the provided explanation, without considering the presented evidence, refused to draw up an administrative offense report against the commission member.

1.1.2. Participation of Public Officials in Pre-Election Campaigning

Public servants are prohibited from participating in pre-election campaigning during working hours and/or while exercising their official duties.⁹ Additionally, employees of Legal Entities

⁴ Decision of the N52 Baghdati District Election Commission N52/50, 27.10.2024.

⁵ Decision of the Kutaisi City Court, case N4/750-24, 6.11.2024.

⁶ In another case, which also involved a member of a precinct election commission participating in pre-election campaigning on social media, the Tbilisi City Court (case N4-8002-24, 01.11.2024) rejected the complaint based on two grounds: 1. The evidence presented in the complaint does not confirm the time of the alleged violation; 2. The evidence in the case does not establish that the specified page truly belongs to the commission member.

⁷ In a similar case, the Mtskheta District Court did not consider sufficient the explanation provided by a person appointed as a member of the district election commission by the 'United National Movement,' according to which they had not shared any campaign post on his/her social media. Therefore, the authenticity and validity of the screenshot presented as evidence were disputed.

Mtskheta District Court decision, case N4-a/839-2024, 22.10.2024.

⁸ A similar complaint was filed by the political union of citizens 'United National Movement,' the Non-entrepreneurial Non-commercial Legal Entity 'International Society for Fair Elections and Democracy,' and GYLA regarding the participation of a member of the New York 6th electoral district commission in pre-election campaigning. The CEC rejected the complaint on similar grounds. CEC Decision N01-02/1964, 29.10.2024.

⁹ Subparagraph 'h' of Paragraph 4 of Article 45 of the Election Code of Georgia.

under Public Law (LEPL) (except for higher and professional educational institutions, artistic institutions, religious organizations, and the Georgian Bar Association) are also prohibited from participating in pre-election campaigning during working hours and/or while exercising their official duties, as well as employees of Non-entrepreneurial Non-commercial Legal Entities (NNLEs) founded by the state or municipality, and those working in preschool educational institutions, general education institutions, or other educational establishments founded by the state or municipality.¹⁰

It is noteworthy that the primary goal of introducing such a regulation by the legislator was to establish public services as politically neutral institutions.

During the pre-election period, cases of public servants' involvement in pre-election campaigning remained relevant. For example, on October 11, 2024, GYLA filed a complaint with the №17 Telavi District Election Commission. The complaint concerned the Deputy Mayor of Telavi Municipality sharing a post in support of the ruling party on the social network "Facebook" during working hours, which also included the party number of Georgian Dream.

According to the explanation provided by the interested party, it is clarified that at the time mentioned in the complaint, the individual was at work, where social media networks are blocked on the existing computers. Additionally, their Facebook page is constantly logged in on the computer at their residence, which is also used by other family members (in this case, the spouse). Therefore, the photo mentioned in the complaint was not shared by them. They also state that neither during work hours nor in their free time do they share party posts, as they are well-acquainted with the Election Code.

The District eElection Commission also deemed the explanation¹¹ provided by the individual sufficient in this case and rejected the complaint filed by GYLA.¹²

In another case, the complainant sought to hold the individual responsible for sharing a political video with election campaign content on their Facebook account.¹³ The individual confirmed that they used their personal Facebook page; however, they clarified that neither state nor municipal resources were used for this purpose. Specifically, all materials posted on their personal page were uploaded through their private internet resources.¹⁴

The District Election Commission, when evaluating the mentioned issue, clarified that "in terms of the use of social media, only the use of official websites of relevant budgetary institutions and/or social media managed with budget funds is prohibited, and not actions/activities conducted on personal social media pages."¹⁵

¹⁰ Subparagraph 'j' of Paragraph 4 of Article 45 of the Election Code of Georgia.

¹¹ Decision of the N17 Telavi District Election Commission, N17/36, 21.10.2024.

¹² Similar cases are quite frequent, for example, the decisions of the N17 Telavi District Election Commission N17/37, 23.10.2024, and the N49 Terjola District Election Commission N49/53, 28.10.2024, in response to complaints filed by «International Society for Fair Elections and Democracy».

¹³ The decision of the N65 Martvili District Election Commission, 65/40, dated 28.10.2024, in response to a complaint filed by «International Society for Fair Elections and Democracy».

¹⁴ N28 Dusheti (Decision N28/48, 03.11.2024) and N29 Kazbegi (Decision N29/16, 28.10.2024) District Election Commissions rejected the complaints filed by «International Society for Fair Elections and Democracy» based on similar reasoning.

¹⁵ Similar reasoning can be found in the context of previous elections. For a detailed review, see GYLA's report «Analysis of Electoral Disputes (2020 Georgian Parliamentary Elections, First and Second Rounds),» <https://admin.gyla.ge/uploads_script/publications/pdf/საარჩევნო%20დავების%20ანალიზი.pdf_01722854919.pdf> [25.02.2025].

According to the Commission's practice, posting/sharing/liking information in favor of or against any subject on social media using personal resources is not considered an administrative offense.¹⁶

Under this interpretation, the electoral administration equated the use of administrative resources during the pre-election campaign and the circle of individuals entitled to participate in the pre-election administration, thereby rendering meaningless the legislation that restricts public servants' participation in pre-election campaigning during working hours and/or while performing their official duties.

As mentioned, the purpose of establishing such a restriction for public servants during the performance of their duties is to form neutral public institutions. However, the practice established by the electoral administration undermines both the neutrality of public services and the electoral system as a whole.

1.2. Participation in Pre-Election Campaigning Through Attendance at Events

During the pre-election period, there were frequent cases of conducting agitation through attending events. A notable example in this regard was the decision of the Zugdidi District Election Commission.¹⁷ Specifically, according to the complaint submitted to the commission, on October 15, 2024, a pre-election event of the political party "Georgian Dream" was held in the city of Zugdidi, in which the Chairman of the National Energy and Water Supply Regulatory Commission (later referred to as the GNERC) participated. According to the complainant, this participation violated the legislation.¹⁸ The complaint was accompanied by relevant video evidence.

According to the decision made by the District Election Commission, the link attached to the complaint was reviewed. Based on the review, the District Election Commission asserted that there was no evidence of pre-election campaigning or participation in campaigning by the Chairman of the Georgian National Energy and Water Supply Regulatory Commission (GNERC).

For his part, the Chairman of GNERC confirmed his attendance at the event, but explained that he attended as an ordinary citizen and did not participate in pre-election campaigning. The district election commission accepted this explanation and rejected the complaint.

The reasoning of the district election commission fails to meet the criteria for justification, particularly given that the definition of campaigning as outlined in the Election Code includes and qualifies any public action that contains signs of an election campaign, including participation in the organization or conduct of pre-election events¹⁹, which was clearly confirmed in this case.²⁰

¹⁶ In similar cases, the N65 Martvili District Election Commission (Decision N65/41, 28.10.2024) and the N18 Akhmeta District Election Commission (Decision N18/24, 22.10.2024) rejected the complaints presented by the Non-Entrepreneurial «International Society for Fair Elections and Democracy» based on similar arguments.

¹⁷ Decision N67/63, 27.10.2024 on the complaint of «International Society for Fair Elections and Democracy».

¹⁸ Subparagraph 'i' of Paragraph 4 of Article 45 of the Election Code of Georgia.

¹⁹ Subparagraph z7¹ of Article 2 of the Election Code of Georgia.

²⁰ In another case, which involved the attendance of an election commission member at a campaign meeting with voters organized by an electoral subject, the Zugdidi District Election Commission considered the individual's explanation as a sufficient basis for exemption from administrative responsibility. According to the explanation, the commission member was unaware that the meeting was taking place at that location, spoke briefly to an

1.3. Use of Administrative Resources

During the pre-election period of the 2024 parliamentary elections, numerous cases of administrative resource use were identified. When considering these cases, the district election commissions mostly relied on the explanations provided and did not take effective action in response to the complaints:

For example, according to a complaint filed by GYLA with the Gardabani District Election Commission, in October 2024, the Teachers' Day in the Gardabani Municipality was celebrated on October 19 instead of October 27. At the event, symbolic gifts and so-called commemorative cards were handed out to the gathered teachers by the Gardabani Municipality Mayor's Office, which featured a congratulatory text along with the party number of the "Georgian Dream" party. According to GYLA, the number on the card appeared in the same format as it appears on the party's promotional banners and video clips. The professional day was congratulated by the Vice Governor of Kvemo Kartli and current (at the time of the complaint) members of the Georgian Dream party list from the Georgian Parliament. The event was also commented on by the Mayor of Gardabani Municipality on social media.

In GYLA's view, this practice should have been considered as the use of administrative resources. The Gardabani District Election Commission rejected the complaint²¹, basing its decision on the response from the municipality's mayor's office, which stated that the event was neither planned nor organized by the mayor's office, and that its organization was not funded by the state or municipal budget, including the purchase of symbolic gifts and so-called souvenir cards given to the attendees.²²

1.4. Failure to Appear at Complaint Hearings as a Basis for Exemption from Liability

The biased nature of the case reviews and the low evidentiary standard are confirmed by the decision of the Rustavi District Election Commission.²³ Specifically, GYLA filed a complaint with the Rustavi District Election Commission regarding the alleged violation of electoral legislation by the head of the N25 kindergarten. In the complaint, GYLA explained that the head of the kindergarten had allegedly coerced employees under their supervision to participate in a pre-election event organized by the "Georgian Dream" party.

GYLA's complaint also pointed out that the mentioned individual was insulting employees and additionally tasked them with finding participants for the event and sending lists. This action, on the one hand, constitutes illegal campaigning, and on the other hand, it involves coercion of subordinates through the abuse of office, specifically the use of administrative resources. The record, considering its content, provided the opportunity to identify that the campaigning process was taking place during working hours as well.

It is also noteworthy that the filed complaint (among other things) requested a detailed

acquaintance at the meeting, and left the premises shortly thereafter.

Decision N67 Zugdidi District Election Commission, N67/61, 25.10.2024, on the complaint filed by the Non-Entrepreneurial «International Society for Fair Elections and Democracy.»

²¹ Decision of the N20 Rustavi District Election Commission, N21/35, 02.11.2024.

²² An example of the unquestioned acceptance of explanations presented by the District Election Commissions is the decision of the Kobuleti District Election Commission on the complaint filed by Transparency International Georgia, Decision N81/62, 26.10.2024;

Also, the decision of the Adigeni District Election Commission on GYLA's complaint, Decision N8/37, 02.11.2024.

²³ Decision N20/130, 03.11.2024.

examination of the stated factual circumstances, including questioning the employees working at the kindergarten whose identities were mentioned in the recording. According to the response from the Rustavi District Election Commission, the election commission's lawyer attempted several times to contact the head of the kindergarten by phone. During the phone conversation, the lawyer informed them about the received complaint and asked them to come to the district election commission for clarification. However, the individual refused and did not agree to provide any clarifications over the phone.

In the same decision, it is mentioned that the chairperson of the Rustavi District Election Commission does not know the head of the kindergarten and, at the same time, lacks the ability to identify the individual. Therefore, the complaint was not upheld.

1.5. Minor Significance of an Act as a Condition for Exemption from Administrative Liability

An interesting case is when the court determined a violation but, on the grounds of the minor significance of the act, relieved the individual from administrative responsibility. Specifically, according to the decision of the Khobi Magistrate Court²⁴, based on the administrative offense report prepared by the Khobi District Election Commission on October 24, a staff member of the Khobi Municipality was found to have engaged in pre-election campaigning through social media during working hours in favor of the political party "Georgian Dream." Specifically, the individual shared a post supporting a concert organized by the party.

The person agreed with the circumstances indicated in the records and requested forgiveness. The court considered the violation to have occurred, explaining that, on the one hand, the offense committed by the person was of minor significance. Additionally, the court took into account the party's "sincere repentance," as well as the fact that the person had not been previously subject to administrative penalties and was given a verbal warning.²⁵

²⁴ Case N4/150-2024, 30.10.2024.

²⁵ In a similar case, which involved the Head of the Public Relations and Media Department of the Khobi Municipality Mayor's Office conducting election campaigning for the political party «Georgian Dream» on social media during working hours, the Khobi Magistrate Court also issued a verbal warning. Case N4/149-2024, 30.10.2024.

In another case, the court determined that a violation had occurred when the Chairperson of the 25th District Election Commission of Batumi, District N79, attended a campaign event for the political party «Georgian Dream - Democratic Georgia.» The individual admitted to the factual circumstances of the case, and based on the minor nature of the act, the court issued a verbal warning. The Batumi City Court, Case N4/1779-24, 17.10.2024.

2. ELECTION DISPUTES RELATED TO SUMMARY PROTOCOLS OF VOTING RESULTS

The summary protocol is an official document confirming the voting and election results;²⁶ Therefore, accurately reflecting data in this document is a crucial prerequisite for the legitimacy of the elections.

As in previous elections, the 2024 parliamentary elections also saw numerous complaints and lawsuits filed with district election commissions and common courts due to imbalances and other types of violations. Notably, at polling stations where elections were conducted using technology, new types of irregularities emerged. Specifically, at some polling stations, the total number of voters recorded in the final summary protocols exceeded the total number of ballots indicated in the consolidated report (the excerpt of the preliminary results) printed from the special electronic device at the same polling stations.²⁷ Additionally, in some cases, the number of votes received by electoral subjects and/or the number of invalid ballots in the consolidated report did not match the corresponding data in the final summary protocols of the voting results.²⁸

This section of the report will focus primarily on these issues:

According to the complaint filed by GYLA with the Vake District Election Commission, in ten precinct election commissions within the Vake electoral district, the number of votes received by one or more electoral subjects, as indicated in the consolidated report (the excerpt of the preliminary results) printed from the special electronic device, was either higher or lesser than the number of votes received by the same electoral subjects as recorded in the precinct election commissions' summary protocols of voting results.

In these same precincts, the number of invalid ballots indicated in the consolidated report (the excerpt of the preliminary results) printed from the special electronic device was either higher or lower than the number of invalid ballots recorded in the precinct election commissions' summary protocols of voting results.

The complaint requested the annulment of the precinct election commissions' summary protocols of voting results, a recount of valid and invalid ballots, and the imposition of disciplinary liability on the responsible members of the precinct election commissions.

The commission denied the complaint,²⁹ reasoning that, under the existing procedure, the legally binding results of the precinct election commission are only reflected in the summary protocol of voting results prepared based on the ballot count conducted by the counters.

The Commission additionally stated that, in accordance with electoral legislation, the manual recount of ballots by the counters clarified the validity of votes received by electoral

²⁶ Paragraph 2 of Article 70 of the Election Code of Georgia.

²⁷ According to paragraph 'i' of Article 76^o of the Election Code of Georgia, after the polling process is finished, the PEC chairperson shall order one of the voter registration commission members to print out the final report from the voter verification device.

²⁸ It is noteworthy that at the polling stations where the elections were conducted using technology, the summary protocol of the voting results reflected not the data calculated by the machine, but the data manually counted by the counters. This regulation is driven by the fact that the elections (on such a scale) were conducted using technology for the first time in 2024. It is also important to highlight that both the technology and the commission members should follow the same legal criteria when determining the validity/authenticity of the ballots.

²⁹ N2 Vake District Election Commission Decree N92/2024, 31.10.2024.

subjects and the number of invalid ballots in the disputed polling stations, which was duly reflected in the summary protocol of the voting results.³⁰

Thus, simply pointing out that the manually recounted data by the vote counters holds legal force, the District Election Commission refrained from engaging in a deeper substantive analysis and did not even seek to determine what might have caused such a discrepancy—despite the fact that both the ballot-counting machine and the vote counters operate based on the same instructions.

In the same context, the reasoning of the Gori District Court on a similar case was quite interesting. Specifically, according to the complaints filed by a representative of the International Society for Fair Elections and Democracy (ISFED) with the Gori District Election Commission, the preliminary results data from fifteen polling stations in the Gori electoral district differ from the data in the summary protocols of the district election commissions. Specifically, the number of invalid ballots and votes received by the candidates were different. The complaint requested a recount of the results and the imposition of disciplinary measures.

The district election commission did not accept the claim, citing as the main argument that the representative of the monitoring organization did not submit a complaint on the day of the election at the polling station. Furthermore, it was stated that only the summary protocol of the election results, compiled by the vote counters based on the ballot count, reflects the legally valid results of the district election commission.

The Gori District Court partially accepted the claim³¹ and clarified that it was established that the preliminary data is counted by the special electronic apparatus, and an excerpt of the preliminary results is printed from the machine. The court also determined that the data on invalid ballots from the preliminary results of the polling stations under review differed from the invalid ballots counted by the vote counters.

The court focused on the fact that, according to the existing procedure, the special electronic device counts the votes and, accordingly, the valid and invalid ballots based on the criteria defined by the legislation: a ballot is considered valid only if it conforms to the established template, where only one circle corresponding to a political subject's name is marked and/or colored.

The court pointed out that, according to the law, the counting of electoral ballots must be carried out by the counters in accordance with the requirements of the law. Therefore, the court had to assess why there was a discrepancy in the number of invalid ballots between the results of the special electronic voting machine and those of the counters, when the same legal requirements and conditions were in place. The court also questioned what factual data the counters used to determine the invalid ballots and consider them valid.

The court pointed out that these factual circumstances were not investigated by the Gori District Election Commission, and by referring to an extremely formal basis, it did not accept the claimant's complaints. Therefore, the Gori District Election Commission was instructed to recount the invalid ballots from 15 polling stations.

³⁰ The Khelvachauri District Election Commission rejected another complaint filed by GYLA with similar reasoning, Decree N22/2024 of the N83 Khelvachauri District Election Commission, 31.10.2024.

³¹ Gori District Court decision, case N3/254-24, 4.11.2024.

This important decision was appealed by the District Election Commission to the Tbilisi Court of Appeals, which annulled the decision of the Gori District Court.³²

In another case, according to the complaint filed by the International Society for Fair Elections and Democracy (ISFED) with the Khelvachauri District Election Commission, the protocol revealed a discrepancy. The data in the consolidated protocols of two other precincts did not match the preliminary data from the electronic receipt. Also, there were corrections in the protocols, but they did not include correction protocols. The protocols were not confirmed by a seal. The filed complaints were not accepted, which were subsequently appealed to the court.

The district election commission explained that in one case, the error was caused by a technical malfunction, while in another precinct, the discrepancy was due to a wet ballot found in the mobile ballot box, which the machine did not accept, although this ballot was taken into account during the vote counting process. In two cases, it was noted that disciplinary proceedings were underway against the precinct commission secretary (in one case, the secretary was subjected to disciplinary action, while in the other, proceedings were ongoing during the case review).

The court referred to paragraph “d³ of Article 21 of the Election Code of Georgia, which stipulates the obligation of the district election commission to recount the results if the sum of the number of ballots considered invalid and the number of votes given to electoral subjects exceeds by 5 or more the total number of voters indicated in the summary protocol of the precinct election commission.

The court explained that the inaccuracy of the summary protocol data could lead to their invalidity in cases of such violations, where the data recorded as a result of the inaccuracy does not reflect the actual situation, but rather aims to alter the data. Based on this reasoning, the court noted that the nature of the violations in the summary protocol of the polling station results was not of a scale that would have warranted the recounting of the ballots at the polling station.³³

In other words, the court classified cases that are not explicitly stated in the legislation as grounds for vote recounts by the District Election Commission within the commission’s discretionary authority,³⁴ effectively excluding its role as a legal enforcer in this process.

It is also noteworthy that, given the scale of using electronic technologies in these elections, district election commissions and the court should have fully exercised their legal authority to recount the results to clarify the discrepancies. This would have helped identify the reasons behind the differences in results, dispelled doubts regarding the reliability of the voting machine, and ultimately allowed the commission, electoral subjects, and observer organizations to detect flaws that should be addressed in future elections.

³² The decision of the Tbilisi Court of Appeals, case N3b/3321-24, 6.11.2024.

³³ Khelvachauri District Court Decision, Case N3-175/24, 03.11.2024.

³⁴ A similar reasoning is provided in the decision of the Ozurgeti District Court, Case N3/191-24, 04.11.2024.

3. ELECTION DISPUTES CONCERNING THE SECRECY OF THE VOTE

Timeline of the Dispute on Ballot Secrecy³⁵

At the first stage, complaints were submitted to the District Election Commissions on October 29, 2024, requesting the annulment of the results and the corresponding summary protocols of the precincts where the elections were conducted using technological means. Out of the 73 submitted complaints, none were satisfied by the District Election Commissions.

The decisions/decrees made by the District Election Commissions were appealed in the City/District Courts, a total of 24 courts. Out of the 23 judges who reviewed the case, only one, Judge Vladimir Khuchua of the Tetrtskaro District Court, granted the lawsuit submitted by GYLA.³⁶

The decisions made by the courts of first instance were appealed in the appellate courts of Tbilisi and Kutaisi. Both courts refused to grant the submitted appellate complaints.³⁷ However, the decision made by the Tetrtskaro District Court was annulled by the Tbilisi Court of Appeal based on the appeals filed by the Tsalka and Tetrtskaro District Election Commissions. It is important to note that, in election disputes, the appellate court represents the final instance for considering the matter.

After the appellate courts made their decisions, the district election commissions issued the consolidated protocols, which were subsequently appealed by GYLA to the CEC.³⁸ On November 10, 2024, after several hours of deliberation, the CEC rejected the complaints submitted. The CEC's decision was then appealed first to the Tbilisi City Court and later to the Appellate Court. Both instances rejected the complaints, and thus, the decision remained unchanged.

The Tbilisi Appellate Court concluded the proceedings on November 15, 2024, after which, on November 16 of the same year, the CEC issued the consolidated protocol of the election results,³⁹ which was also appealed first to the City Court and then to the Appellate Court. The claims were not upheld in either case.

The refusal of the Appellate Court to grant an interim measure during the consideration of the case was appealed to the Supreme Court of Georgia, which left the claim unexamined.

In the report, the legal proceedings concerning the secrecy of the vote will be discussed in this sequence.

³⁵ The dispute regarding the secrecy of the vote was handled at various stages not only by GYLA but also by other monitoring organizations and political associations. As noted, some of the results from these organizations will also be reviewed in the report. However, within the chronology of the dispute, only the path taken by GYLA is outlined in general terms, as GYLA fully utilized all the legal mechanisms defined for this type of dispute.

³⁶ The judge reviewing the case, Vladimir Khuchua, consolidated the lawsuits submitted by GYLA, the non-governmental organization 'Transparency International Georgia,' the non-governmental organization 'Academy of the Future of Georgia,' and the non-governmental organization 'Open Space Caucasus.' With the decision made, all the claims were granted.

³⁷ Both the Tbilisi and Kutaisi appellate courts consolidated the complaints submitted by GYLA and other entities. In the case of Kutaisi, the cases were grouped into two proceedings, while in the case of Tbilisi, they were consolidated into one proceeding.

³⁸ At the CEC, as well as in court, the complaints submitted by GYLA, along with those of the political parties 'United National Movement' and 'Lelo - For Georgia's Freedom,' were heard.

³⁹ In addition to GYLA, the consolidated protocol of the election results was also appealed in court by political parties: «Unity-National Movement,» «Gakharia for Georgia,» and «Lelo - for People, for Freedom.»

The issue of secrecy violation in the 2024 elections

GYLA submitted complaints to the district election commissions on October 29, requesting the annulment of the results of all the polling stations (2263) in those districts where the elections were conducted using technology.

The acceptance of GYLA's complaints would lead to the holding of a repeat election, as the annulment of the results from technology-based polling stations would significantly impact the overall election outcome.

GYLA argued that on the day of the election, the principle of voter confidentiality was widely violated, which undermines the electoral rights guaranteed by the Constitution of Georgia.

The secrecy of voting is a fundamental component of the constitutional right to vote,⁴⁰ and in cases where this right is violated, the protection of the right becomes illusory. This guarantee also protects matters related to the conduct of the election process⁴¹ at the polling station, such as the instrumental means for exercising the right: the ballot and the ballot box. According to the standards set by the OSCE Office for Democratic Institutions and Human Rights, the absolute secrecy of voting must be protected at all stages of the voting process, including at the moment the ballot is placed in the box.⁴²

The violation of the principle of secrecy also breaches the European Convention, which stipulates that 'High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot under conditions that ensure the free expression of the people's will, including the election of legislative bodies.'⁴³ According to the case law of the European Court, this article is distinct from other fundamental rights under the Convention and its additional protocols because it imposes an obligation on High Contracting Parties to conduct elections that ensure the free expression of the people's will.⁴⁴

It is important to note that the Venice Commission clearly pointed out to the Georgian election administration the necessity of taking all required measures to ensure the secrecy of the vote during the process of introducing electronic technologies. However, the Central Election Commission (CEC) was unable to guarantee this right on the day of the 2024 parliamentary elections. Specifically, the 'Georgian Dream' party installed video cameras at polling stations, which, in some cases, were directed at the registration desks and verification devices, and in other cases, at the voting booths and main election ballot boxes. The quality of the ballots did not ensure that no marks were left on the back of the ballot where the circle had been colored. The combination of these two factors highlights the high risks of influencing voters' will and violates the principles of secrecy of the vote and free expression of will.

⁴⁰ The Constitution of Georgia, Article 24.

⁴¹ Compare: CCPR General Comment No. 25, Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights, and the Right of Equal Access to Public Service, adopted at the fifty-seventh session of the Human Rights Committee, 12 July 1996, CCPR/C/21/Rev.1/Add.7, para. 20.

⁴² Existing Commitments for Democratic Elections in OSCE Participating States, OSCE/ODIHR, 2003, <<https://www.osce.org/files/f/documents/0/d/13956.pdf>> [22.03.2025].

⁴³ European Convention on Human Rights (adopted on November 4, 1950, entered into force on September 3, 1953), Article 3 of the First Protocol.

⁴⁴ European Court of Human Rights, Guide on Article 3 of Protocol No. 1 to the European Convention on Human Rights, Right to free elections, 29.02.2024, § 11.

<https://ks.echr.coe.int/documents/d/echr-ks/guide_art_3_protocol_1_eng> [22.03.2025].

It is noteworthy that, prior to the elections, GYLA identified the risks of violating the secrecy of the vote during the CEC's training and informational meetings, and addressed the CEC in advance, urging them to take appropriate measures to eliminate this issue. In a letter dated September 28, 2024 (N01-01/1607), GYLA was informed that the election ballots used during the CEC's training and informational meetings were sample versions, and that the quality of the ballots to be used on election day would be different, ensuring the protection of secrecy. However, this condition was not met.

Given the scale and systemic nature of the violation of the secrecy of the vote, GYLA also addressed the Prosecutor's Office, requesting an investigation into these incidents.⁴⁵

3.1. Hearing of Complaints Related to Voting Secrecy in District Election Commissions

According to the uniform complaints submitted by GYLA to the district election commissions, the ballot paper and marker used in the parliamentary elections of October 26, 2024, did not prevent the voter's choice from becoming visible on the other side of the paper. To ensure the secrecy of the vote, the so-called frame-envelope was supposed to serve as a safeguard along with the turned-over ballot, but as it was revealed, even with the precise execution of the instructions issued by the CEC, the size of the frame-envelope could not guarantee the secrecy of the vote. When the ballot was placed in the vote-counting machine, its back became partially visible, which allowed third parties to identify the voter's choice.

Furthermore, as soon as the polling stations opened, video cameras of the political party 'Georgian Dream' were mass-deployed at the polling stations. In some cases, the cameras were directed at the registration desks and verification machines, and in other cases, at the voting booths and the main ballot boxes. In GYLA's opinion, the combination of these circumstances undermined the protection of the right to the secrecy of the vote.⁴⁶

Based on the given argument, GYLA requested the annulment of the results and the related summary protocols for all polling stations where the elections were conducted using electronic technologies. Almost all the election districts⁴⁷ that reviewed the issue

⁴⁵ GYLA demands the annulment of the results of all polling stations (2263 stations) conducted using technology due to the violation of the secrecy of the vote,» <<https://gyla.ge/post/GYLA-gancxadeba-30octomberi>> [22.03.2025].

⁴⁶ It is worth noting that the presented reasoning was the core of GYLA's argumentation, both in the discussions within the district election commissions, as well as in those conducted by the CEC and the courts. The argumentation of other monitoring organizations regarding the violation of the right to vote in secret is substantially similar within the framework of the dispute, both at the level of district election commissions and during the judicial review stage. It is also important to mention that, unlike GYLA, other monitoring organizations contested the results not of all electronic polling stations in specific districts, but rather of individual polling stations. Moreover, in the complaints and lawsuits, emphasis was placed not only on the violation of secrecy, but also on other procedural violations. However, within the framework of this report, as already noted, the focus is primarily on the issue of the secrecy of the vote and the ongoing discussions surrounding it.

⁴⁷ **Abasha District Election Commission** Decision N22/2024, dated 31.10.2024.

Ambrolauri District Election Commission Decision N21/2024, dated 31.10.2024.

Akhalkalaki District Election Commission Decision N24/2024, dated 31.10.2024.

Adigeni District Election Commission Decision N21/2024, dated 31.10.2024.

Aspindza District Election Commission Decision N24/2024, dated 31.10.2024.

Akhmeta District Election Commission Decision N26/2024, dated 31.10.2024.

Bolnisi District Election Commission Decision N33/2024, dated 31.10.2024.

Borjomi District Election Commission Decision N27/2024, dated 31.10.2024.

substantively⁴⁸ issued essentially identical decisions.⁴⁹ Therefore, in the following sections

Gardabani District Election Commission Decision N59/2024, dated 31.10.2024.
Gori District Election Commission Decision N45/2024, dated 31.10.2024.
Gurjaani District Election Commission Decision N25/2024, dated 31.10.2024.
Dedoplistskaro District Election Commission Decision N34/2024, dated 31.10.2024.
Didube District Election Commission Decision N33/2024, dated 31.10.2024.
Dmanisi District Election Commission Decision N37/2024, dated 31.10.2024.
Dusheti District Election Commission Decision N73/2024, dated 31.10.2024.
Vani District Election Commission Decision N20/2024, dated 31.10.2024.
Zestafoni District Election Commission Decision N27/2024, dated 31.10.2024.
Terjola District Election Commission Decision N21/2024, dated 31.10.2024.
Tianeti District Election Commission Decision N31/2024, dated 31.10.2024.
Isani District Election Commission Decision N98/2024, dated 31.10.2024.
Kaspi District Election Commission Decision N37/2024, dated 31.10.2024.
Krtsanisi District Election Commission Decision N44/2024, dated 31.10.2024.
Lagodekhi District Election Commission Decision N30/2024, dated 31.10.2024.
Lanchkhuti District Election Commission Decision N24/2024, dated 31.10.2024.
Lentekhi District Election Commission Decision N15/2024, dated 31.10.2024.
Marneuli District Election Commission Decision N74/2024, dated 31.10.2024.
Martvili District Election Commission Decision N37/2024, dated 31.10.2024.
Mestia District Election Commission Decision N22/2024, dated 31.10.2024.
Mtatsminda District Election Commission Decision N34/2024, dated 31.10.2024.
Mtskheta District Election Commission Decision N48/2024, dated 31.10.2024.
Nadzaladevi District Election Commission Decision N83/2024, dated 31.10.2024.
Ninotsminda District Election Commission Decision N14/2024, dated 31.10.2024.
Ozurgeti District Election Commission Decision N68/2024, dated 31.10.2024.
Oni District Election Commission Decision N17/2024, dated 31.10.2024.
Rustavi District Election Commission Decision N54/2024, dated 31.10.2024.
Saburtalo District Election Commission Decision N96/2024, dated 31.10.2024.
Sagarejo District Election Commission Decision N29/2024, dated 31.10.2024.
Samgori District Election Commission Decision N112/2024, dated 31.10.2024.
Sachkhere District Election Commission Decision N25/2024, dated 31.10.2024.
Senaki District Election Commission Decision N47/2024, dated 31.10.2024.
Tkibuli District Election Commission Decision N39/2024, dated 31.10.2024.
Poti District Election Commission Decision N38/2024, dated 31.10.2024.
Kareli District Election Commission Decision N33/2024, dated 31.10.2024.
Kobuleti District Election Commission Decision N54, dated 31.10.2024.
Kutaisi District Election Commission Decision N99/2024, dated 31.10.2024.
Kazbegi District Election Commission Decision N19/2024, dated 31.10.2024.
Kvareli District Election Commission Decision N29/2024, dated 31.10.2024.
Shuakhevi District Election Commission Decision N28/2024, dated 30.10.2024.
Chokhatauri District Election Commission Decision N48/2024, dated 31.10.2024.
Chkhorotsku District Election Commission Decision N22/2024, dated 31.10.2024.
Tsageri District Election Commission Decision N23/2024, dated 31.10.2024.
Tsalenjikha District Election Commission Decision N20/2024, dated 31.10.2024.
Tsalka District Election Commission Decision N20/2024, dated 31.10.2024.
Zugdidi District Election Commission Decision N42/2024, dated 31.10.2024.
Chiatura District Election Commission Decision N28/2024, dated 01.11.2024.
Kharagauli District Election Commission Decision N26/2024, dated 31.10.2024.
Khashuri District Election Commission Decision N30/2024, dated 31.10.2024.
Khobi District Election Commission Decision N25/2024, dated 31.10.2024.
Khoni District Election Commission Decision N35/2024, dated 31.10.2024.
Khulo District Election Commission Decision N27/2024, dated 31.10.2024.
Khelvachauri District Election Commission Decision N22/2024, dated 31.10.2024.

⁴⁸ The exception is the ruling issued by the Samtredia District Election Commission, according to which GYLA's complaint remained unexamined due to its late submission to the District Election Commission.

⁴⁹ The exception is also the ruling issued by the Chugureti District Election Commission, in which there is practically no discussion, as the district refused to satisfy GYLA's complaint on the grounds that no complaint had been

of the report, the primary arguments for the refusal of GYLA's complaints by the district election commissions will be assessed.

- **The standard of the “correct behavior” of the voter:**

According to the district election commissions, if the election ballot used in the October 26, 2024 elections was correctly placed in the special frame-envelope,⁵⁰ it was impossible to violate the secrecy of voting and ballot filling.⁵¹ The election administration stated that this was ensured by the design (size/thickness) of both the special frame-envelope and the election ballot:

“Therefore, if the voter correctly placed the ballot inside the special frame-envelope, and later placed the ballot, inside the frame-envelope, into the special electronic device for ballot counting, it was impossible to violate the secrecy of voting and the completion of the ballot. Specifically, it was impossible to determine which circle next to which electoral subject the voter had marked.”

This argument appears in the deliberations of both the district election commissions and the common courts, and it appears in almost the same form in a significant portion of the decisions.⁵²

- **The scope of responsibility of the CEC.**

When discussing the scope of the CEC's responsibility, the districts argue that “the CEC, through legal acts, established rules that, when followed, fully ensured the secrecy of the vote. Additionally, taking into account the size of the ballot paper and the number of electoral subjects participating in the elections, the CEC produced a special frame-envelope of a size that, when the ballot was placed correctly, fully ensured the secrecy of the vote.”

Therefore, the district commissions conclude that “the CEC carried out the necessary legal, technical, and administrative measures to protect the secrecy of the vote.”

The rulings also state that “in the event of the voter disregarding the requirements of electoral legislation, any size, thickness, or type of special frame-envelope and ballot paper could potentially reveal which candidate a particular voter voted for, if the voter's intention was for others to know their choice, or if the voter failed to follow the prescribed procedure for placing the ballot in the election box.

- **Ballot Thickness as a Guarantee of Voting Secrecy**

According to the position of the district election commissions, along with the frame-envelope, the ballot paper itself served as a guarantee of vote secrecy. Specifically, the district

registered at the polling station by GYLA's observers on the day of the vote. The ruling issued by the N52 Baghdadi District Election Commission also differs from the reasoning of other district election commissions. In this case, the commission based its entire argument on the fact that the complaint challenged the summary protocols prepared by all the precinct election commissions within the N52 Baghdadi district, while the complainant (GYLA) did not specify which specific precinct election commission's summary protocol had been prepared in violation of the law.

⁵⁰ The form of the special frame-envelope was determined by the CEC's order N266/2024, dated 10.10.2024.

⁵¹ The form and text of the election ballot were determined by the CEC's orders N265/2024 and N266/2024, dated 10.10.2024.

⁵² The issue will be discussed in more detail in the following sections of the report.

commissions considered cases where the ballot was incorrectly placed in the frame-envelope and explained:

Given the thickness of the ballot paper produced by the CEC and the large number of electoral subjects listed on it, it is impossible to determine which electoral subject a voter supported. This is especially true considering that on October 26, 2024, the back side of the ballot did not display the names and sequential numbers of the electoral subjects, nor the circles in front of those numbers.

The district election commissions additionally point out that the paper purchased by the CEC for the election ballots, which was high-grammage offset paper, was acquired before the approval of the ballot text. The purchase was made considering the recommendation issued by the supplier company, *Smartmatic*. They note that *“190-gram offset paper is thicker than what was recommended by the supplier company.*

- **Possibility of Voter Identification:**

According to the district election commissions, “On election day, voter identification and verification are conducted exclusively by the voter registration commission member. Consequently, it is practically impossible for other individuals present at the polling station to identify a voter, considering the number of voters participating in the election, the total number of people present at the polling station, and the location of the polling stations.”

The commissions further argue that even in polling stations where electronic voting took place, voter identification remains implausible. They assert that even if a theoretical assumption is made that a special marker’s is visible on the back of the ballot, this would not enable the identification of the voter due to the overall circumstances of the voting process.

- **Video Recording at Polling Stations:**

The district election commissions, in their decisions, refer on the one hand to the legality of placing cameras at polling stations,⁵³ while on the other hand, they argue that in the voting booths used during the October 26, 2024 elections, due to the booth’s design and structure, it was impossible for voters to photograph the ballot-marking process. Furthermore, they state that the stationary video camera mentioned in the complaint, which was installed in the polling room, could not have captured the voter’s choice.

Thus:

- The decisions made by the district election commissions are problematic in several ways. First, the commissions evaluate the process of placing ballots into the counting machine and the widespread presence of cameras at polling stations in isolation from one another. Even within hypothetical considerations, they fail to examine the voting process from the perspective of the voter.

⁵³ Election Code, Article 8, Paragraph 25: A person authorised to be at a polling station, as well as a person authorised to attend a session of a commission, shall have the right to photograph and video film, except in a polling booth, without obstructing the electoral process/the work of the election commission session. It is prohibited to photograph and video film or otherwise process the information or data that, according to this Law, is not/are not considered as public information, except when the photographing and video filming or processing is allowed by this Law.

- Another issue is that the commissions collectively shifted the burden of responsibility onto the voter while limiting the Central Election Commission's (CEC) obligations to the mere adoption of legal acts. They did not deliberate on the practical implementation of these rules or their unintended consequences.
- The commissions also linked the quality of the paper used for ballots to the supplier's recommendation without assessing the actual conditions and implications.
- The district election commissions also unanimously ruled out the possibility of voter identification, relying solely on the role of the registrar commission member. They failed to consider the movement of individuals authorized to be present at the polling station and the possibility that these individuals could perceive both the voter and their recorded choice.
- Notably, the commissions did not rule out the possibility of marker traces transferring to the back of the ballot. However, despite this acknowledgment, they did not thoroughly assess the significance of this fact or its potential impact on the free expression of voter will.
- Finally, the decisions of the district election commissions are nearly identical in all cases. This suggests that the commissions did not reach independent conclusions but rather followed a uniform instruction or pre-prepared text.

3.2. Disputes on Voting Secrecy in the Common Court System

3.2.1. Decisions of First-Instance Courts

The decisions issued by the District Election Commissions were appealed by GYLA in the City/District Courts. The claims filed requested the following:

1. To declare the decisions of the District Election Commissions invalid;
2. To declare invalid the summary protocols issued by the precinct election commissions and those polling stations within the electoral districts where the elections were conducted using technological means.

Within the scope of the present section, the main legal arguments and trends are analyzed, based on which 22 out of the 23 judges in the first-instance courts rejected the claim:

- In most of the decisions, the judges point out the fact that the evidence presented by GYLA (photo/video material) does not specifically relate to the precincts under consideration and/or it cannot be verified which precinct it describes:

In certain cases, this part appears as established factual circumstances in the decisions – in the decision of the Batumi City Court,⁵⁴ among the established factual circumstances, we read that “in certain cases, the ballots with a colored circle mark on the back do not belong to the territories of the Batumi and Kobuleti District Election Commissions.”⁵⁵

⁵⁴ Case N3-760/24, 3.11.2024.

⁵⁵ A similar line of reasoning is found in the decisions of the Senaki District Court (Case N3/83, 3.11.2024) and the Sachkhere District Court (Case N3/41-24, 3.11.2024) as well.

A similar line of reasoning is found in the reasoning section of the decision as well: according to the decision of the Sachkhere District Court,⁵⁶ the claimant presented video footage and photos regarding voting conducted using electronic technologies at several precincts; however, the claimant is unable to confirm which specific precincts these videos were recorded at.⁵⁷

The courts overlook the fact that official documents released by the CEC clearly indicate that the Election Commission purchased paper of identical quality and the same type of marker. Accordingly, the ballots at all polling stations were of the same quality. Therefore, if it were established that the existing electoral system at one precinct failed to ensure the fundamental right of voters to ballot secrecy, the same violation would apply to all precincts. Such generalization should not be considered a deviation from procedural law but rather a comprehensive examination of the case circumstances and a logical legal assessment—something that, unfortunately, was absent in the vast majority of these cases.

- In most of the decisions, the court agrees with the respondent's reasoning that the voter should have acted according to the standard of 'proper' behavior:

According to the decision of the Khelvachauri District Court,⁵⁸ 'if the voter correctly placed the ballot paper in the special frame-envelope and then correctly inserted it into the special electronic vote-counting device, it was impossible to violate the secrecy of voting and ballot completion.

As already noted, similar to the District Election Commissions, this phrase appears almost unchanged in a significant portion of court decisions.⁵⁹

The perception of the voter as a subject with obligations is further reinforced by several rulings. Specifically, in the decision of the Sachkhere District Court,⁶⁰ the court states that 'the process of exercising the right to vote in elections is fully explained and clarified by the relevant normative acts. It is the voter's responsibility to correctly carry out the act of voting at the moment of casting the ballot.'⁶¹

According to the decision of the Mtskheta District Court,⁶² 'the protection of the right to vote is not only the voter's right but also an obligation.'⁶³

⁵⁶ Case N3/41-24, 3.11.2024.

⁵⁷ According to the decision of the Poti City Court, 'none of the presented photographs were taken at the Khobi and Poti polling stations,' Case N3/115-2024, 3.11.2024.

⁵⁸ Case N3-174/24, 3.11.2024.

⁵⁹ Gori District Court, Case N3/251-24, 3.11.2024;
Khashuri District Court, Case N3-96-2024, 3.11.2024;
Tbilisi City Court, Case N3/8255-24, 3.11.2024;
Mtskheta District Court, Case N3/395-24, 3.11.2024;
Akhaltikhe District Court, Case N2/204-24, 4.11.2024;
Sighnaghi District Court, Case N3/160-24, 4.11.2024.

⁶⁰ Case N3/41-24, 3.11.2024.

⁶¹ After the examination of the claims filed by the non-governmental organizations 'Transparency International – Georgia,' 'The Academy of the Future of Georgia,' and 'Open Space Caucasus,' the responsibility was placed on the voter by the Gori District Court (Case N3/264-24, 5.11.2024) and the Khashuri District Court as well (Case N3-97-2024, 4.11.2024).

⁶² Case N3/395-24, 3.11.2024.

⁶³ A similar line of reasoning is developed by the Rustavi City Court, Case N3-332-24, 3.11.2024;
According to the Zugdidi District Court, if the envelope were placed close to the voting machine receiver, the possibility of deciphering anything on the ballot would be entirely excluded. Case N3/157-24, 3.11.2024;
The Batumi City Court also excluded the probability of revealing a voter's vote in the case of correct behavior by the voter, Case N3-760/24, 3.11.2024.

It is concluded that both the electoral administration and the courts have fully imposed the responsibility for ensuring secrecy on the voter, whose behavior, under the new voting model, is still in the process of formation.

- Both the District Election Commissions and the courts, in most cases, unanimously excluded the possibility that, even in the case of a marker's imprint transferring to the back of the ballot and its location being discernible, the choice made by the voter would be perceptible to a third party.

To exclude the possibility of the choice made by a specific voter being discerned by others, the courts cite various reasons:

- **A short period of time:**

Specifically, the 7.3 points of the decisions made by the Kutaisi⁶⁴ and Samtredia⁶⁵ City/District Courts are identical:

'The court notes that the presented video material confirms that, in certain cases, there is a marker imprint on the back of the election ballot, which may be noticeable during the process of placing the ballot into the vote-counting machine, within a very short period of time, during which it is impossible to determine who the voter cast their vote for.'⁶⁶

The court acknowledged that there was evidence of the marker's imprint leaking onto the back of the ballot; however, in this case, it did not find a violation of the secrecy of the vote, as it occurred within a very short period of time. In reality, the court did not assess how short this period is or whether it would be impossible for an average person/observer to perceive the expressed will.

It is also unclear on what basis the Kutaisi City and Samtredia District Courts determined that the ballot would need the smallest amount of time to pass through the machine, especially since in the video clip released by the CEC, it is visible that the back side of the ballot fully appears before it is partially taken by the machine. Moreover, the court did not conduct an experiment during the hearing.

- The voter is alone with the machine, thus excluding the possibility of observation by third parties.

According to the explanation of some City/District Courts, 'According to the Election Code of Georgia, voter identification/verification on election day is carried out only by a member of the voter registration commission. Therefore, identification of the voter by other individuals present at the polling station, considering the arrangement of the polling stations, is impossible, even in the case when a marker imprint is visible on the back of the ballot.'⁶⁷

According to the decision of the Signaghi District Court,⁶⁸ 'It is inconceivable that at the

⁶⁴ Case N3/638-24, 3.11.2024.

⁶⁵ Case N3/72-24, 2.11.2024.

⁶⁶ Due to the very short period of time, the possibility of identifying the choice made by the voter was excluded by the Zugdidi District Court as well, Case N3/157-24, 3.11.2024.

The Akhalkalaki District Court literally repeats this reasoning, Case N3/59-24, 4.11.2024.

⁶⁷ This part of the reasoning is identical to that of the District Election Commissions and is found in the court decisions in its unchanged form, specifically, the decision of the Rustavi City Court, Case N3-332-24, 3.11.2024, the decision of the Bolnisi District Court, Case N3/187-24, 4.11.2024, and the decision of the Akhaltsikhe District Court, Case N2/204-24, 4.11.2024.

⁶⁸ Case N3/157-24, 4.11.2024.

polling box on election day, throughout the entire day, there was only one representative of an ‘interested party’ who would observe the transfer of the marker imprint to the back of the ballot.

Additionally, the Akhaltsikhe District Court⁶⁹ explained: ‘Although a marker imprint is visible on the back of the ballot, in the case in question, the fact of taking photos of the ballots and their public distribution cannot be established. Therefore, the discussion of a violation of secrecy is meaningless.’

The court further explained: ‘Before approaching the electronic machine, the voter had already privately expressed their will in the booth, during which the principle of secrecy was not violated, and the electronic machine is only a counting device.’

As for the Akhaltsikhe District Court, it reduced the realization of the principle of secrecy only to the expression of will in the voting booth, leaving the entire subsequent process, up until the placement of the ballot in the machine, beyond consideration. This court linked the violation of secrecy substantively to the act of taking photos of the ballots and their subsequent public distribution, which can be agreed with, considering that secrecy is violated when a particular voter’s vote becomes known to any third party, regardless of whether the choice is documented and accessible to a wide circle of people.

- The name of a specific subject is not visible on the back of the ballot.⁷⁰ Furthermore, the spacing between the names of the electoral subjects is only a few millimeters.

According to the reasoning developed by the Tbilisi City Court,⁷¹ Even in the case of the appearance of the so-called ‘colored circle mark’ on the back of the ballot, the circle did not provide the possibility to identify which specific candidate the voter supported. As supporting evidence, the court (among other things) pointed out that the distance between the names of the electoral subjects was only a few millimeters.⁷²

Despite the reasoning, it remains unclear on what criteria the court excluded the possibility that the location of the circle could make the voter’s choice identifiable, in terms of who the voter did or did not vote for, considering that the electoral list and the numbering of the candidates participating in the elections were already known to everyone in advance.

Also, there was quite a significant distance between the opposition and ruling political parties on the ballot, which further simplified the identification of the voter’s preference, at least in terms of understanding whether the person made a pro-opposition or pro-government choice. The court left this circumstance out of its assessment.

- In many cases, the courts refer to the procedures determined by the CEC on the one hand, and on the other hand, to the guidelines and informational video clips prepared by it, to justify the legitimacy of the electoral administration’s actions.

⁶⁹ Case N2/204-24, 4.11.2024.

⁷⁰ Decision of the Gori District Court, Case N3/251-24, 3.11.2024; Decision of the Khachuri District Court, Case N3-96-2024, 3.11.2024.

⁷¹ Case N3/8255-24, 3.11.2024.

⁷² A similar reasoning has been developed by the Signagi District Court in the cases of both GYLA (Case N3/160-24, 4.11.2024), as well as the cases of the following NGOs: Transparency International Georgia, the Academy of the Future of Georgia, and Open Space of the Caucasus (Case N3/157-24, 4.11.2024).

Specifically, according to the decision of the Tbilisi City Court,⁷³ ‘The CEC established a rule for placing the election ballot in a special frame-envelope and then in a special electronic counting machine, which ensured the full confidentiality of the vote when followed. Moreover, taking into account the size of the election ballot and the number of electoral subjects participating in the election, the CEC created a special frame-envelope of such dimensions that, when the election ballot was placed according to the established procedure, it fully ensured the confidentiality of the vote. Considering all of the above, the City Court concluded that the CEC implemented the necessary legal, technical, and administrative measures to protect the confidentiality of the vote.’⁷⁴

As a rule, courts tend to overlook the fact that voter behavior cannot be ideal, perfectly aligning with the prescribed instructions, especially under the conditions of a newly implemented model.

It is important to note that even if voters fully complied with the procedures set by the CEC during the 2024 parliamentary elections, the secrecy of their vote could still not be ensured during the process of placing the ballot into the vote-counting machine.

Moreover, the effectiveness of the CEC’s efforts in the context of adequately informing voters should be assessed not by the duration or abundance of the video clips produced, or by the procedures developed, but by the voter’s behavior, the resulting outcome, and the factual circumstances. Undoubtedly, voters should be able to ensure the secrecy of their vote without undue effort; otherwise, the very existence of the electoral system loses its meaning. Ensuring this is precisely the primary responsibility of the CEC.

- In discussions regarding the cameras installed at the polling stations, the courts in certain decisions refer to the possibility guaranteed by electoral legislation, according to which, subject to compliance with the relevant conditions, the placement of cameras at polling stations is permitted. On the other hand, by referencing the burden of proof, they require the claimant to present appropriate evidence that would establish what the camera installed at the polling station was capturing.⁷⁵

According to the reasoning of the Zugdidi District Court⁷⁶, the claimant has not presented evidence that would confirm that the camera was specifically monitoring the act of placing the ballot into the vote-counting machine.⁷⁷

⁷³ Case N3/8255-24, 3.11.2024.

⁷⁴ Similar reasoning has been developed by the Signaghi District Court, both in the case of the Georgian Young Lawyers’ Association (Case N3/160-24, 4.11.2024), as well as in the cases of ‘Transparency International Georgia,’ ‘Academy of Georgia’s Future,’ and ‘Open Space of the Caucasus,’ Case N3/157-24, 4.11.2024; Similarly, the Zestafoni District Court has also ruled in Case N3/84-24, 3.11.2024.

⁷⁵ Similar reasoning can be found in almost every decision, for example, the decision made by the Rustavi City Court, Case N3-332-24, 3/11/2024; the decision made by the Poti City Court, Case N3/115-2024, 3.11.2024.

⁷⁶ Case N3/157-24, 3.11.2024.

⁷⁷ The courts’ reasoning on the issue of cameras installed at polling stations is quite diverse. Specifically, according to the Batumi City Court, ‘the mentioned recording device is a non-stationary, portable recording device mounted on a special stand, which may be placed at the contested location by any person,’ Case N3-760/24, 3.11.2024. In contrast, the Tbilisi City Court clarified: the cameras were installed stationary at certain polling stations and were directed at the ballot box. Accordingly, the court did not identify any violation or contradiction in this regard, Case N3/8255-24, 3.11.2024.

According to the decision of the Akhaltsikhe District Court, the complaints were filed three days after the election, by which time the installed cameras had already been removed, and it could not be determined where they had been placed or what they had captured. Case N2/204-24, 4.11.2024.

The Poti City Court, for its part, reasoned that ‘the presented evidence does not prove that these cameras were

The Gurjaani District Court,⁷⁸ for its part, noted that no evidence substantiates that video cameras were installed at the polling stations. Moreover, it is not substantiated that they were placed in such a way that would interfere with the protection of the secrecy of the vote.

The Ozurgeti District Court⁷⁹ unconditionally accepted the defendant's position regarding the fact that, generally, on election day, the disputed cameras were either turned off or deactivated. Moreover, the court placed the burden of proof on the claimant and emphasized the necessity of presenting evidence that would confirm that the camera was operational on election day.

Despite the diversity of the arguments, the common feature in the reasoning of the common courts is that practically all of them addressed the issue of the marker trace on the back of the ballot and the cameras installed en masse at the polling stations in isolation from each other. Most importantly, they did so without evaluating the situation from the perspective of the voter as a vulnerable category, and without considering what effect or potential effect the coincidence of these circumstances could have had.

In referencing the distribution of the burden of proof, the court did not take into account what information the claimant might have had access to.

- The courts associate the protection of the secrecy of the vote from the cameras installed at the polling stations with several mechanisms, including, notably, the form of the voting booth and the frame-envelope of the ballot:

In several decisions, we encounter identical reasoning as recorded by the district election commissions: the Khelvachauri District Court⁸⁰ literally repeats the reasoning of other decisions and clarifies that 'considering the form and appearance of the booth, it was impossible to capture on video or photo the procedure of the voter filling out the election ballot.'⁸¹

As for the frame-envelope, when discussing its function, the Akhaltsikhe District Court⁸² clarified that 'the envelope serves as both the device for placing the ballot into the machine and the function of protecting the voter's choice. In cases where it is placed close to the receiving mechanism of the machine, the possibility of discerning anything on the ballot is completely excluded.'⁸³

installed on the territory of the Poti/Khobi Districts or that these cameras were used to record the process of placing the ballot into the vote-counting machine.' Case N3/115-2024, 3.11.2024.

The Telavi District Court, in its decision on the claims filed by the non-profit (non-commercial) legal entities 'Transparency International Georgia,' 'Academy of Georgia's Future,' and 'Open Space of the Caucasus,' noted that the claimants did not present any evidence that would irrefutably prove that the cameras installed were capturing the process of placing the ballot into the vote-counting machine. Case N3/156-2024, 4.11.2024.

⁷⁸ Case N3/177-24, 4.11.2024.

⁷⁹ Case N3/190-24, 3.11.2024.

⁸⁰ Case N3-174/24, 3.11.2024.

⁸¹ Similar reasoning can be found in other decisions: the decision of the Khashuri District Court, Case N3-96-2024, 3.11.2024; the decision of the Tbilisi City Court, Case N3/8255-24, 3.11.2024; the decision of the Gori District Court, Case N3/251-24, 3.11.2024.

⁸² Case N2/204-24, 4.11.2024.

⁸³ The decision of the Telavi District Court literally repeats this reasoning in the decision on the claims filed by 'Transparency International Georgia,' 'Academy of Georgia's Future,' and 'Open Space of the Caucasus,' Case N3/156-2024, 4.11.2024,

According to the Khelvachauri District Court,⁸⁴ The frame-envelope completely covered the information of the electoral subjects, and for this reason, it was simply impossible to see which electoral subject's circle the voter had marked.⁸⁵

- When evaluating the process from the voter's perspective, the courts assess whether the voter viewed the appearance of the marker trace on the back of the ballot as a violation of the secrecy of the vote. They also focus on the voter's intention to make their choice visible to third parties.

The Zugdidi District Court⁸⁶ deliberated on whether the voter perceived the transition of the marker to the back of the ballot as a violation of the secrecy of the vote. This was ruled out by the fact that no request to change the ballot or envelope was recorded from the voters.⁸⁷

Regarding the voter's intention to disclose their choice to third parties, the Khelvachauri District Court⁸⁸ opined that the secrecy of the vote could be violated in the case of ballots of any thickness, should the voter wish to do so. In general, no process, regardless of its form or method, is protected from the voter's expression of such an intention.⁸⁹

The courts do not consider what should have been required from the voter if, during the placement of the ballot into the machine, it turned out that the vote was visible to third parties. It is also noteworthy that Georgian legislation does not grant the voter the right to file a complaint or appeal regarding electoral disputes.

The court overlooked the issue that, within the scope of the dispute, it should have assessed whether, on election day, the choice recorded by the voter was visible to third parties, regardless of the voter's intent.

- One of the main arguments that almost all first-instance courts rely on⁹⁰ is the fact that GYLA did not file a complaint at the polling stations.

Specifically, the courts referred to Articles 72-73 of the Election Code of Georgia, which stipulate that a complaint about a violation of the voting procedure at a polling station must be filed immediately upon noticing the violation, between 7 a.m. on election day and before the opening of the ballot box.⁹¹

⁸⁴ Case N3-174/24, 3.11.2024.

⁸⁵ Similar reasoning is presented in the following decisions: the decision of the Gori District Court, Case N3/251-24, 3.11.2024; the decision of the Khashuri District Court, Case N3-96-2024, 3.11.2024; the decision of the Tbilisi City Court, Case N3/8255-24, 3.11.2024.

⁸⁶ Case N3/157-24, 3.11.2024.

⁸⁷ Identical reasoning can be found in the decision made by the Kutaisi City Court, Case N3/638-24, 3.11.2024; Also in the decision of the Akhaltsikhe District Court, Case N2/204-24, 4.11.2024.

⁸⁸ Case N3-174/24, 3.11.2024.

⁸⁹ Similar reasoning is developed by the Khashuri District Court, Case N3-97-2024, 4.11.2024; Tbilisi City Court, Case N3/8255-24, 3.11.2024.

⁹⁰ Similar arguments are presented in the decisions of the following district/city courts: Senaki District Court, case N3/83, 3.11.2024; Rustavi City Court, case N3-332-24, 3.11.2024; Zugdidi District Court, case N3/157-24, 3.11.2024; Batumi City Court, case N3-760/24, 3.11.2024; Kutaisi City Court, case N3/638-24, 3.11.2024; Gori District Court, case N 3/251-24, 3.11.2024; Zestaponi District Court, case N3/84-24, 3.11.2024; Mtskheta District Court, case N3/395-24, 3.11.2024; Gurjaani District Court, case N3/177-24, 4.11.2024; Sachkhere District Court, case N3/41-24, 3.11.2024; Signaghi District Court, case N3/160-24, 4.11.2024; Batumi City Court, case N3/115-2024, 3.11.2024; Also, the decisions of Mtskheta District Court (case N3/396-2024, 3.11.2024) and Khashuri District Court (case N3-97-2024, 4.11.2024) regarding the petitions of GYLA, the Academy of the Future of Georgia, and Open Space of the Caucasus.

⁹¹ Case N3-332-24, 3.11.2024.

The court indicated that the complaint regarding the violation of the secrecy of the vote was not filed before the opening of the ballot box.⁹²

The courts did not discuss the provision of Article 72 of the Election Code, which requires the submission of a complaint 'immediately after the violation is detected.' In this regard, the court did not take into account the main argument of GYLA, according to which the scale of the violation was revealed after the polling stations had closed.

It is also noteworthy that none of the courts considered what practical legal consequences might arise from submitting such a complaint at the polling station.

The courts do not clearly discuss whether the failure to submit complaints to the electoral commissions can cover or exclude the existence of such large-scale problems. Specifically, the Senaki District Court⁹³ in its decision focused on the nature of the violations described in the complaint and their (if proven) fundamental importance for the legitimacy of the election. The Senaki District Court also pointed out that, in such cases, it is the direct responsibility of the observer to write a complaint, which, according to the judge's indication, was not confirmed.

Thus, the mentioned court acknowledged that in the case of such violations, the fundamental principles of the election were disregarded. On the other hand, it linked the assessment of the legality/illegality of the election entirely to the observer's submission of a complaint within a specific time frame.

- In discussions regarding the use of electronic technologies in elections, decisions often include the justification that the state's determination of the procedures and conditions for voting cannot be considered as any form of restriction.⁹⁴

The common courts overlooked the fact that none of the claims filed by the plaintiffs involved an assessment of the legality of the decision to conduct elections using electronic means. Rather, the issue was that the inadequate preparation of this process led to a violation of the principle of secrecy, which, in turn, resulted in the invalidation of the election results.

Ultimately, based on the aforementioned reasoning and the indication that the courts considered the arguments presented by GYLA in a general and abstract manner, and on the grounds that 'no evidence was presented to show that the secrecy of voting was violated at any polling station or, specifically, for any voter,'⁹⁵ they refused to grant the claims submitted.

⁹² The norm was explained in the same way by the Akhaltsikhe District Court as well, Case N2/204-24, 4.11.2024.

⁹³ On the claims of the non-governmental organizations «Transparency International Georgia», «Georgian Academy of the Future», and «Open Space Caucasus», the decision of the Senaki District Court, case N3/81-2024, 3.11.2024.

⁹⁴ The decision of the Rustavi City Court, case N3-332-24, 3.11.2024.

An identical reasoning is presented in the decision of the Mtskheta District Court, case N3/395-24, 3.11.2024.

Also, in the decisions of the Gurjaani District Court, case N3/177-24, 4.11.2024, the Bolnisi District Court, case N3/187-24, 4.11.2024, and the Akhaltsikhe District Court, case N2/204-24, 4.11.2024.

⁹⁵ The decision of the Poti City Court, case N3/115-2024, 3.11.2024; the decision of the Gurjaani District Court, case N3/177-24, 4.11.2024;

The Akhaltsikhe District Court, in refusing to grant the claim, additionally stated that the plaintiff 'has not presented adequate evidence (audit conclusion) that the electronically conducted voting using technology contradicts electoral principles, including with regard to secrecy,' case N2/204-24, 4.11.2024.

- **What did the common courts fail to consider when reviewing the cases?**
- The courts did not give due attention to the evidence presented by GYLA, including one of the most important documents, which reflects the communication with the CEC.

Before the elections, GYLA discovered the issue with the thickness of the ballot used in the training and informational meetings conducted by the CEC and addressed this issue to the CEC in advance.⁹⁶ In response, the organization was informed that the ballot used in the CEC's training and informational meetings was a test version, and that the ballot used on election day would be of a different quality, ensuring the protection of secrecy.

The letter clearly indicated that the CEC was aware of the issue with the thickness of the ballot, yet the promise made by the electoral administration was not fulfilled.

- The courts did not grant the request made by GYLA, which sought for the court to examine the sealed electronic ballots used at the electronic/technological polling stations on election day, October 26, 2024, at their storage location (warehouse), based on randomly selected polling stations.

In return, the common courts often state in their decisions that the paper purchased by the CEC is thicker than what was recommended by the 'supplier.' Considerable attention is given to discussing the nature of offset paper and examining the causes that may have potentially resulted in the appearance of a mark on the reverse side of the paper that mirrors what is printed on the front.⁹⁷

Furthermore, the Rustavi City Court⁹⁸ allowed for the possibility of a marker imprint on the other side, but concluded that this could only occur if the voter held the marker on the paper for an extended period.⁹⁹ Therefore, the court placed the responsibility on the voter and, instead of granting the request that would have allowed for the inspection of the ballots and/or conducting an experiment on its own initiative, relied on publicly available or researched information in the online space.

- As a rule, the courts do not explicitly consider the possibility of a ballot being returned from the machine, nor the fact that if this happens, the secrecy of the vote may not be guaranteed.

Summary:

Based on the reviewed decisions, we can conclude that the common courts considered the voter as a subject burdened with responsibilities, obligated to ensure the secrecy of their vote through their 'correct behavior.' On the other hand, the courts linked the violation of ballot secrecy to the voter's own will. However, it is unacceptable to equate cases where a voter voluntarily discloses their vote with situations where the voter did not intend to do so, but procedural complexity or system deficiencies failed to guarantee ballot secrecy. It was the duty of the administrative body and the court to determine the cause of the issue - whether it stemmed from the quality of the marker, the thickness of the ballot, or another factor.

⁹⁶ Letter of September 28, 2024, N01-01/1607.

⁹⁷ The decision of the Rustavi City Court, case N3-332-24, 3.11.2024.

The decision of the Akhaltsikhe District Court, case N2/204-24, 4.11.2024.

⁹⁸ Case N3-332-24, 3.11.2024.

⁹⁹ An identical reasoning is presented in the decision made by the Akhaltsikhe District Court, case N2/204-24, 4.11.2024.

In a state governed by the rule of law, the primary duty of the Central Election Commission is to ensure that voters can freely express their will. Voters should not have to exert extra effort or undergo special training to safeguard the secrecy of their vote. It is the responsibility of the election administration to guarantee secrecy from the outset, making any violation of this principle practically impossible due to chance or factors beyond the voter's control.

3.2.2. Decision of the Tetrtskaro District Court¹⁰⁰

The decision of the Tetrtskaro District Court proved to be of utmost importance in protecting one of the fundamental electoral rights guaranteed by the Constitution—the secrecy of the vote. The court upheld the plaintiffs' claims and annulled the voting results (including the relevant summary protocols of voting and election results) in polling stations within Election District N25 of Tsalka and Election District N26 of Tetrtskaro, where elections were conducted using electronic technologies.

The Tetrtskaro District Court was the only one that had the opportunity to observe the voting process within the framework of the trial, through a judicial experiment. Specifically, by its ruling of November 3, 2024, the court requested from the CEC one vote-counting electronic device (test version for the October 26, 2024, elections), 20 election ballots (version for the October 26, 2024, parliamentary elections), 10 special frame-envelopes (version for the October 26, 2024, parliamentary elections), 5 markers (version for the October 26, 2024, parliamentary elections), and conducted the experiment during the court session.

Based on the combination of the case circumstances, the presented evidence, and the experiment, the court explained:

- The secrecy of the vote must be upheld at every stage of the electoral process.” The court unequivocally stated that **‘even the mere theoretical possibility of a violation of the principle of secret voting creates fear in the voter, thus suppressing their free will. As a result, a vote conducted under such circumstances cannot have legal legitimacy’**.

Based on the conducted experiment, the court determined that the elections held on October 26, 2024, using electronic technologies in the polling stations of Election District N25 of Tsalka (a total of 17 polling stations) and Election District N26 of Tetrtskaro (a total of 13 polling stations) posed all the real risks that could threaten the secrecy of the vote and the free expression of the voter's will.

According to the court's indication, ‘Based on the examined evidence, it was established that, within the bounds of reason, in most cases, it is impossible for a voter to place the expressed will (colored/uncolored, marked/unmarked ballot) into the special electronic vote-counting device in a way that completely excludes the violation of the secrecy of their vote.

¹⁰⁰ Case N3-62-24(3/63-24), 4.11.2024: Within the case, the court consolidated the lawsuits filed by the Non-Entrepreneurial (Non-Commercial) Legal Entities ‘Transparency International Georgia,’ ‘Academy for the Future of Georgia,’ ‘Open Space Caucasus,’ and GYLA against the Tsalka and Tetrtskaro District Election Commissions. On October 29, 2024, ‘Transparency International Georgia,’ ‘Academy for the Future of Georgia,’ and ‘Open Space Caucasus’ filed a complaint with the Zalka District Election Commission. The complaint requested the annulment of the voting results compiled by the precinct election commissions of polling stations N1 and N32, as well as the imposition of disciplinary and/or administrative liability on the responsible precinct election commission members.

This was confirmed during the process of examining the evidence, with the participation of the parties and the court in the courtroom, when several secretly marked ballots were placed into the special electronic vote-counting device by different individuals. It became apparent to the parties standing near the device which part of the ballot was colored. The parties did not express any other position regarding this matter.

Tetritskaro court also pointed out that the election ballot is printed based on the CEC's directive, according to the template it has established,¹⁰¹ and stated: 'It is unclear to the court, and the defendants (the election administration) could not explain, how the election ballot presented in court and used in the elections, along with the frame envelope, corresponds to the CEC's directive-approved template in terms of its characteristics (color, size, weight, etc.), as no specific features are indicated. The same applies to the marker presented.

The decision also states that, according to the election administration (defendant), apart from the CEC's directive N265/2024 dated October 10, 2024, there is no other regulatory act addressing this issue. Therefore, the court did not limit the CEC's responsibility solely to the execution of the supplier company's recommendations in this regard.

The ruling states: "At disputed polling stations, it was possible to arrange video recording devices in such a way that, in the event of oversight, an interested party would have the opportunity to record a citizen's vote. The court further emphasizes that this mainly concerns the process of placing the election ballot, inserted into the frame envelope, into the special machine for vote counting, which, in the best-case scenario, lasts for a few (approximately 2-5) seconds. The court also takes into account the provisions of the manual instructions approved by the CEC's resolution."

The judge's reasoning is also significant in the context of the distribution of the burden of proof: "The court believes that when there is substantiated and confirmed evidence that the tools (ballot, marker, frame envelope, special vote-counting machine) could, in practice, violate the principle of the secrecy of the vote, in this case, the respondents (the election administration) bear the burden of proof, pursuant to Article 17 of the Administrative Procedure Code.

3.2.3. Decisions of Appellate Courts

3.2.3.1. Decision of the Tbilisi Court of Appeals

In Eastern Georgia, the decisions/rulings on election disputes issued by first-instance courts were appealed by GYLA to the Tbilisi Court of Appeals.¹⁰²

The Tbilisi Court of Appeals consolidated 22 different cases submitted by GYLA, other local election observation organizations,¹⁰³ and District Election Commissions.¹⁰⁴

¹⁰¹ The court referred to the election ballot and special envelope templates established by the CEC's directive N265/2024 dated October 10, 2024.

¹⁰² Appeals were filed regarding the decisions of the City (District) Courts of Gori, Rustavi, Mtskheta, Khachuri, Akhaltsikhe, Telavi, Gurjaani, Akhalkalaki, Signagi, Bolnisi, and Tbilisi, which refused to grant GYLA's claims/motions, as well as the procedural orders issued by these courts.

¹⁰³ Appeals were filed by local observer organizations – 'Transparency International – Georgia,' 'Academy of the Future of Georgia,' and 'Open Space Caucasus' – regarding the decisions made by the District (City) Courts of Mtskheta, Akhaltsikhe, Telavi, Gurjaani, Gori, Akhalkalaki, Bolnisi, Khachuri, Rustavi, and Signagi, which denied the satisfaction of their claims.

¹⁰⁴ Appeals were filed by the N25 Tsalka District Election Commission and N26 Tetritskaro District Election

The court proceedings began on November 6, 2024, and concluded nearly 23 hours later, on November 7.¹⁰⁵ The court cited the obligation to review election disputes within expedited timeframes as the primary reason for the continuous process. However, a separate issue remains as to whether the three judges had the opportunity to thoroughly examine the case materials within such constrained deadlines, especially given the consolidation of multiple complaints. Additionally, questions arise regarding the necessity of merging these cases into a single proceeding.

Ultimately, the Court of Appeals rejected the complaints submitted by election observation organizations. As a result, the decisions of the first-instance courts remained unchanged.

At the same time, the Court of Appeals upheld the appellate complaints of the District Election Commissions of Tsalka and Tetrtskaro, annulled the November 4, 2024, decision of the magistrate judge of the Tetrtskaro District Court in Tsalka Municipality, and issued a new ruling on this matter.

It is noteworthy that in the cases under review, GYLA's claims, arguments, and reasoning were presented in full, while a significant portion of the reasoning in the appeals filed by other election observation organizations¹⁰⁶ (except for references to violations identified at the disputed polling stations) concerned the widespread violation of ballot secrecy during Georgia's October 26, 2024, parliamentary elections. Accordingly, within the scope of the dispute, the court should have initially examined whether the principle of ballot secrecy was upheld on election day.

According to the explanation of the Appellate Court, the frame-envelope and ballot paper format/size used in the voting process were selected by the CEC in a manner intended to ensure both the secrecy of the voter's choice and the proper functioning of the results-counting device installed on the ballot box.

Accordingly, the Appellate Court, similar to the reasoning of the first-instance courts and District Election Commissions, substantively linked the protection of ballot secrecy to both the characteristics of the frame-envelope and the ballot paper itself.

The Appellate Court granted the motion of the appellant District Election Commissions and conducted an experiment during the hearing. As explained by the court, this procedural action aimed to determine whether, when voting through the electronic device, the presence of marker traces on the back of the ballot paper could allow for the clear identification of the voter's choice.

Based on the experiment, the court concluded that 'despite the presence of traces of coloring on the back of the ballot paper, there is no violation of the principle of secrecy of the vote, as the form (size/thickness) of the special frame-envelope used in the voting process completely excluded the possibility of revealing the voter's choice.'

According to the court's explanation, if the voter followed the instructions provided by the CEC, the frame-envelope would be held freely by the voter while placing the ballot into the

Commission regarding the decision made by the Magistrate Judge of the Tetrtskaro District Court on November 4, 2024, in Tsalka Municipality.

¹⁰⁵ See the report prepared by 'Radio Free Europe' titled '23 Hours in Court.'

<https://youtu.be/eYDnSL94fHM?si=AXPc4le1_I5cH7n1> [10.01.2024].

¹⁰⁶ Transparency International – Georgia,» «Academy of the Future of Georgia,» «Open Space Caucasus,» «Civil Idea – Civil Initiative for a Democratic Euro-Atlantic Choice.

results-counting device. As the ballot began to move within the device, the voter would simultaneously move the frame-envelope in the same direction toward the device's entry slot. Consequently, any traces left would be completely invisible to the human eye (including to video recording equipment).

One essential factor must be considered. An experiment was conducted by qualified CEC staff at the Tbilisi Court of Appeals, and in a manner that had not been outlined in the instructions provided by the CEC before the elections or depicted in the video tutorials. This is clearly stated in the text of the decision: 'As the ballot began to move within the device, the frame-envelope was moved accordingly.' This is an essential element that appears in the Appellate Court's decision. It was not mentioned in the instructions set by the CEC nor in the video tutorials released by them. However, it appeared in a new video clip¹⁰⁷ and, also, as a result of an experiment conducted by a professional in a different manner during the court proceedings.

Based on the arguments presented, the court concluded that 'it was impossible for the unaided eye to determine which electoral subject's circle the voter had marked or whether any circle had been marked at all, unless the voter, through intentional action or gross negligence, made their choice public.'

Regarding the form of guilt, as intent, and the voter's intention to reveal their choice, which the first-instance courts referred to, the Appellate Court also introduced the concept of gross negligence, thereby expanding the scope of interpretation and increasing the burden placed on the voter.

Regarding voter identification, the Appellate Court noted that on election day, voter identification/verification was conducted only by a member of the registrar commission. Accordingly, identification of the voter by other individuals present in the voting room was impossible, considering the number of people at the polling station.

According to the Appellate Court, it is inconceivable how, on election day, there could have been only one representative of an 'interested party' by the results-counting device throughout the day, who would have been able to identify each voter arriving at the polling station, observe the specific location of the marking trace on the back of the ballot paper, and, at the same time, proactively record information about which political subject was supported by several hundred or thousands of voters.

In this case, the court overlooked the fact that creating a threat to the secrecy of the vote does not require the identification of every voter. Rather, it is the mere instillation of fear in the voter that their choice could be perceived by a third party, which in itself undermines the principles of secrecy of the vote and the free expression of will.

Moreover, the court agreed with the reasoning of the lower-instance courts regarding the legality of placing video cameras at polling stations. However, unlike them, it raised an additional question: whether the presence of a video camera above the results-counting device at the polling station would induce fear and doubt in the voter that they were being monitored.

In the view of the Tbilisi Court of Appeals, for the maximum accumulation of votes cast by voters in favor of a specific electoral subject to have occurred, it would be logical that the

¹⁰⁷ <<https://www.youtube.com/watch?v=Tfl95uKePyA>> [18.02.2025].

voters themselves should have had information about the effective mechanisms for controlling their choice, which would leave them no option but to vote for a particular electoral subject.

However, the Appellate Court did not specify on what basis it excluded the possibility that some voters might indeed have had such information, or that such a perception could have formed based on a combination of circumstances during the actual voting process.

According to the position of the Tbilisi Court of Appeals, 'there is no evidence in the case materials to confirm that at least one voter was informed in advance about the existence of effective control over their expressed will.'

The Appellate Court concluded that the trace of the colored circle on the back of the ballot paper did not provide the possibility of determining which electoral subject the voter had supported, or whether the ballot had been invalidated at all.

In the Appellate Court's assessment, in order to satisfy the claim, among other factors, the following condition must have been met: a member of the precinct election commission standing by the results-counting device must have been able to accurately identify the specific voter. Additionally, they must have been equipped with special skills (including perfect vision) to precisely determine, by observing the location of the marker trace on the ballot, whether the circle of a specific electoral subject had been marked.

Regarding the return of marked ballots from the results-counting devices for unclear reasons, the court stated that if such an occurrence did take place, it would have been of an exceptionally rare nature and would not have affected the outcome of the elections.

The court also considered the letter sent by a representative of GYLA to the CEC and concluded that the election administration had fulfilled its promise. According to the court's explanation, the evidence presented in the case confirms that the CEC, based on the relevant contract, purchased paper that was thicker than what had been recommended by the service provider company.

At first glance, the Tbilisi Court of Appeals considers the facts as if they form a cohesive whole, but in reality, it fails to clearly connect them. It places the burden of proof for certain circumstances on the plaintiff, circumstances over which they have no control. The court completely excluded from its assessment the behavior of the ordinary, vulnerable voter, who is easily influenced. As a result, the decision it reached was fundamentally based on an experiment that did not correspond to the actual reality on election day.

3.2.3.2. Decisions of the Kutaisi Court of Appeals

Unlike the Tbilisi Court of Appeal, the Kutaisi Court of Appeal consolidated the presented claims into two proceedings.¹⁰⁸ Ultimately, the appellate court did not satisfy the appellants' requests and upheld the appealed decisions without change.

¹⁰⁸ Thus, two decisions were made: Case N3/დ-436-24, 6.11.2024, and Case N3დ-445-24, 7.11.2024.

- **The decision of the Kutaisi Court of Appeal on November 6th¹⁰⁹**

The appellate court verbatim repeats the reasoning of the district election commissions' rulings and the reasoning provided in several decisions of the first-instance courts regarding the 'correct' behavior standard of the voter. According to the court's assessment, in the case of proper placement of the ballot first in the frame-envelope and then in the special vote-counting machine, the possibility of identifying which electoral subject the voter voted for or did not vote for was excluded.

hus, according to the reasoning of the Kutaisi Court of Appeal, the secrecy of the vote, as a right, implies both the secrecy of whom the voter voted for and the secrecy of whom they did not vote for.

The court repeats the justification frequently used by the lower-instance courts and district election commissions that secrecy was ensured, including by the form and appearance of the polling booth determined by the CEC. Additionally, according to the court, it was not proven that the evidence presented regarding the violation of the secrecy of the vote — the video and photo materials — were indeed taken at the polling stations mentioned in the complaints.

It is also important to note that the appellants requested the annulment of the decisions of the first instance courts, which had rejected the inspection of the ballots at the polling stations. The same motion was presented at the appellate stage, but the request was not granted. According to the court's argument, when the respondents do not rule out the possibility of ink seepage to the reverse side of the ballot, the contested decisions are correct — even if the requested ballots had such ink seepage, this does not necessarily mean a violation of the secrecy of the vote.

From the reasoning presented, it is clear that the court places no importance on the fact of ink seepage.

- **The decision of the Kutaisi Court of Appeal of November 7th¹¹⁰**

According to the decision of the Kutaisi Court of Appeal dated November 7, 2024, the presence of a marker's trace on the back of the ballot is an objective reality. However, despite this, if the rules established by the CEC were followed, the secrecy of the vote would not be under threat.

In the same context, the court pointed out that the voter's intention could become apparent to third parties. Moreover, according to the court's explanation, influence on the voter is possible before the expression of their will, not after. In other words, the court reasoned that the voter did not know in advance that, in certain cases, the ballot, when turned over, would reveal their choice from the other side, nor did they know that the envelope would not fully cover the ballot. Therefore, the secrecy of their vote could not be violated.

Also, in the court's assessment, the claims filed by GYLA cannot achieve the intended goal within the common court system; on the contrary, 'such claims may lead to a legal vacuum and a violation of constitutional principles, as it is always possible to assume that different courts and, accordingly, different appellate chambers may reach different outcomes.' Ac-

¹⁰⁹ Case N3/ð-436-24, 6.11.2024.

¹¹⁰ Case N3ð-445-24, 7.11.2024.

According to the court's reasoning, the current legislation provides 'the only correct way' to resolve such issues. The appellate chamber considered a referral to the Constitutional Court as the appropriate remedy.

Considering all of this, the chamber explained that it could not assess the normative acts regulating the parliamentary elections of October 26, 2024, and the standard for the fulfillment of the state's positive and negative obligations in the election process conducted on the basis of these acts, within its own competence.

It is interesting to understand what caused the substantive difference between the decisions made by the Kutaisi Court of Appeal on November 6 and 7: in the November 7 decision, the court practically does not discuss the issue and refers to the Constitutional Court as the institution with the relevant competence.

4. DISPUTE AGAINST THE CENTRAL ELECTION COMMISSION (CEC)

4.1. CEC Hearing¹¹¹

On November 8, 2024, GYLA filed a complaint with the CEC, requesting the invalidation of the district election commissions' final protocols/election results and the appointment of new elections.¹¹²

During the several-hour-long hearing, the opinions expressed by representatives of the competent authority largely did not align with the legal regulations and factual circumstances. Nevertheless, several interesting issues emerged during the session: According to the legal assessment of the CEC's Legal Department, "if the voter was unaware that their recorded vote was being reversed, it confirms that the will was formed freely." Additionally, the department explained that, under Article 124 of the Election Code, the CEC is inherently required to take judicial decisions into account.

During the discussion of the matter, CEC member Archil Anasashvili explained that the cameras installed at the polling stations were the property of the "Georgian Dream" party. He also mentioned that these cameras were transferred to the CEC in 2021 under a leasing agreement, although the district election commissions provided a different account to the representatives of GYLA.

By the decision of the CEC,¹¹³ the presented complaints were not upheld due to lack of grounds. This decision was appealed in both instances of the court, but without success. In the ruling of the Tbilisi City Court, it is difficult to find any argument that differs, even slightly, from what had already been stated in numerous previous decisions.¹¹⁴

The court in this decision also refers to the standard of correct behavior for voters. Furthermore, in this case, it limited the responsibility of CEC to the procedures it had established.

Consequently, based on a completely formalized reasoning, the court once again did not grant the presented petition requests.

It is also noteworthy that the court rejected the motions presented by GYLA, which requested:

- Inspection of the ballots at their location;
- Receipt and transfer records and samples of the markers used in the October 26, 2024, elections;
- Presentation of the video camera leasing agreement.

The Tbilisi Court of Appeal considered that the CEC's ruling, challenged by GYLA, was made based on the examination of all the factual circumstances relevant to the case, the evaluation of those circumstances, and their correlation.¹¹⁵ Therefore, it rejected the requests

¹¹¹ See: <<https://www.youtube.com/watch?v=ahZbopjCRJ8>> [18.02.2025].

¹¹² The political party «Unity - National Movement» (Complaint Registration N 5091) and the political party «Strong Georgia - Lelo, for the People, for Freedom!» (Complaint Registration N 5093) filed complaints with the CEC (their complaints were considered together with the ones filed by GYLA).

¹¹³ Decree N340/2024, 10.11.2024.

¹¹⁴ Case N3b/3579-24, 22.11.24.

¹¹⁵ Case N3b/3476-24, 15.11.2024.

presented. It is worth noting that the Court of Appeal reviewed the case without an oral hearing.

After the decision was made by the Court of Appeal, on November 16, 2024, the CEC summarized the results of the October 26, 2024, Parliamentary Elections of Georgia and issued the corresponding final protocol.¹¹⁶

¹¹⁶ In this case, the court was required to assess the legality of the CEC's decree N340/2024 of November 10, 2024, and accordingly, determine whether there was a basis for the appellants' (claimants') request to annul the summary protocols of the district election commissions and the results of electronic/technological precincts within these districts, as well as to order the CEC to schedule a new election.

5. CASE REGARDING THE LEGALITY OF THE SUMMARY PROTOCOL OF THE GEORGIAN PARLIAMENTARY ELECTIONS

The next, third stage of the case on the secrecy of the vote began in Tbilisi City Court with a request to annul the final summary protocol of the results of the October 26, 2024 Georgian parliamentary elections, issued by the Central Election Commission (CEC) on November 16, 2024. In this case as well, the decision of both levels of courts upheld the validity of the act.¹¹⁷ In this section, the court also pointed to the mandatory effect of decisions that have entered into legal force.

The appellate chamber simultaneously considered the appeal request and other motions presented in the appeal, including the advisability of a temporary ruling. Indicating that the primary request was not being granted, the court also rejected the request for the motion to be upheld.

¹¹⁷ Cases: N3-8699-24, 19/11/2024 and N3ð/3579-24, 22.11.2024.

6. HEARING OF THE CONSTITUTIONAL COMPLAINTS OF THE PRESIDENT AND MEMBERS OF PARLIAMENT BY THE CONSTITUTIONAL COURT

6.1 . Content of the President's Complaint

On November 20, 2024, a constitutional complaint was submitted to the Constitutional Court of Georgia by President Salome Zourabichvili, challenging certain aspects related to the opening of polling stations abroad,¹¹⁸ as well as the inclusion of individuals residing overseas and registered in consular records in the special voter list.¹¹⁹ Additionally, the complaint contested the normative acts¹²⁰ adopted by the Central Election Commission of Georgia and their compliance with the democratic principles enshrined in Article 3 of the Constitution, the electoral rights guaranteed by Article 24, and the principles of universal and equal suffrage stipulated in Article 37(2) of the Constitution. The dispute in this regard concerned the fact that polling stations abroad were not being established in proximity to the residences of voters living overseas.

The President of Georgia also challenged Article 3 of the Election Code (secrecy of voting), Article 76⁵ (ballot paper format), and Article 63, Paragraph 1 (printing of ballots in the state language). Additionally, the dispute concerned provisions of the Central Election Commission of Georgia's (CEC) Ordinance N7/2023, adopted on February 6, 2023, on "Defining the Rules and Conditions for Conducting Elections Using Electronic Means," which regulated the procedure for filling out ballots and their content. The President also contested the CEC's October 10, 2024, ordinance, as well as Subparagraphs "d," "d.a," and "d.b" of Article 3 of the Law of the Autonomous Republic of Adjara on the Elections of the Supreme Council of Adjara (principle of voting secrecy).

According to the President, these norms contradicted the democratic principle enshrined in Article 3 of the Constitution, the right to vote protected under Article 24, and the secrecy of parliamentary elections guaranteed by Article 37, Paragraph 2. Furthermore, the President challenged Article 131 of the Election Code and demanded a prohibition on the CEC granting parliamentary mandates.

The dispute also involved individual legal acts, including the CEC's summary protocols on the results of the October 26, 2024, parliamentary elections and the Supreme Election Commission of Adjara's summary protocols on the results of the Supreme Council elections.

In the President's constitutional complaint regarding the violation of the principle of universal participation in elections, it is stated that, according to Article 23, Paragraph 7 of the Election Code of Georgia, the CEC is required to establish polling stations in foreign countries no later than 30 days before the election, based on the data from the Ministry of Foreign Affairs of Georgia, for no fewer than 50 and no more than 3000 voters. According to the President, the CEC is obligated to establish a polling station close to the residence of a citizen living abroad when there are at least 50 voters in the settlement. If the number of voters in the settlement exceeds 3000, the CEC must establish multiple polling stations. The President asserts that under this norm, the CEC is not granted any discretion. Nonetheless,

¹¹⁸ Paragraph 7 of Article 23 of the Election Code.

¹¹⁹ Subparagraph 'e' of Paragraph 1 of Article 32 of the Election Code.

¹²⁰ Resolution N51/2024 of October 11, 2024, 'On Determining the Additional Deadline for Creating Polling Stations in Some Other Countries and the Measures for Forming the Relevant Election Commissions,' as well as Decree N191/2024 of the Central Election Commission of Georgia of September 26, 2024, 'On the Creation of Polling Stations in Other Countries for the 2024 October 26 Parliamentary Elections of Georgia.'

the President referred to the ruling of the Chamber of Administrative Cases of the Tbilisi City Court, dated September 30, 2024, N3/7245-24, in which it was stated that the electoral administration had discretion in determining where and how many polling stations should be established.

The Tbilisi City Court did not accept the plaintiff's position in this case, which argued that the CEC was obligated to establish polling stations abroad wherever more than 50 Georgian citizens with voting rights resided. The President based her argument in this part of the case on this normative content. The common courts allowed that the CEC could establish polling stations abroad regardless of the voter's place of residence. According to the President, this deprived voters of access to polling stations. To exercise their active voting rights, voters had to travel tens of thousands of kilometers (for example, a Georgian citizen living in Alabama would have to travel far to New York in order to cast their vote). The President disagreed with the CEC's approach, according to which a polling station abroad should be established in the city where the permanent diplomatic mission of Georgia is located. As a result, voters had to travel hundreds of kilometers to cast their votes, and due to the distance of the polling stations, not all of them were able to exercise their voting rights, thereby violating the principle of universality. Furthermore, those who did not live in the city where Georgia's permanent diplomatic mission was located were in a disadvantaged position compared to Georgian citizens living in those cities.

The President also argued that the principle of secrecy of the vote was violated during the voting process. According to her, the marker would transfer to the back side of the ballot, which made it possible for the deputy chairperson of the commission, who was responsible for supervising the voting machine, to discern which candidate or party the voter had chosen when the ballot was inserted into the machine. A uniform ballot of the same quality, purchased by the CEC, was used throughout the entire territory of Georgia. When the ballot slid from the frame-envelope into the voting machine, it was easy for an external observer to identify at least who the voter did not vote for — the ruling party or the opposition. If the ballot was turned over, it was completely obvious which party or candidate's circle the voter had marked. Consequently, the principle of secrecy of the vote was violated. This was further exacerbated by the fact that cameras were installed at the polling stations, which were aimed at the voting machines.

The President requested the unconstitutional recognition of the normative content of the disputed norms, which placed the entire burden of protecting the secrecy of the vote on the voter, while also allowing the possibility that it could be perceivable to external parties who the voter did not vote for.

The President argued that the leakage of the marker led to a widespread feeling among voters that their vote would not be secret. As a result, they either did not go to the polling station or changed their position and voted for the "Georgian Dream" instead of an opposition party. Given that 90% of voters were supposed to cast their vote using electronic technology, and considering that the same quality ballot was used at all polling stations and the marker leaked everywhere, the violation of secrecy and the manipulation of voters' will caused a change in the percentage of votes received by the parties. Regarding the violation of universal suffrage and equality, the number of voters registered in the overseas electoral list was approximately 96,000. Of this, about two-thirds (over 60,000) could not participate in the elections because polling stations were set up far from their place of residence. The President argued that the violations of universality, equality, and secrecy affected the results

of the election. Consequently, she requested the recognition of the electoral norms as invalid and the annulment of the election results conducted on that basis.

6.2. Complaint of 30 Members of Parliament

On November 20, 2024, 30 members of Parliament exercised their constitutional right and filed a constitutional complaint with the Constitutional Court, challenging the electoral legislation as well as the results of the parliamentary elections held on October 26, 2024, under that legislation. The norms they challenged largely coincided with those provisions raised by the President. Additionally, the parliamentarians challenged the normative content of Article 131 of the Election Code (the appeal of decisions made by election commissions), which denies the court the authority to suspend the consideration of a case when the Prosecutor's Office of Georgia initiates an investigation under Article 164 (3) of the Criminal Code of Georgia.

Members of Parliament pointed out that the violations they were challenging occurred during the 2024 October 26th elections, and it was impossible to foresee these issues prior to the election day. Therefore, according to the standard set by the ruling №3/6/1392 of November 4, 2022, the restriction provided by Article 60, Paragraph 6 of the Constitution, which prohibits the unconstitutional recognition of electoral legislation in the year of elections and 15 months before the elections, should not have been applied. According to the parliamentarians, ensuring the secrecy of the vote before the October 26, 2024 elections was a positive obligation of the state. The electoral administration and the common courts altered the content of this obligation with their decisions made after October 26, 2024. The burden of ensuring the secrecy of the vote was shifted from the precinct election commissions to the voter. This, however, could not have been foreseen 15 months before the parliamentary elections.

6.3. Amicus Curiae by GYLA

On November 22, 2024, GYLA submitted an amicus curiae opinion to the Constitutional Court regarding the President's constitutional claim. According to GYLA's assessment, the state failed to ensure the systemic protection of the voter's secrecy during the parliamentary elections of October 26, 2024. The decision made by the court granted a normative interpretation to the principle of vote secrecy that fundamentally undermined the integrity of the elections and violated the electoral principles defined by the Constitution of Georgia. The secrecy of the vote protects the voter from potential threats that could influence their choice and limit their freedom. Furthermore, it ensures the secrecy of the individual's choice made in favor of a particular political party as well as against other political entities. This principle safeguards the autonomy of the voter. At the same time, it not only offers procedural protection but also constitutes an essential component of democratic participation in the governance of the state.

The state authority responsible for election administration must organize elections in such a way that voters do not need to take additional individual efforts or special measures to protect the confidentiality of their vote, different from the instructions provided by the electoral administration. A large-scale violation of vote secrecy may be considered as having a fundamental impact on the election, potentially altering the percentage of votes gained by candidates and thus changing the final outcome of the elections. In cases where problems

related to vote secrecy are complex and severe, significantly undermining public trust in democracy, the Constitutional Court, along with determining the unconstitutionality of the contested norms, should assess the impact of these norms on the results of the conducted elections.

In the context of the principle of universality, GYLA agrees with the position of the UN Human Rights Committee, which states that if a state adopts a model granting citizens living abroad the right to participate in national elections, it must take appropriate measures to determine the total number of voters, the polling stations to be opened, and their locations. Georgia violated this standard and failed to ensure the opening of the corresponding polling stations near those voters who wished to participate in the elections.

6.4. Possibility of Suspending Summary Protocols

On November 29, 2024, the Constitutional Court issued a ruling, effectively rejecting the appeals of the President and Members of Parliament for substantive consideration. The ruling was published on December 3, 2024.¹²¹ By the time the ruling was made and published, the Parliament, declared elected on October 26, 2024, had already convened, and the individuals declared as deputies in these elections had been granted their corresponding powers. Even if the Constitutional Court had accepted the appeals for substantive consideration, granted them, and annulled the election results, this would not have led to the termination of the Parliament's powers — the appeals would have had to be satisfied before the Parliament convened.

According to paragraph 5 of Article 25 of the Organic Law of Georgia on the Constitutional Court, if the Constitutional Court considers that the application of a normative act may cause irreparable consequences for one of the parties, it may suspend the operation of the disputed act or a part of it before reaching a final decision on the case, or for a shorter period. In the opinion of the *amicus curiae*, GYLA requested the suspension of the action of the CEC's summary protocol in order to temporarily halt the 10-day deadline for the convening of Parliament from the issuance of the protocol. Since the summary protocol is an individual and not a normative act, and Article 25(5) of the Organic Law of Georgia on the Constitutional Court provides for the possibility of suspending a normative, not an individual, act, GYLA, in the *amicus curiae*'s opinion, called for a broad interpretation of this provision and its analogy—the suspension of an individual legal act. This would have prevented irreparable harm caused by the convening of Parliament.

In its written opinion, the *amicus curiae* GYLA requested that the Constitutional Court, on its own initiative, suspend the action of the CEC's summary protocol, as neither the President's nor the Parliament members' appeals included such a request. To prevent irreparable harm, the President challenged Article 131 of the Election Code of Georgia, according to which, "The CEC shall, within two days after summarising the final results of elections, register the elected MPs of Georgia and give them temporary certificates as MPs of Georgia."

From the President's position, if the CEC were prohibited from issuing certificates to the members of Parliament, this would prevent the convening of Parliament, as after the rec-

¹²¹ The ruling of the Constitutional Court of Georgia dated November 29, 2024, case N3/7/1848,1849, <<https://constcourt.ge/ka/judicial-acts?legal=17525>> [30.03.2025].

ognition of powers, it would be impossible to dissolve Parliament, even if the Constitutional Court declared the 2024 October 26 elections unconstitutional.

In response to the President's request, the Constitutional Court indicated that declaring Article 131 of the Election Code of Georgia unconstitutional would not be a means to prevent irreparable consequences, but rather such a mechanism was provided for by the constitutional procedural legislation. Specifically, if the applicant party believes that the convening of Parliament leads to irreparable consequences, it can request, among other things, the suspension of the action of the final election summary protocol.

Thus, the Constitutional Court took into account the opinion of GYLA and broadly interpreted the provision¹²² regarding the possibility of suspending an individual legal act – the summary protocol. According to the position of the majority of the Constitutional Court, there were no grounds for admitting the case for consideration on the merits.

6.5. Constitutional Court's Approach to Opening Election Precincts Abroad

As mentioned above, the Constitutional Court declared the appeals of the President and the members of Parliament inadmissible in all respects. Regarding the opening of polling stations in other countries, they were not admitted for consideration on the merits due to lack of justification. In the Constitutional Court's assessment, it would not be possible to establish a qualified election commission in every country, one that would include members appointed by political parties, who would be able to conduct elections in accordance with the procedures established by law. According to the Constitutional Court's explanation: "Abroad, the formal opening of a polling station close to the actual residence of certain citizens, when the polling station is poorly organized, cannot be considered a requirement of the constitutionally protected right to vote. Along with the opening of the polling station, the state must ensure proper organization of the elections at that station and guarantee the opportunity for citizens to make their choices in a free environment."

According to the Constitutional Court, the opening of a polling station abroad and the proper organization of elections are naturally linked to significant technical and, most importantly, human resources. First and foremost, it is necessary to find an appropriate building where the polling station can be set up. At the same time, it is important to form and train an election commission to ensure that the elections are conducted properly. Furthermore, the Election Code of Georgia requires the involvement of political parties when forming the commission. The majority of the election commission's members are appointed by election subjects, and therefore, the mobilization of this human resource should be ensured not only by the state but also by political parties.

First and foremost, the Constitutional Court did not assign adequate weight to the role of the place of residence in the exercise of active electoral rights. When a polling station is thousands of kilometers away from a voter's place of residence, reaching it requires significant expenses, which the voter may not have the means to afford. The failure to open a polling station for such a voter should, de facto, be equated with the deprivation of the right to vote. Moreover, it must also be considered that, in some cases, despite the willingness to incur such expenses, it may be impossible to reach the city where the polling station is

¹²² Paragraph 5 of Article 25 of the Organic Law of Georgia on the Constitutional Court.

located due to the lack of intercity public transport in the relevant country. Such a situation should also be considered equivalent to the deprivation of a citizen's right to vote.

The European Court of Human Rights stated: "The exclusion of any group or a specific category of the population from the electoral process must comply with the fundamental principle of Article 3 of Protocol No. 1 of the Convention, including the universality of elections. An unjustified deviation from this standard threatens the legitimacy of the legislative body elected in violation of it and the laws enacted by this body." According to the European Court of Human Rights, in any electoral system, every citizen must have an equal opportunity to cast their vote. At the same time, no electronic system guarantees that every vote will carry equal weight in relation to the election results. Most importantly, when exercising the right to vote, all citizens must be treated equally. Logically, it is impossible to assess what impact the lost vote of a voter, who could not participate in the election, would have on the election results.

The Constitutional Court did not identify any insurmountable difficulty that would justify deviating from the principle of the universality of elections in cities where no diplomatic representation of Georgia is located, nor did it justify the de facto deprivation of voting rights for Georgian citizens and, as a result, questioning the legitimacy of the elected Parliament. The opening of 15 additional polling stations in cities where there is no diplomatic representation of Georgia, but where the number of voters is 50 or more, did not pose a risk to the country's fiscal security, and it was entirely feasible from a human resources perspective. At the same time, it would have served to realize the universality of elections and the right to equality. The Constitutional Court's opposing arguments are superficial and unsubstantiated.

6.6. Secrecy of the Vote and the Common Courts' Authority to Determine the Normative Content of the Law

The Constitutional Court did not admit the appeals for consideration on the merits regarding the violation of the secrecy of the vote. According to its explanation: "The disputed norms have different contents. On the one hand, they emphasize the necessity of protecting the secrecy of the vote, the form, text, and filling rules of the election ballot, as well as the authority of the CEC/SEC to determine the types of election boxes and special envelope frames. At the same time, the acts of the CEC regarding the determination of the voting procedure have become the subject of dispute. None of the aforementioned norms suggest that any deviation from the secrecy of the vote or the selection of the ballot/marker in such a way that, after making a choice, it becomes visible from both sides of the ballot is allowed during the electoral process. In contrast, the disputed norms explicitly emphasize the necessity of protecting secrecy, and both their content and spirit are clearly directed toward ensuring secrecy during voting."

According to the Constitutional Court, the violation of secrecy does not arise from the disputed norms but from the actions of the electoral administration, which is not within the scope of the Constitutional Court's consideration: "In order to substantiate the contradiction of the disputed norms with the Constitution, the complainant must demonstrate that the identified issue arises from the disputed norms and is the result of their application, rather than the actions of the electoral administration. Specifically, the complainant must prove that the disputed norms established the rules for creating and using the ballot and/

or marker in the form identified by the complainant, that it is impossible to conduct the voting in accordance with these norms while ensuring secrecy, or that there is a circumstance indicating that, under the conditions of proper behavior by the electoral administration, the electoral process, based on these norms, would lead to the violation of secrecy of the vote. Since none of the constitutional complaints present an argument indicating that the problem related to secrecy stems from the disputed norms, it is evident that the identified issue concerns the actions of the electoral administration (the selection of the ballot and/or marker), and not the content of the disputed norms themselves.”

“Based on the practice of the Constitutional Court, the normative content of the disputed norm indicated by the complainant must either clearly follow from the text of the disputed norm or be confirmed by an authoritative interpretation by a legal interpreter. The interpretations of the common courts are highly significant in determining the real meaning of the law. As a rule, the Constitutional Court accepts and considers the legislative norm in the same normative content as it was used by the common court. However, there may be exceptions to this general rule, including when the Constitutional Court is convinced that the interpretations made by the court of the same instance are contradictory. In such a case, it cannot be considered that the content of the disputed norm has been definitively determined by the common court. Inconsistent interpretation practices of the norm may also indicate the norm’s vagueness and potential unconstitutionality. Additionally, in exceptional cases, the Constitutional Court is also authorized not to accept the interpretation proposed by the common court if it is clearly unreasonable.”

The Constitutional Court’s explanation that the challenged norms provide guarantees for ensuring secrecy and literally do not allow for its violation was not sufficient to keep these norms beyond constitutional review. A norm may, in itself, be entirely constitutional, but the common courts may attribute to it a normative meaning that is contrary to the Constitution.

The fact that the norm challenged by the President and Members of Parliament literally establishes the guarantee of the secrecy of the vote does not mean that the courts have not attributed to it a meaning contrary to secrecy in practice. Moreover, the President of Georgia referenced the decision of the Kutaisi City Court of November 3, 2024 (Case N3/638-24) in his appeal and explained that the court, based on the disputed norms, imposed responsibility for the secrecy of the vote on the voter (according to the Kutaisi City Court’s evaluation: “If the voter is close to the receiving device, the possibility of distinguishing anything on the ballot is fully excluded”). This decision was upheld by the Kutaisi Court of Appeals, indicating that the norm challenged by the President had the very normative meaning attributed to it by the Kutaisi Court of Appeals. Such an interpretation of the norm could not be considered unreasonable, as this decision was upheld by a higher-instance court, which had jurisdiction to make a final decision on the case.

If we take into account that the common courts, based on the norms challenged by the President and Members of Parliament, legally recognized the actions of the electoral administration, the Constitutional Court’s conclusion that the issue identified by the complainant pertains to the actions of the electoral administration (the selection of the ballot and/or marker) and not to the content of the disputed norms is incorrect. Since the electoral administration acted based on the content of the disputed norm that was later legalized by the common courts, it was within the Constitutional Court’s competence to assess this content in the format of substantive consideration, which it failed to do. This amounts to a refusal to perform the function of constitutional review concerning electoral legislation and elections conducted under this legislation.

In this case, two dissenting opinions were written by the judges – Teimuraz Tughushi and Giorgi Kverenchkhiladze.¹²³

Judge Teimuraz Tughushi believed that “the Constitutional Court did not examine the arguments and evidence presented in the case and did not admit the appeals for consideration on the merits without proper justification. No questions were even posed to the respondent regarding the problems identified by the complainants. Contrary to my proposal, the case was examined without an oral hearing, whereas the legislative framework, as well as the practical aspects of the case, allowed for it to be properly examined without the need to expedite the process, with an oral hearing.”

He pointed out that the constitutional claims presented evidence and arguments that clearly highlighted the risks of violating constitutional rights arising from the legislation. Moreover, the issues raised in the constitutional claims were identified so clearly that they should not have been difficult to understand, not only for highly qualified lawyers but also for any objective observer. The court simply needed to review and substantively evaluate the arguments and evidence presented in the claims, which it failed to do. As a result, the Constitutional Court effectively refused to exercise its inherent function of constitutional review within the system of checks and balances established by the Constitution of Georgia.

Judge Giorgi Kverenchkhiladze also disagreed with the plenary’s decision and on the issue of the universality of elections stated: “The arguments and evidence presented in the appeal properly substantiated the issues arising from the challenged norms, the restriction of the relevant constitutional provisions, and the potential unconstitutionality of the contested regulation, which was sufficient for admitting the constitutional complaints for consideration on the merits. However, my colleagues essentially evaluated the constitutionality of the contested rules in a procedural session format, without thoroughly examining the majority of relevant issues, and placed the burden of proving the reasonable possibility of mobilizing the appropriate resources for opening polling stations in foreign countries without Georgian diplomatic representation on the appellant.”

¹²³ The dissenting opinion of Teimuraz Tughushi is available at: <https://constcourt.ge/ka/judicial-acts?legal=17546>; the dissenting opinion of Giorgi Kverenchkhiladze is available at: <https://constcourt.ge/ka/judicial-acts?legal=17547>.

7. RECOMMENDATIONS

The handling of electoral disputes in accordance with the standards of a fair trial is an essential condition and principle for ensuring trust in the process. The standards applied to the disputes related to the parliamentary elections of October 26, 2024, did not uphold this principle. With regard to the submitted complaints, decisions were made both at the electoral administration and judicial stages without a comprehensive examination of the issues, and therefore, they did not meet the justification standard. Despite the shift to an electronic voting model, many existing problems were not resolved, and, moreover, new issues emerged. Challenges regarding the standards for handling complaints/petitions by the electoral administration and common courts remain relevant.¹²⁴

To the Electoral Administration:

- The practice of formal consideration of complaints should be eliminated, and the quality of justification for decisions made should be improved.
- The competent authorities must thoroughly examine the submitted documentation. In making decisions following the consideration of complaints, they should not rely solely on the explanations or clarifications of the individuals identified as having violated the law.
- The practice within the electoral administration regarding the identification of cases of agitation by public servants, employees of public legal entities (except for higher and professional educational institutions, art institutions, religious organizations, and the Georgian Bar Association), employees of state or municipally established NNLEs (Non-entrepreneurial Non-commercial Legal Entities), as well as employees of pre-school education and general education institutions or individuals employed in general educational institutions during working hours or when exercising their official powers should be revised, and such actions should be regarded as violations, regardless of whether the person uses administrative resources in this process.
- The attendance of individuals at a meeting in support of a specific electoral subject or candidate, who are prohibited from engaging in or participating in agitation, should be assessed by the electoral administration as participation in agitation, regardless of whether the person's actions help or hinder the election of the candidate.
- An event should be considered pre-election agitation if, in substance, it promotes and/or hinders the election of a specific person, regardless of whether it is explicitly stated that it is held in support of that specific candidate.

¹²⁴ See the report of GYLA 'Analysis of Electoral Disputes (The Parliamentary Elections of Georgia on October 31, 2020, First and Second Rounds).

<https://admin.gyla.ge/uploads_script/publications/pdf/საარჩევნო%20დაჯების%20ანალიზი.pdf_01722854919.pdf> [25.02.2025].

To the common courts:

- The quality of the court's reasoning of decisions should improve, and a uniform practice that aligns with the purpose of the law should be established.
- The burden of proof should be properly distributed between the parties.
- The court should provide the applicants with the opportunity to obtain relevant evidence.
- Appeal courts should examine cases with an oral hearing.
- Cases should only be consolidated if it would be more efficient, taking into account the content of the appeals.