The Politics of Provocation

The ECtHR's Ruling in Miladze v Georgia

Gionata Bouché

07.07.2026 doi: 10.59704/1d31358c456f75cc

The recent judgment *Miladze v Georgia* of the European Court of Human Rights concerning a TikTok video published by a Georgian self-defined civil activist adds another layer to the Court's increasingly messy Article 10 case law. The applicant repeatedly insulted public officials in crude and sexually explicit terms while broadcasting to a large online audience. Domestic courts imposed only a modest administrative fine, later reduced on appeal. The ECtHR did not find a violation of the applicant's right to freedom of expression.

The judgment therefore raises several questions about the limits of legitimate political speech online. This post first outlines the facts and reasoning of the case before turning to a critical analysis.

The Facts

The applicant, an active social media figure working as a food deliverer in Tbilisi, published a TikTok video at the end of a long shift criticising the city mayor's office over urban transport policies and the alleged misuse of bus lanes by public officials driving government cars. Throughout the video, he used repeated vulgar and sexually explicit insults directed at the mayor, municipal staff and law enforcement officers, including phrases equivalent to "f* you" and "go f* your mothers".

Georgian authorities charged him under administrative law provisions concerning disorderly conduct and insults against law enforcement officers in public. According to the government, the offence had been committed in a "public place", namely TikTok, and the obscene language used did not merit protection under freedom of expression guarantees.

The applicant argued that his statements formed part of political criticism concerning matters of public interest and were not directed at identifiable individuals. The domestic courts rejected these arguments. The first-instance court accepted that TikTok constituted a public space for the purposes of administrative liability. While acknowledging that public officials must tolerate sharp and emotionally charged criticism to a greater extent, it nevertheless concluded that direct insults fell outside protected expression. It further stressed the importance of preventing the normalisation of sexually explicit insults on social media platforms popular among minors. On appeal, the applicant's fine was reduced, but the conviction itself was upheld.

The Judgment

Before the Strasbourg Court, the applicant argued that the interference with his freedom of expression was not prescribed by law because Georgian legislation regulating conduct in public spaces did not explicitly extend to cyberspace. He further contended that the interference lacked a legitimate aim and was unnecessary in a democratic society, particularly since the speech did not amount to hate speech or incitement to violence.

The Court quickly disposed of the first two elements of the Article 10 test. It considered it sufficiently foreseeable that social media platforms could qualify as public spaces under domestic law. Likewise, it accepted that the interference pursued legitimate aims, namely the protection of morals, public order and the rights of others. The real issue therefore concerned whether the interference was "necessary in a democratic society".

Here, the Court repeated familiar formulas from its Article 10 jurisprudence, such as that protection under art 10 ECHR extends to expressions that "shock,

offend or disturb" and that vulgarity does not automatically deprive speech of Convention protection, especially where such language serves a stylistic or expressive purpose in debates of public interest. At the same time, it also reminded that national authorities enjoy a certain margin of appreciation when balancing competing interests (§ 67-69).

The Court nevertheless sided with the Georgian authorities. Its analysis focused heavily on the nature of the applicant's speech, the personalisation of the statements, and the characteristics of TikTok as a medium.

Provocation vs Denigration

According to the Court, substantial portions of the video consisted not of political argument but of sustained verbal aggression devoid of informational value. While the applicant's criticism originated in a matter of public interest, namely urban transport policy and alleged official misconduct, the Court considered the form of expression decisive. The language used was characterised as personally abusive and "wanton denigration" rather than politically provocative (§ 71-72).

This sits uneasily alongside earlier Strasbourg case law strongly protecting offensive political expression. In *Peradze and Others*, the Court explicitly recalled that Article 10 protection extends even to "clearly vulgar and/or offensive language and/or conduct, including expressions with sexual references", provided that such language contributes to public debate on matters of public interest (§ 45).

In my view, the present judgment fails to explain convincingly why that principle suddenly loses force here. The applicant's statements, however crude, emerged directly from criticism of local government policy and alleged abuses of authority. This was a citizen's angry denunciation of public officials and urban governance, not a mere insult detached from political debate. Yet the Court artificially separates the political content from the emotional and vulgar form through which that criticism was expressed. Nor is the Court's distinction between protected provocation and unprotected "wanton denigration" sufficiently clear (§ 68). The circumstances here clearly differ from those in *Rujak v Croatia*, where the standard of "wanton denigration" was applied to statements made during a quarrel with public officials with the sole intent of offending them and without any connection to a matter of public concern. The present judgment understates the public relevance of the applicant's speech by dismissing any of its expressive or informational value, while offering little reasoning for that conclusion beyond moral disapproval of the language itself.

Individual Attack vs Critique of Authority

The Court takes care to distinguish the case from *Peradze and Others v Georgia*, where the applicant chanted vulgar statements at a public protest against a construction project without targeting specific individuals. In the present case, by contrast, the insults targeted the mayor and law enforcement personnel specifically (§ 72).

The Court arguably overstates the personalised nature of the attack. Although the mayor was identifiable, the impugned comments were not directed exclusively at him but also referred more broadly to municipal staff and law enforcement officers. Moreover, direct offences against an identifiable public official have been considered worthy of protection. It is unclear why the Court decided to depart from its frequent admission that "political invective often spills over into the personal sphere; such are the hazards of politics and the free debate of ideas, which are the guarantees of a democratic society" (§ 34). The judgment therefore expands the notion of impermissible personal abuse in ways that may prove difficult to confine in future cases involving online criticism of public authorities.

The Court's approach is also difficult to reconcile with its longstanding insistence that public officials must display a higher degree of tolerance toward criticism, even when it comes to direct insults. This was, for instance, the case in *Gaspari v Armenia,* where a protester called a chief police officer "scum" and in *Eon v France*, where a dissenting citizen referred to the President as a "prick" on a publicly displayed placard. Similarly, in the seminal case *Oberschlick v Austria*, a

journalist's utterance of the word "idiot" when publicly describing a politician was deemed protected. In all these and other cases, the Court has emphasised the narrow limits of acceptable restrictions on political expression directed at public officials (including municipal authorities).

In the case at hand, the applicant's remarks were more vulgar than the expressions at issue in those cases. Yet, the Court has repeatedly asserted that vulgarity alone cannot be decisive in the assessment, given that it could serve stylistic purposes and that style enjoys protection just like the content of expression (i.e. *Uj v Hungary*, § 20). In *Bouton v France*, for instance, the Court protected a highly provocative political protest involving nudity and sexually explicit language ("f*ck the Church"). However, in the present case, the Court rejected analogies to cases involving satire, artistic provocation or hyperbolic political speech, emphasising the absence of any stylistic value and the violent and degrading implications of the insults within the Georgian linguistic context (§ 74). In my view, the application of this principle here leads to a rather artificial dismissal of outrage, provocation and emotional immediacy as the language of political contestation, particularly those, like the applicant, challenging abuse of public power from positions of social disadvantage and frustration.

Social Media and "Obscenity"

Another significant factor weighed in by the Court is the impact of viral amplification caused by TikTok's algorithmic design. The Court also repeatedly referred to TikTok's broad accessibility and popularity among minors. The video reportedly accumulated around 100,000 views within a short period. Although the applicant included an initial warning concerning vulgar language, the Court considered this insufficient to prevent exposure to underage audiences. In this context, it stressed the importance of preventing the normalisation of sexually explicit insults in online discourse (§ 76).

The Court's approach here resonates with its case law for a stricter regulatory approach to online defamatory content (§ 75). In the case at hand, however, this reasoning appears to overstate the level of obscenity in the applicant's statements, when compared to the type of harm in respect of which the Court has traditionally afforded States a wide margin of appreciation in protecting minors, such as explicit sexual advice and imagery. By considering the national authorities' treatment of the applicant's language as a matter of public morality requiring legal intervention, the Court edges dangerously close to conflating offensive, yet (as shown above) protected, political speech with genuine online harm. Once TikTok and equivalent platforms are acknowledged as public spaces of political debate, it becomes difficult to justify expectations of unusually sanitised political discourse within them.

Proportionate Sanctions

Finally, the Court considered the reduced administrative fine as proportionate and limited in its chilling effect, also in the absence of additional restrictions (§ 77). However, the Court forgets how, as per its case law, even the minimum statutory sanction or a warning could have this effect.

Blurred Standards

This decision contributes to the broader instability in the Court's contemporary Article 10 jurisprudence. Strasbourg continues to proclaim robust protection for offensive political speech while simultaneously narrowing that protection in practice through elastic and ambiguous analyses. As Natali Alkiviadou has recently observed in her work on hate speech and the ECtHR, the Court's distinctions between protected provocation and punishable abuse often remain inconsistent, ungrounded in empirical evidence and difficult to predict. Moreover, the ruling advances the blurring of standards of responsible communication, once primarily associated with professional media actors, to other speakers. Besides the tone and content, the applicant was effectively expected to account not only for his own expression but also for algorithmic amplification, audience vulnerability and the broader communicative environment of TikTok itself.

While I do not wish to overstate the relevance of this single judgment (also given that it originates from

a dispute in a non-EU country), I cannot avoid expressing concern about the implications of this kind of legal reasoning beyond Article 10 doctrine. As European regulatory frameworks such as the EU's Digital Services Act place growing emphasis on the prevention of online harms in platform governance, authoritative human rights institutions like the ECtHR may, by conflating vulgar political expression with socially harmful conduct, (indirectly) legitimise unnecessarily restrictive moderation practices. The resulting chilling effect would likely fall most heavily on informal and emotionally charged forms of civil activism.

ABOUT THE AUTHOR

Gionata Bouché

Gionata Bouché is a PhD candidate at the Institute for Information Law, University of Amsterdam, working at the intersection of AI and media law, with a general interest in freedom of expression. Photo: Theresa J. Seipp

SUGGESTED CITATION

Bouché, Gionata: The Politics of Provocation: The ECtHR's Ruling in Miladze v Georgia, Verfassungsblog, 07.07.2026, doi: 10.59704/1d31358c456f75cc.

Licensed under CC BY-SA 4.0.

Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20260707-190644-0.