EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
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ECHR 258 (2025)
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# Total ban on smoking in Estonian prisons is in breach of the European Convention

The case Vainik and Others v. Estonia (applications nos. 17982/21 and 3 others) concerned the total ban on smoking in prisons in Estonia from October 2017. The four applicants in the case, prisoners at the time, complained both about the ban itself and the withdrawal symptoms they had had.

In today's **Chamber** judgment[1] in the case the European Court of Human Rights held, by 4 votes to 3, that there had been **a violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights as concerned three of the applicants.

The Court found that the notion of personal autonomy and the possibility to make choices about one's own life and health was at the heart of this case. Indeed, in a context of already limited personal autonomy, the freedom for prisoners to decide – such as whether to smoke – was all the more precious for them.

In deciding to bring in the ban there had, however, been no assessment at all of the impact on the personal autonomy of prisoners who smoked. Such a far-reaching and absolute ban had not been justified and exceeded Estonia's considerable leeway to regulate smoking in prisons.

The Court pointed out that it had already ruled on cases concerning smoking in prisons from the opposite angle, that is passive smoking, but that this was the first time it had had to assess the impact of a total ban on smoking in prisons from the point of view of prisoners with a long-term smoking habit.

A legal summary of this case will be available in the Court's database HUDOC (link)

## Principal facts

The applicants are Rene Vainik, Denis Lvov and Dmitri Tsajun, three Estonian nationals, and Nikolai Smeljov, who is of unknown citizenship.

They are all long-term smokers and were prisoners at the time the smoking ban entered into force in Estonia, namely on 1 October 2017.

The Minister of Justice introduced the ban through amendments to the Internal Prison Rules. The Viru Prison, where the applicants were detained, amended its house rules to ban smoking completely on its premises.

All four applicants challenged the ban in the courts, ultimately without success.

In particular, constitutional review proceedings were triggered in the cases brought by the second two applicants, leading to the Supreme Court of Estonia declaring in 2019 that the ban was constitutional. The Supreme Court accepted that a complete ban on smoking interfered with the right to property and to self-realisation, but that it was necessary for the protection of non-smokers' health and prison security (including, the risk of fire and of cigarettes being used as an illegal form of

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.

currency). It also considered that less restrictive means – such as special smoking rooms, separating smokers and non-smokers or allowing smoking only outdoors – would not be as effective as a complete ban. Moreover, treatment and counselling for withdrawal symptoms was provided if a prisoner gave up smoking.

In 2021 the Supreme Court refused to examine the second two applicants' appeals on points of law.

In the meantime, the proceedings brought by the other two applicants, which had been suspended pending the constitutional review proceedings, were resumed. The Tartu Administrative Court dismissed Mr Lvov's complaint and found that Mr Vainik's claim lacked prospects of success, which decision he did not appeal. The Supreme Court refused to examine Mr Lvov's subsequent appeal on points of law.

## Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private and family life), the applicants complained both about the ban on smoking itself and about the withdrawal symptoms they had had – including weight gain, sleeping problems, depression and anxiety. Mr Tsajun and Mr Smeljov also alleged that they had not been offered nicotine replacement therapy for their withdrawal symptoms.

The application was lodged with the European Court of Human Rights on various dates in 2021.

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

Ioannis **Ktistakis** (Greece), *President*,
Peeter **Roosma** (Estonia),
Georgios A. **Serghides** (Cyprus),
Darian **Pavli** (Albania),
Andreas **Zünd** (Switzerland),
Oddný Mjöll **Arnardóttir** (Iceland),
Úna **Ní Raifeartaigh** (Ireland),

and also Milan **Blaško**, *Section Registrar.*

## Decision of the Court

Firstly, the Court rejected Mr Vainik's complaint as inadmissible for not having used the legal avenues available to him at national level (see FAQ). He had failed to appeal against the decision finding that his claim lacked prospects of success and the Court considered that the further procedural steps he had taken did not amount to making effective use of national remedies.

It also rejected as inadmissible the complaints under Article 3. Even if giving up smoking had caused the applicants some stress or anguish, it had not attained the minimum level of severity for Article 3 to come into play. Mr Tsajun and Mr Smeljov had not argued in the domestic proceedings that they had not received appropriate treatment to tackle their withdrawal symptoms. Nor had they provided the Court with evidence to prove that they had requested treatment or counselling or that such requests had been dismissed.

The Court was, however, prepared to accept that the choice to smoke and the question of providing treatment to counter withdrawal symptoms came under the scope of the right to respect for private life. Article 8 was therefore applicable in the case.

It went on to find that the ban on smoking had interfered with the remaining three applicants' right to respect for private life, but that that interference had intended to protect others from passive smoking.

The ban had not, however, benefitted from direct parliamentary review and debate. It had resulted from the combined effect of a ministerial regulation and Viru Prison's house rules.

The domestic analysis had, moreover, focused on health protection, prison security and the possibility of counselling and treatment. The discussion had not taken into account at all personal autonomy, together with prisoners' freedom of choice in matters concerning their own body and health.

It also noted that smoking tobacco was still legal for persons at liberty and that there was no consensus among the member States on the need to ban smoking in prison settings. States' leeway ("margin of appreciation") to regulate smoking in prisons, while considerable, was not without limits.

Therefore, such a far-reaching and absolute ban with no assessment of the impact on the personal autonomy of prisoners who smoked had not been justified and exceeded Estonia's freedom to decide on such matters.

In coming to this decision, the Court was sensitive to the context of the already limited personal autonomy of prisoners, and that the freedom for them to decide for themselves – such as whether to smoke – was all the more precious.

The Court concluded that there had been a violation of Article 8.

### Just satisfaction (Article 41)

The Court held that Estonia was to pay Mr Lvov, Mr Tsajun and Mr Smeljov 1,500 euros (EUR) in respect of costs and expenses.

## Separate opinions

Judges Zünd and Arnardóttir expressed concurring opinions, Judges Roosma and Ní Raifeartaigh a joint partly dissenting opinion, Judge Pavli a partly dissenting opinion and Judge Serghides a statement of partial dissent. These opinions are annexed to the judgment.

*The judgment is available only in English.*

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**Press contacts**
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

**We are happy to receive journalists' enquiries via either email or telephone.**

**Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)**

Denis Lambert (tel: + 33 3 90 21 41 09)
Inci Ertekin (tel: + 33 3 90 21 55 30)
Jane Swift (tel: + 33 3 88 41 29 04)

**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.