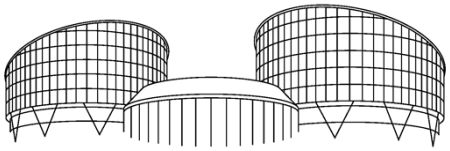

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF VAINIK AND OTHERS v. ESTONIA

(*Applications nos. 17982/21 and 2 others)*

JUDGMENT
(Striking out)

Art 37 • Striking out applications • Art 37 § 1 (c) • Death of one of the applicants during the Grand Chamber proceedings • No interest expressed by any heir or close relative to pursue the application on his behalf • Continued examination not justified • Art 37 § 1 (a) • Absence of intention on the part of the remaining two applicants to pursue their applications • Lack of legal representation in the Grand Chamber proceedings • Failure to inform the Court of their release from prison and the changes in address • Applicants no longer detained and thus not affected by complete ban on smoking in Estonian prisons • Lack of special circumstances relating to respect for human rights that required the continued examination of their applications

Prepared by the Registry. Does not bind the Court.

STRASBOURG

30 June 2026

This judgment is final but it may be subject to editorial revision.

In the case of Vainik and Others v. Estonia,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Mattias Guyomar, *President,*
Arnfinn Bårdsen,
Ivana Jelić,
Lado Chanturia,
Kateřina Šimáčková,
Lorraine Schembri Orland,
Anja Seibert-Fohr,
Peeter Roosma,
Ana Maria Guerra Martins,
Davor Derenčinović,
Sebastian Răduleţu,
Diana Kovatcheva,
Gediminas Sagatys,
Stéphane Pisani,
Mateja Đurović,
Vahe Grigoryan,
Sébastien Biancheri*, judges*,

and John Darcy, *Deputy Grand Chamber Registrar,*

Having deliberated in private on 15 June 2026,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the total tobacco ban in Estonian prisons, which, according to the applicants – who were all prisoners when the ban entered into force – violated their rights under Article 3 and Article 8 of the Convention as it prevented them from smoking while in prison, and had given rise to physical and mental suffering as a result of nicotine withdrawal.

PROCEDURE

2. The case originated in four separate applications (nos. 3184/21, 17982/21, 43852/21 and 44600/21) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). Three of the applications were submitted on 6 January, 28 March and 21 August 2021 by, respectively, Estonian nationals Mr Denis Lvov, Mr Rene Vainik and Mr Dmitri Tsajun, and the fourth application was submitted on 31 August 2021 by Mr Nikolai Šmeljov, whose citizenship is unknown.

3. At the initial stage of the proceedings before the Chamber, the applicants were represented by Mr D. Piskunov, at the time a practising

lawyer in Estonia. Mr Piskunov subsequently ceased to represent the applicants in the present case (see paragraphs 18-20 below). The Estonian Government ("the Government") were initially represented by their Agent, Ms M. Kuurberg, Representative of Estonia to the European Court of Human Rights, and subsequently by Mr T. Kolk, her successor in that office.

4. The applications were allocated to the Third Section of the Court, pursuant to Rule 52 § 1 of the Rules of Court, and the Government were given notice of the applications on 1 December 2021.

5. On 4 November 2025 a Chamber of the Third Section, composed of Ioannis Ktistakis, President, Peeter Roosma, Georgios A. Serghides, Darian Pavli, Andreas Zünd, Oddný Mjöll Arnardóttir and Úna Ní Raifeartaigh, judges, and Milan Blaško, Section Registrar, delivered its judgment. The Chamber decided unanimously to join the four applications. It further declared, unanimously, Mr Lvov's application (no. 3184/21) inadmissible in its entirety, and declared inadmissible the complaints under Article 3 of the Convention lodged by the three remaining applicants, Mr Vainik, Mr Tsajun and Mr Šmeljov. By a majority, it declared admissible the latter applicants' complaints under Article 8 of the Convention. The Chamber held, by four votes to three, that there had been a violation of Article 8 of the Convention.

6. On 4 February 2026 the Government requested that the case be referred to the Grand Chamber. That request was granted by a panel of the Grand Chamber on 23 March 2026.

7. The composition of the Grand Chamber was determined in accordance with Article 26 §§ 4 and 5 of the Convention and Rule 24.

THE FACTS

I. DOMESTIC PROCEEDINGS

A. Introduction of the tobacco ban by the Minister of Justice of Estonia

8. On 6 October 2016 the Estonian Minister of Justice, as the authority responsible for the national prison system, amended the Internal Prison Rules to the effect that prisoners were to be prohibited from possessing smokable tobacco products or related items. The measure, which entered into force on 1 October 2017, was accompanied by an explanatory memorandum examining the social, economic and legal (constitutional) implications of the ban. In particular, the memorandum accepted that the ban would interfere with the constitutional right to free self-realisation under Article 19 § 1 of the Constitution. However, the measure pursued the aims of protecting health, reducing passive smoking, ensuring prison security, preventing fire risks and limiting the use of cigarettes as prison currency. The authorities further considered the ban proportionate. Smoking rates in prisons were significantly

higher than in society generally and were regarded as part of the prison subculture. Existing measures had failed to protect non-smokers effectively, while less restrictive alternatives, including reduced smoking allowances and smoking cessation counselling, were considered insufficient. Although smoking remained lawful outside prison, the memorandum concluded that the specific nature of the prison environment justified a complete ban.

B. Opinion of the Chancellor of Justice of Estonia on the tobacco ban

9. The Chancellor of Justice, an independent constitutional office-holder responsible, *inter alia*, for reviewing the conformity of legislation and regulations with the Constitution and performing ombudsman functions, issued an opinion questioning the constitutionality of the ban. While accepting that the measure pursued legitimate aims, she considered that a total prohibition could be disproportionate. The Chancellor observed that, for prisoners, smoking also functioned as a means of coping with stress and boredom. In her view, the risks associated with smoking in prison were not comparable to those posed by alcohol or narcotic drugs, particularly since indoor smoking was already prohibited. She further warned that the ban could encourage illicit trade in tobacco, increase tensions among prisoners and undermine rehabilitation objectives, and that the State did not have unlimited powers to impose its conception of a healthy lifestyle on prisoners.

C. Review by the Supreme Court

10. All of the applicants were long-term smokers and were detained in Viru Prison when the ban entered into force on 1 October 2017. Each challenged the measure unsuccessfully before the administrative courts.

11. The matter ultimately came before the Supreme Court. On 17 December 2019 it delivered judgment no. 5-19-40, following constitutional review proceedings initiated at the request of two of the applicants (Mr Tsajun and Mr Šmeljov). That judgment upheld the constitutionality of the tobacco ban and subsequently formed the basis for dismissing all of the applicants' claims.

12. The Supreme Court reiterated that restrictions on fundamental rights required a valid statutory basis and had to remain within the limits of the legislative delegation contained in the Imprisonment Act. In this regard, it accepted that security in prison and "people's safety" had to be interpreted in the light of the particular risks inherent in detention. It further acknowledged that the prison authorities enjoyed a broad margin of appreciation in assessing such risks, and held that protecting non-smokers from passive smoking fell within the concepts of "security in prison" and "people's safety". Fire prevention and deterring the use of cigarettes as prison currency were also considered legitimate aims, compatible with the objectives of imprisonment.

13. However, the Supreme Court agreed with the Chancellor of Justice that protecting prisoners from the health consequences of smoking or eliminating nicotine addiction did not fall within the statutory purposes of imprisonment. Nevertheless, it concluded that the remaining aims were sufficient to justify the regulation and that the Minister had acted within the scope of the statutory delegation.

14. The Supreme Court then held that the ban interfered with prisoners' property rights and their right to free self-realisation. However, those rights could lawfully be restricted, where necessary and if proportionate to legitimate aims. It considered a complete ban to be appropriate and necessary. Although illicit tobacco could still be smuggled into prisons, the measure substantially reduced lawful access and facilitated supervision. Statistics had shown a decline in smoking-related violations since the introduction of the ban.

15. The Supreme Court also examined less restrictive alternatives, including designated smoking areas and the separation of smokers from non-smokers, but considered these to be less effective and more difficult to supervise. In balancing the competing interests, the Supreme Court accepted that nicotine dependence and withdrawal symptoms increased the severity of the interference. However, it noted that such symptoms were generally temporary and that counselling and nicotine replacement treatment were available where necessary.

16. The Supreme Court also attached weight to the gradual implementation of the measure, noting that smoking allowances had already been progressively reduced before the complete ban entered into force. It ultimately concluded that the protection of non-smokers, the prevention of fire risks and of illicit debt-based relationships between prisoners, and the maintenance of prison order outweighed the interference with prisoners' rights.

II. PROCEEDINGS BEFORE THE GRAND CHAMBER

17. On 6 February 2026 the Registry transmitted the Government's request that the case be referred to the Grand Chamber (see paragraph 6 above) to Mr D. Piskunov, the applicants' legal representative (see paragraph 3 above). He was subsequently informed by the Registry, on 23 March 2026, that the panel of the Grand Chamber had granted the Government's request for referral.

18. In the ensuing days, in the course of the preliminary administrative preparation of the proceedings before the Grand Chamber, the Registry noted that Mr Piskunov had not corresponded with the Court since making his final submissions before the Chamber in May 2022. Letters sent to him through the Court's Electronic Communications Service (eComms) system, including

the correspondence concerning the Government's referral request, had not been accessed or downloaded for a considerable period.

19. Following additional enquiries to the law firm with which Mr Piskunov had been associated, the Registry was informed that he was no longer employed there, and that he was no longer practising law in Estonia.

20. In those circumstances, the Registry wrote directly to the applicants by registered post on 2 April 2026, using their last known addresses, informing them that the case had been referred to the Grand Chamber and thus of the need to be legally represented in the proceedings.

21. As regards Mr Vainik, the Registry had a private residential address on file, as he had previously lodged another application with the Court; the Registry subsequently received confirmation that the letter had been delivered to a person residing at that address. As regards Mr Šmeljov and Mr Tsajun, the only addresses available to the Registry were those of the prison where they were incarcerated at the time their applications had been lodged. The letters addressed to them were returned undelivered.

22. On 2 April 2026 the Government were likewise informed of the Registry's attempts to contact the applicants and were invited to assist in establishing their current whereabouts and, if possible, to provide a means of contacting them.

23. On the same date, the Registry also wrote to the law firm at which Mr Piskunov had formerly been employed, explaining the situation and thus opening the possibility that another member of the firm might assume legal representation. No reply was received.

24. By letter of 10 April 2026, the Government informed the Court that Mr Vainik had died on 28 March 2026. They further stated that the other applicants, Mr Šmeljov and Mr Tsajun, had been released from prison "years ago" and that their current whereabouts were unknown to the authorities. In the light of those circumstances, the Government invited the Court to strike the application out of its list, pursuant to Article 37 § 1 of the Convention, before taking any further steps in the proceedings before the Grand Chamber.

25. On 30 April 2026 the Registry of the Court again requested the Government to indicate whether, after having exhausted all relevant domestic administrative avenues, including, *inter alia*, searches in the Population Register and enquiries to the administration of the prison in which the applicants had been detained, they remained unable to establish the whereabouts of the other two applicants or to identify any possible heirs of the deceased applicant.

26. In a letter dated 20 May 2026, the Government informed the Court that additional administrative searches had failed to identify any heirs of the deceased applicant. They also provided the Court with the private residential addresses of the two remaining applicants, Mr Šmeljov and Mr Tsajun. The Court subsequently contacted both applicants at those addresses, inviting

them to confirm their intention to pursue the proceedings and to appoint a legal representative. No response has been received.

THE LAW

REQUEST FOR THE CASE TO BE STRUCK OUT OF THE LIST

27. In view of the developments and circumstances described above, the Court considers that it should, already at the present stage of the proceedings before the Grand Chamber, rule upon the Government's request to strike the case out.

28. Article 37 § 1 of the Convention provides as follows:

> "The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application; or
>
> (b) the matter has been resolved; or
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

29. The Court considers it necessary to distinguish between the applicants' different situations.

30. As regards the situation of Mr Vainik, the Court's established practice, where an applicant dies during the proceedings, including after referral of the case to the Grand Chamber, and no heir or close relative expresses a wish to pursue the application, is to strike the application out of its list of cases (see, among many authorities, *Mraović v. Croatia* (striking out) [GC], no. 30373/13, §§ 7, 24-25, 9 April 2021; *Léger v. France* (striking out) [GC], no. 19324/02, §§ 4, 8, 44-45 and 51, 30 March 2009; *Savickis and Others v. Latvia* [GC], no. 49270/11, § 90, 9 June 2022; and *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 57, ECHR 2012).

31. This is the situation in the present case. Moreover, the Court observes that it took several measures that could have drawn the attention of Mr Vainik's heirs or next of kin to developments in the case. The key procedural steps in the proceedings – the adoption of the Chamber judgment, the Government's request for referral to the Grand Chamber, and the acceptance of that request – were all announced by press releases. Delivery was accepted of the letter addressed to Mr Vainik, informing him of the referral of the case (see paragraph 21 above). Nevertheless, no one has come forward expressing a wish to pursue the application on behalf of the deceased applicant. In these circumstances, the Court considers that it is no longer justified to continue the examination of the application in so far as it concerns Mr Vainik (Article 37 § 1 (c) of the Convention).

32. As regards the situation of Mr Šmeljov and Mr Tsajun, the Court observes that at this stage they are without legal representation in the proceedings, contrary to Rule 36 §§ 2 and 3 of the Rules of Court. Moreover, they have refrained from direct contact with the Court, omitting to inform it of the changes in address since their applications were lodged, and of the change of circumstances represented by their release from prison, contrary to Rule 47 § 7.

33. For the Court, the circumstances strongly support the conclusion that the two applicants in question do not intend to pursue their applications, within the meaning of Article 37 § 1 (a) of the Convention (compare, *mutatis mutandis*, *V.M. and Others v. Belgium* ((striking out) [GC], no. 60125/11, § 36, 17 November 2016, and *Gavrilov and Kurov v. Russia* (dec.), no. 8683/04, 6 May 2008).

34. It remains to be determined whether there are special circumstances relating to respect for human rights as defined in the Convention and the Protocols thereto which require the continued examination of the application (Article 37 § 1 *in fine*). In doing so, the Court has, *inter alia*, had regard to whether the case raises important issues providing it with an opportunity to elucidate, safeguard and develop the standards of protection under the Convention, or whether the impact of the case goes beyond the particular situation of the applicant (see *Berlusconi v. Italy* [GC], no. 58428/13, § 68, 27 November 2018, with further references).

35. The Court observes that, since they are reported as no longer being in detention, the second and third applicants are not presently affected by the complete prohibition on smoking in Estonian prisons. It further observes that no other application has been brought against Estonia in relation to this matter. There is thus no appearance of a continuing objection to the measure in question from within the prison population, based on the Convention, which might justify the continued examination of this case.

36. Nor has any similar application been lodged against any other High Contracting Party. There is thus no basis to consider that this case concerns an issue of general relevance and significance across the whole Council of Europe area. The issue does not therefore appear to be one on which a definitive ruling from the Grand Chamber is required for the sake of "respect for human rights", within the meaning of Article 37 § 1 *in fine* of the Convention. In other words, the Court does not discern in this case the transcendent quality that it has identified in other proceedings in which it declined to strike the application out (see, for example, *Karner v. Austria*, no. 40016/98, §§ 25-27, ECHR 2003-IX; *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII; and *Delecolle v. France*, no. 37646/13, § 39, 25 October 2018).

37. The Court further notes that the prohibition was subjected to constitutional review by the Supreme Court of Estonia (see paragraphs 11-16 above). That court scrutinised the ban in terms of its legal validity, the

legitimacy of the aims pursued, and its proportionality with respect to those aims, principally from the standpoint of Article 19 § 1 of the Constitution, guaranteeing the right to free self-realisation. It set out at length the reasons that led it to conclude that the ban was not unconstitutional.

38. In light of the above considerations, the Court concludes that no special circumstances relating to respect for human rights require it to continue the examination of the case.

39. Lastly, the Court would clarify that, in so far as it concerned the merits, the judgment given by the Chamber in these proceedings did not become final and is thus legally void. The case has now been decided by the present judgment of the Grand Chamber, which is final, as provided by Articles 43 § 3 and 44 § 1 of the Convention (see *V.M. and Others*, cited above, § 39, and *Gross v. Switzerland* [GC], no. 67810/10, § 35, ECHR 2014).

40. Accordingly, applications nos. 17982/21, 43852/21 and 44600/21, which together constitute the present case, should be struck out of the Court's list of cases.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

Decides to strike applications nos. 17982/21, 43852/21 and 44600/21 out of its list of cases.

Done in English and in French, and notified in writing, on 30 June 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

John Darcy Deputy to the Registrar	Mattias Guyomar President