

## No violation of freedom of expression in viral TikTok case

In today's **Chamber** judgment<sup>1</sup> in the case of [Miladze v. Georgia](#) (application no. 41585/23) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 10 (freedom of expression) of the European Convention on Human Rights.**

The case concerned Mr Miladze's administrative conviction for a video he had posted on TikTok in 2022 criticising the new transport policies in Tbilisi and alleging misconduct by public officials. The video had gone viral.

The Court found that the Georgian courts had carried out a thorough and calibrated balancing exercise in the case, distinguishing robust political criticism from hostile personal denigration which was not protected under the European Convention. It took into account in particular the aggressive and vulgar language used and the potential impact, especially for young people, of sexually explicit personal insults on a widely used social-media platform.

### Principal facts

The applicant, Irakli Miladze, is a Georgian national who was born in 1993 and lives in Tbilisi. He is a food courier who also describes himself as a civil activist.

From 2018 to 2022 Tbilisi City public transport was reformed to prioritise public transport and improve infrastructure for pedestrians and cyclists.

In December 2022 Mr Miladze uploaded a short video to TikTok, criticising Tbilisi's new urban transport policies. He used obscene language which targeted in particular the mayor of Tbilisi, the mayor's staff and the police, saying repeatedly the Georgian slang term *nabozari* (ნაბოზარი), roughly equivalent in English to "motherfucker", and "go fuck your mother". He posted the video in public mode, making it accessible to anyone. It quickly went viral, with more than 100,000 views and was shared 600 times.

The Tbilisi Police Department subsequently instituted administrative-offence proceedings against Mr Miladze in relation to the video. He was ultimately convicted in May 2023 of "disturbing public peace and order" under Article 166 § 1 of the Code of Administrative Offences and given a 180 euro fine. The Georgian courts relied on judicial precedent to confirm that social media platforms played a prominent role in the public life of society and therefore had to be considered "a space where public order may be affected". They concluded overall that Mr Miladze's obscene language had amounted to gratuitous insult of specific public officials, without contributing to any public debate; and it was not therefore protected by freedom of speech rights. They also emphasised the need to prevent the normalisation of sexually explicit personal insults on widely used social-media platforms, particularly those popular among young people.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression) of the European Convention, Mr Miladze complained about his conviction for disorderly conduct, maintaining that the relevant law should not have been extended to cyberspace. He also argued that the language he used had not amounted to hate speech, that TikTok users could easily have avoided his content if they had wanted to and that, in any case, he had included a disclaimer with a warning about offensive language.

The application was lodged with the European Court of Human Rights on 17 November 2023.

Judgment was given by a Chamber of seven judges, composed as follows:

Lorraine **Schembri Orland** (Malta), *President*,

Lado **Chanturia** (Georgia),

Faris **Vehabović** (Bosnia and Herzegovina),

Anja **Seibert-Fohr** (Germany),

Anne Louise **Bormann** (Denmark),

Sebastian **Rădulețu** (Romania),

András **Jakab** (Austria),

and also Hasan **Bakırcı**, *Section Registrar*.

## Decision of the Court

The Court noted that it was not in dispute that the administrative offence and fine had constituted an interference with Mr Miladze's right to freedom of expression. However, it saw no reason to question the lawfulness of that interference. The national courts had clearly explained that the notion of a "public place" encompassed cyberspace, including social-media platforms and internet blogs. It also agreed with the national courts that the aim of the conviction and fine had been legitimate, notably to protect the rights of others.

It went on to reiterate that a State's leeway to decide ("margin of appreciation") on the need for and extent of any interference with freedom of expression depended on a number of factors, and most importantly the type of speech.

Bearing this in mind, the Court noted the particularly aggressive and vulgar language that Mr Miladze had used in his video. He had used the most extreme form of colloquial swearing, regarded in Georgia as a form of violent speech, to denigrate the mayor and other officials. The Georgian courts had been better placed than an international tribunal to assess the meaning and tone in which Mr Miladze had chosen to express himself as they were more familiar with the cultural and linguistic context.

Like the national courts, the Court saw no political or social satire, nor any stylistic purpose, at play that could justify the choice of such coarse language. Although Mr Miladze had warned that the video contained obscene language, this had not restricted minors accessing it or prevented the content from appearing on non-voluntary algorithmic feeds ("For Your Feed"). The disclaimer had not therefore protected unwilling viewers or minors from the risk of being exposed to obscenities.

Overall, the national courts had carried out a structured and thorough balancing exercise of the case, examining the content, tone, purpose and potential impact of Mr Miladze's video and clearly making the distinction between robust political criticism and hostile personal denigration.

The national courts' calibrated approach had been confirmed by the limited severity of the sanction, the minimum fine possible under the law. Moreover, no criminal proceedings had been instituted against Mr Miladze. Nor had the authorities sought to remove his video or restrict his social-media account. Indeed, he has since continued to criticise the authorities actively on his social-media accounts.

