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

THIRD SECTION

CASE OF VAINIK AND OTHERS v. ESTONIA

(Applications nos. 17982/21 and 3 others –
see appended list)

JUDGMENT

Art 8 • Private life • Introduction of total ban on smoking in prisons affecting the applicants, serving prisoners who were long-term smokers • Choice to smoke and the provision of treatment to counter withdrawal effects of quitting fell within the material scope of the right to respect for private life • Art 8 applicable • Legitimate aims of protecting health and preventing disorder or crime • Domestic authorities enjoyed considerable but not unlimited margin of appreciation to regulate smoking in prison • Impugned ban not adopted by Parliament and did not benefit from direct parliamentary review and debate • Lack of consensus among member States on the need to ban smoking in prison settings • No assessment of importance and impact of ban from the perspective of the personal autonomy of prisoners who smoke • Failure to provide relevant and sufficient reasons for far-reaching and absolute prohibition • Margin of appreciation exceeded

Prepared by the Registry. Does not bind the Court.

STRASBOURG

4 November 2025

THIS CASE WAS REFERRED TO THE GRAND CHAMBER,
WHICH DELIVERED JUDGMENT ON 30/06/2026.
THIS CHAMBER JUDGMENT HAS NOT THEREFORE BECOME
FINAL, AND IS LEGALLY VOID IN SO FAR AS IT
CONCERNED THE MERITS OF THE CASE.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Vainik and Others v. Estonia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Ioannis Ktistakis*, President*,
Peeter Roosma,
Georgios A. Serghides,
Darian Pavli,
Andreas Zünd,
Oddný Mjöll Arnardóttir,
Úna Ní Raifeartaigh*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the 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") by three Estonian nationals, Mr Denis Lvov ("the first applicant"), Mr Rene Vainik ("the second applicant") and Mr Dmitri Tsajun ("the fourth applicant"), and Mr Nikolai Šmeljov ("the third applicant"), who is of unknown citizenship, on the various dates indicated in the appendix;

the decision to give notice to the Estonian Government ("the Government") of the complaint concerning the total ban on smoking in prison and to declare inadmissible the remainder of the applications;

the parties' observations;

Having deliberated in private on 3 June 2025 and 30 September 2025,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The case concerns the total ban on smoking in Estonian prisons, which, according to the applicants – who were all prisoners at the time the ban entered into force – violated their rights under Articles 3 and 8 of the Convention.

THE FACTS

2. The applicants, whose particulars are set out in the appendix, were detained in Viru Prison at the relevant time. The second, third and fourth applicants were represented by Mr D. Piskunov, a lawyer practising in Tallinn. The first applicant was represented by the same lawyer until 11 March 2025.

3. 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 facts of the case may be summarised as follows.

I. GENERAL BACKGROUND

5. On 6 October 2016 the Minister of Justice amended the provisions of Regulation no. 72 on the Internal Prison Rules (*vangla sisekorraeeskiri*) in so far as they related to the possession of tobacco products. As a result, section $64^{1}(3^{1})$ of the Internal Prison Rules provides that detainees are prohibited from having smokable tobacco products (*suitsetatavad tubakatooted*) and items that can be used to assemble or smoke smokable tobacco products (hereinafter referred to as "tobacco products"). The ban entered into force on 1 October 2017.

6. On 24 April 2017 the governor of Viru Prison amended Viru Prison's house rules (*Viru Vangla kodukord*) to completely ban smoking on its premises. The ban also entered into force on 1 October 2017.

7. The total ban on smoking in prison was preceded by successive changes to Viru Prison's house rules, which over time reduced the number of cigarettes that detainees were allowed during their outside walks (see paragraphs 68-69 below).

II. AS REGARDS THE FIRST APPLICANT

8. The first applicant, who was known to have been a smoker, was detained in Viru Prison when the relevant changes to its house rules and the Internal Prison Rules (see paragraphs 5 and 6 above) entered into force.

9. After unsuccessfully raising the issue with Viru Prison, he lodged a complaint with the Tartu Administrative Court on 31 January 2018, challenging the smoking ban. He also claimed compensation for non-pecuniary damage caused by the smoking ban in the Internal Prison Rules and Viru Prison's house rules. He explained that he had been smoking for over thirty years and that, following the ban on smoking, he had been suffering from depression, sleeping problems and loss of appetite.

10. The Tartu Administrative Court and the Tartu Court of Appeal refused to examine his complaints. He appealed to the Supreme Court.

11. On 28 June 2019 the Supreme Court allowed his appeal, quashed the decisions of the lower courts and remitted the case to the Tartu Administrative Court for re-examination as regards the smoking ban (*tühistamisnõue ja kohustamisnõue*) and compensation for non-pecuniary damage caused by the Internal Prison Rules. The Supreme Court terminated the proceedings concerning his claim (*lõpetab menetluse*) for compensation for non-pecuniary damage caused by Viru Prison's house rules.

12. On 5 November 2019 the Tartu Administrative Court suspended the proceedings pending the outcome of constitutional review proceedings brought in relation to the smoking ban (case no. 5-19-40 – see

paragraphs 26-39 below). The applicant's subsequent appeals against that decision were unsuccessful.

13. On 5 February 2020 the Tartu Administrative Court resumed the proceedings.

14. On 26 March 2020 the first applicant applied for exemption from payment of the State fee (*riigilõiv*).

15. On 15 April 2020 the Tartu Administrative Court, referring, *inter alia*, to the Supreme Court's judgment in case no. 5-19-40 (see paragraphs 26-39 below), dismissed the application for exemption from payment of the State fee and ordered the first applicant to pay it. The court found that the first applicant did not have sufficient funds to pay the State fee, but considered that, in any event, his claim lacked prospects of success. As he did not appeal against that decision, it entered into force on 9 May 2020 and the deadline for payment expired on 14 May 2020. The Tartu Administrative Court refused to examine a repeated application by the first applicant, dated 25 April 2020, for exemption from payment of the State fee.

16. On 18 May 2020 the Tartu Administrative Court refused to examine the first applicant's claim dated 31 January 2018 because he had not paid the State fee. That decision was upheld on 27 May 2020 by the Tartu Court of Appeal, which stated that the question before it was no longer whether he should have been exempted from paying the State fee, but whether the first-instance court's refusal to examine his claim had been justified. The Supreme Court refused to examine a further appeal by the applicant against the decision of the Tartu Court of Appeal.

III. AS REGARDS THE SECOND APPLICANT

17. The second applicant has been serving a life sentence in Viru Prison since 1996. He claims to have been a smoker for most of his life. It appears from the medical records submitted by him that he was diagnosed with nicotine addiction in 2015.

18. After the Ministry of Justice dismissed a complaint lodged by him seeking the annulment of the smoking ban introduced into Viru Prison's house rules, he lodged an action for annulment with the Tartu Administrative Court on 4 January 2018. He considered it common knowledge that smokers developed nicotine addiction and that they could have withdrawal symptoms of varying nature, intensity and duration when quitting smoking. He added that he could develop such withdrawal symptoms if he was not allowed to smoke and that it was irrelevant for the purposes of his case whether he had already developed any symptoms.

19. Those court proceedings before the Tartu Administrative Court were suspended pending the outcome of the constitutional review proceedings in case no. 5-19-40 (see paragraphs 26-39 below) and were resumed on 2 January 2020. On 4 February 2020 the Tartu Administrative Court

dismissed his complaint, referring to the Supreme Court's reasoning in judgment no. 5-19-40.

20. The second applicant appealed to the Tartu Court of Appeal. It dismissed his appeal on 18 August 2020. On 29 September 2020 the Supreme Court refused to examine a subsequent appeal by him on points of law.

IV. AS REGARDS THE THIRD AND FOURTH APPLICANTS

21. The third and fourth applicants were detained in Viru Prison. At the time the ban on smoking entered into force, they were both known to have been smokers.

22. After various complaints lodged by them relating to the smoking ban had either been refused or dismissed by Viru Prison or the Ministry of Justice, the third and fourth applicants (on 13 November and 10 October 2017 respectively) brought proceedings before the Tartu Administrative Court, arguing that section $64^1(3^1)$ of the Internal Prison Rules was unconstitutional and challenging the smoking ban in Viru Prison's house rules.

23. In his application to the Tartu Administrative Court, the third applicant stated that he had been smoking for thirty years and that, as a result of the ban on smoking in prison, he had been suffering from fatigue, headaches, overall weakness, sleeplessness and loss of appetite. The fourth applicant submitted that he was heavily addicted to nicotine and was suffering from severe withdrawal symptoms.

24. On 12 June 2019 the Tartu Administrative Court declared section $64^1(3^1)$ of the Internal Prison Rules unconstitutional and set it aside (*jättis kohaldamata*). It referred the judgment to the Supreme Court, triggering constitutional review proceedings. The court also annulled the smoking ban in Viru Prison's house rules and ordered the prison to reconsider whether the third and fourth applicants could smoke in the prison.

25. During the proceedings before the Supreme Court, the Chancellor of Justice, the Minister of Justice and the Minister of Social Affairs gave their opinions on the constitutionality of the ban, alongside the positions expressed by Viru Prison and the applicants in that case.

26. By judgment no. 5-19-40 of 17 December 2019 the Supreme Court declared the ban provided for in section $64^1(3^1)$ of the Internal Prison Rules constitutional.

27. Firstly, the Supreme Court reiterated that, in accordance with the principle of general statutory reservation (*üldise seadusereservatsiooni põhimõte*) enshrined in Article 3 § 1 of the Constitution, it was for the legislature to adopt all important decisions concerning fundamental rights. The delegation of matters within the legislature's competence to the executive, and interference by the executive with fundamental rights, was permitted only on the basis of a delegating provision (*volitusnorm*) established by law and in accordance with the Constitution. Article 94 § 2 of

the Constitution exemplified the principle of general statutory reservation by allowing a minister to issue regulations and administrative decrees on the basis of and for the implementation of laws. A regulation was contrary to the Constitution if it was issued on the basis of an unconstitutional delegating provision, in the absence of a delegating provision, or if it was incompatible with the delegating provision.

28. Accordingly, the Supreme Court assessed whether the rule in section $64^{1}(3^{1})$ of the Internal Prison Rules was within the limits of sections 15(2) and (3) of the Imprisonment Act, on which it was based (see paragraph 46 below). In doing so, the court interpreted the terms "people's safety" and "security and order in prison" listed in section 15(2) of the Imprisonment Act and referred to the aims of the smoking ban listed by the Minister of Justice in the explanatory memorandum to the draft regulation (see paragraph 59 below). In that connection, the Supreme Court highlighted that such an interpretation had to take into account the specific security setting of a prison. Therefore, some items and substances not considered dangerous in everyday life outside prisons could nonetheless pose a threat to security and order in prison.

29. The court noted that both the prison and the Minister of Justice, having specific experience and knowledge in the relevant field, had a wide margin of appreciation in assessing the dangerousness of various items in a prison environment. Nonetheless, the terms "people's safety" and "security and order in prison" could not be construed overly widely so as to allow the minister to ban items arbitrarily. Prohibiting items in prison had to serve the aims of carrying out a prison sentence, comply with the notion of human dignity and avoid causing unnecessary suffering or distress to prisoners.

30. The Supreme Court considered that the aim of preventing smoking-related health damage to others (through the exclusion of passive smoking) was covered by the notions of "people's safety" and "security in prison". It was undoubtedly a prison's obligation to prevent damage to the health of non-smoking prisoners. In that connection, the court referred to the Court's case-law according to which smoking had to be excluded in prison rooms where persons had to stay against their will, and smokers and non-smokers had to be placed in separate cells when necessary.

31. Conversely, the court considered that protecting the health of smoking prisoners themselves and freeing them from nicotine addiction could not be considered to be covered by the aims of serving a prison sentence. Such a ban was neither inherent in imprisonment nor inextricably linked to its execution. The possibility that banning prisoners from smoking could, in the future, save public resources that would otherwise be spent on their healthcare did not alter the above finding. Owning and smoking tobacco products were not, in and of themselves, factors that enhanced criminal behaviour. The aim of carrying out a prison sentence could not be to prevent prisoners from

engaging in any self-damaging activity, especially if this activity was undertaken knowingly and of their own will.

32. In addition, taking note of the aims listed by the Minister of Justice, the Supreme Court found that the aim of preventing the risk of fire in prison (which related to the use of open flames in prison and attempts to light cigarettes with self-made lighters) and the aim of preventing cigarettes from being used as an illegal form of currency in prison (which related to the spread of debt-based relationships among prisoners and contributed to a criminal environment) were covered by the aims set out in section 15(2) of the Imprisonment Act. The court also noted that while facilitating the maintenance of prison security (by having to devote fewer resources to regular checks to ensure that cigarettes were not taken into cells) could not be seen as a standalone legitimate aim of the smoking ban, it nonetheless contributed to the achievement of the other above-mentioned aims.

33. In conclusion, the Supreme Court held that the impugned rule was within the limits of the provision on which it was based.

34. The Supreme Court further accepted that the ban on having tobacco products in prison interfered with property rights and the right to free self-realisation (within the meaning of Article 19 of the Constitution – see paragraph 43 below). In order to be constitutional, the restriction had to be necessary in a democratic society and could not distort the core of the rights in question. In other words, it had to serve a legitimate aim and be proportionate to that aim.

35. The ban on smoking served the above-mentioned legitimate aims. The Supreme Court also found that the ban did indeed contribute to achieving those aims. Even assuming that the prison service would not be able to completely prevent tobacco products from illegally reaching prisoners, it indisputably complicated prisoners' access to tobacco products. The statistics presented by the Minister of Justice confirmed that since the ban had been imposed, the number of incidents related to tobacco handling and smoking in prisons had drastically decreased.

36. The Supreme Court took into account the opinion expressed by the Chancellor of Justice that the ban was not necessary as smoking-related health risks had been sufficiently mitigated by the prohibition of indoor smoking in prison. The court admitted that less restrictive measures could indeed be envisaged in the interests of protecting non-smokers. However, it was difficult to assess the effectiveness of such measures. For example, it would be possible to separate smokers and non-smokers in different cells, or to build special smoking rooms in prisons, or to allow smoking only outdoors, as had been the case until the imposition of the ban in 2017. However, none of those more lenient measures – which permitted limited access to smoking – could ensure that the legitimate aims pursued would be met at a level comparable to a complete ban. The court asserted that, even in smoking rooms or in limited smoking areas, the prison had to ensure that prisoners

were supervised, and the complete separation of non-smokers was not practically possible. There was no reason to doubt the Minister of Justice's assessment that, in comparison to a complete ban, permitting smoking in certain limited areas in prison increased the chances that tobacco products would still reach prohibited areas, thus requiring more prison resources to address the problem.

37. In any event, the court could not envisage measures that would be less restrictive of prisoners' rights but at the same time as effective as a total ban in preventing the risk of fire and the use of cigarettes as an illegal form of currency.

38. Addressing the proportionality of the ban on smoking, the Supreme Court considered that it did not deprive prisoners of anything indispensable. It conceded that nicotine addiction which developed as a result of a long-term smoking habit and the associated withdrawal symptoms when a person quit smoking (the duration and intensity of which were individual) were likely to contribute to the intensity of the interference complained of. However, withdrawal symptoms were unlikely to last long and needed medical treatment only in the most severe cases. The prison had to provide counselling to those wishing to give up smoking and, if necessary, to ensure treatment for severe withdrawal symptoms. The Minister of Justice had confirmed that those services were indeed provided if a prisoner gave up smoking. The applicants in the case in question had not claimed that the prison had not offered them counselling or treatment. In any event, the reduction of smoking in prison had taken place gradually, by reducing the number of cigarettes prisoners were allowed to take with them outdoors (immediately before the total ban entered into force, only one cigarette per day had been allowed). It was therefore unlikely that severe withdrawal symptoms had occurred at the moment that the total ban on smoking came into force.

39. According to the Supreme Court, the smoking ban did not constitute degrading treatment.

40. After the Supreme Court had delivered its judgment in case no. 5-19-40, Viru Prison appealed against the Tartu Administrative Court's judgment of 12 June 2019 (see paragraph 24 above). On 18 March 2021 the Tartu Court of Appeal allowed the appeal. It held that, as the Supreme Court had declared the ban on having tobacco products in prison constitutional, the ban on smoking in Viru Prison's house rules should also be upheld.

41. On 4 May 2021 the Supreme Court refused to examine appeals on points of law lodged by the third and fourth applicants.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT LEGAL FRAMEWORK

A. Constitution of the Republic of Estonia

42. The first phrase of Article 3 § 1 of the Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*) provides that State power is exercised solely on the basis of the Constitution and laws in conformity therewith.

43. Article 19 § 1 provides that everyone has the right to free self-realisation (*vaba eneseteostus*).

44. Article 94 § 2 provides, *inter alia*, that a minister issues regulations and orders on the basis of and for the implementation of laws.

45. Under Article 139, the Chancellor of Justice is an independent official who reviews acts of general application issued by the legislature, the executive and municipalities to ensure their compliance with the Constitution and laws of Estonia.

B. Imprisonment Act (adopted in 2000)

46. Section 15 of the Imprisonment Act (*vangistusseadus*) regulates prisoners' personal effects and prohibited items. Section 15(2) and (3) provides as follows:

> "(2) Prisoners are prohibited from having substances and items which:
>
> 1) endanger people's safety;
>
> 2) are particularly likely to cause damage to property;
>
> 3) are likely to endanger security and order in prison;
>
> 4) are incompatible with the objectives of the sentence of imprisonment;
>
> 5) seriously affect the hygiene requirements of the prison; or
>
> 6) require the authorisation of a prison officer under section 31(2) of this Act.
>
> (3) The Minister responsible for policy shall by regulation draw up a list of the items prohibited to prisoners in closed or open prisons, the total weight of the items [that may be] kept on them and in storage, and the procedure for storing the items deposited."

C. Regulation no. 72 of the Minister of Justice on the Internal Prison Rules

47. Section 8^2 of the Internal Prison Rules (*vangla sisekorraeeskiri*), as in force between 15 February 2011 and 1 October 2017, provided as follows:

Section 8^2 - Smoking arrangements

"(1) Upon admission of a prisoner, it shall be ascertained whether he smokes and whether he wishes to quit smoking. If a prisoner wishes to quit smoking, he shall be provided with counselling in the prison.

(2) A prisoner may smoke in prison only in places designated for this purpose and marked accordingly, and at a time when the prisoner is entitled to be in those places.

(2^1) A prisoner may only smoke cigarettes produced by a manufacturer (hereinafter 'tobacco products').

(3) A prisoner may not keep tobacco products on him. Tobacco products are kept under lock and key by a prison officer. The prison service shall hand out tobacco products to a prisoner only for the period during which he is entitled to be in the places where smoking is allowed."

48. Section 8^2(1) of the Internal Prison Rules, as in force as of 1 October 2017, provides as follows:

Section 8^2 - Organisation of smoking cessation

"(1) Upon admission of a prisoner, with the exception of a person who has been detained for the purpose of sobering up, it shall be ascertained whether the prisoner smokes. If a prisoner, with the exception of a person referred to in sections 3(2) and 4(2) of the Imprisonment Act, expresses a wish to quit smoking, he shall be provided with counselling in the prison."

49. Section 64^1(3^1), which was adopted on 6 October 2016 and entered into force on 1 October 2017, provides that detainees are prohibited from having smokable tobacco products and items that can be used to assemble or smoke smokable tobacco products.

D. Explanatory memorandum to the draft regulation amending Regulation no. 72 of the Minister of Justice on the Internal Prison Rules

50. A twenty-page explanatory memorandum to the draft regulation including the above amendments (see paragraphs 48-49 above) focused mainly on assessing the foreseeable impact of the ban in terms of its social and economic aspects and on analysing the constitutionality of the proposed ban on having smokable tobacco products in prison.

51. The memorandum noted that approximately 21% of prison staff and approximately 77% of prisoners in Estonia were smokers.

52. Since 2008 Estonian prisons had paid increasing attention to healthy lifestyles. Indoor spaces had already become smoke-free in 2010, and since then, tobacco products had been kept in special lockers outside prison cells.

53. The imposition of a smoking ban in prisons was not a novel concept globally. The memorandum noted that a smoking ban was in place in all federal prisons across the United States of America and in state-level prisons in twenty states. Complete bans on smoking were also in force in Australia

and New Zealand, and at that time, there were plans to make all UK prisons tobacco-free over the course of the following year.

1. Impact assessment

54. As regards the social impact of the ban, the memorandum noted that the inability to smoke had a positive impact on the health of prisoners and prison staff, including non-smokers, as they would no longer be exposed to passive smoking. It was considered that the policy in place at the relevant time, which allowed three cigarettes to be smoked per day (see paragraph 69 below), was not sufficient to guarantee the protection of non-smokers' health. As exercise yards were often relatively small, it could be that chain-smoking prisoners did not have an effective opportunity to spend time in the "fresh air". As long as smoking was permitted, prisoners had no real incentive to quit.

55. As regards the negative social impact, the memorandum mentioned possible adjustment problems for prison staff and the risk that some might resign. As for prisoners, the risk of withdrawal effects was noted. However, this was likely to be moderate, given that, at the relevant time, prisoners were already limited to smoking three cigarettes per day. Supportive measures were planned to help prisoners cope, including additional sports and leisure activities, additional food packages and, where necessary, treatment for nicotine addiction provided by prison medical services.

56. As regards the economic impact, the memorandum, on the one hand, highlighted the increased need for counselling and nicotine replacement treatment prescribed by medical personnel. At the relevant time, thirty-five people working in prisons had already undergone special training in smoking cessation counselling, with more to be trained if necessary. The demand for nicotine patches was expected to increase up to fourfold. It was also likely that more resources would be required to process appeals that might be lodged against the ban. A mass uprising was not considered likely.

57. One the other hand, the ban was seen as a way of saving public resources. In the long term, healthcare costs linked to smoking-related problems were likely to decrease. Moreover, the ban would allow for a better use of prison officers' time. It was estimated that, at the relevant time, prison staff collectively spent approximately eighty-five hours per day handing out and collecting cigarettes and conducting searches. In addition, there were approximately 1,800 disciplinary disputes related to smoking and tobacco in prisons per year, each taking an average of three hours of a prison officer's working time.

2. Compliance with the Constitution

58. It was acknowledged that the ban on smokable tobacco products interfered with the right to free self-realisation, as protected under Article 19 of the Constitution.

59. The ban was aimed at protecting health (including by creating a healthier living and working environment), fighting addiction, ensuring prison security and guaranteeing the efficient use of public resources.

60. The memorandum based its analysis of the proportionality of the ban on the following considerations.

61. The proportion of smokers in prison was approximately three times higher than among persons at liberty. Smoking was considered part of the prison subculture, making it virtually impossible for prisoners to give up even if they so wished. In such circumstances, voluntary counselling was of limited use.

62. Under the system in operation at the time, smoking was possible in exercise yards and exercise pens, with smoking areas demarcated by a line on the ground. Prison officers on duty had no practical way of keeping their distance from the smoking area. In some exercise yards surrounded by living quarters, it was impossible to prevent smoke from entering. It was impossible to ensure a smoke-free environment for non-smoking prisoners and prison officers without making considerable investments. The ban on smoking was deemed to contribute to a cleaner and healthier working and living environment.

63. The ban was also expected to improve prison security and optimise the use of resources. Under the system allowing smoking only outdoors, resources had to be allocated to handing out and collecting cigarettes from prisoners and conducting body searches after exercise periods to prevent cigarettes from entering prison. Despite this, cigarettes still found their way into prisons, posing a fire hazard, especially as prisoners tried to light them with self-made lighters. Cigarettes continued to be used as currency in prison, constituting an example of the prison subculture.

64. The memorandum noted that alternatives – either maintaining the limited smoking allowance in force at the time or increasing counselling efforts to convince more people to quit – would not be effective in meeting the above-mentioned objectives.

65. The decision to smoke was influenced by a number of factors, such as accessibility, habits and a lack of alternative activities. Against that background, a number of measures had to be combined to achieve the above-mentioned health and security aims. It was considered that the State had to take a leading role in changing attitudes. Since May 2016 prisons had been implementing an incentive programme for prisoners willing to quit smoking, including offering additional leisure activities and food options. The enactment of the ban would involve a period of adaptation. Counselling and,

if necessary, nicotine replacement treatment would help to ensure the proportionality of the ban.

66. While smoking was not prohibited for those at liberty, it was found that, given the specific features of the prison environment, it was not possible to effectively guarantee prison security and the protection of health without imposing a complete ban on smoking.

E. Viru Prison's house rules

67. Viru Prison's house rules are adopted by decision of its governor.

68. Before 16 May 2016 section 12 of Viru Prison's house rules (*Viru Vangla kodukord*) provided as follows:

> "12.1. A prisoner may smoke at a time and place specified in the daily schedule. Smoking is prohibited for prisoners serving a disciplinary sanction.
>
> 12.2. A prisoner's cigarettes shall be placed in a locker provided by the prison. Every prisoner who smokes shall be assigned an individual locker for storing cigarettes. The key to the locker shall be kept in the guard's room. The locker shall be opened and locked by a prison officer in the presence of the prisoner.
>
> 12.3. A prisoner cannot smoke at a workstation and therefore cigarettes cannot be taken to a workstation.
>
> 12.4. A prisoner may take up to five unpackaged cigarettes to the smoking area at a time designated for smoking."

69. Between April 2016 and August 2017 section 12.4 of Viru Prison's house rules on smoking in prison was repeatedly changed as regards the number of cigarettes prisoners were allowed to take with them during the time they were allowed to smoke once a day. Between 16 May 2016 and 1 July 2017 they were allowed to take three cigarettes, between 1 July 2017 and 1 September they were allowed to take two cigarettes, and between 1 September and 1 October 2017 they were allowed to take one cigarette with them.

70. On 24 April 2017 the governor of Viru Prison amended the rules by inserting in subsection 2.3 that smoking was banned on the premises. That ban entered into force on 1 October 2017. At the same time, section 12 of the rules was repealed.

71. The explanatory memorandum to the house rules stated that the ban was aimed at protecting the health of prisoners and prison staff (including by helping prisoners to overcome addiction), ensuring prison security and guaranteeing the efficient use of public resources. In essence, the same reasons were given as those outlined in the explanatory memorandum to the draft regulation amending Regulation no. 72 of the Minister of Justice on the Internal Prison Rules.

II. RELEVANT DOMESTIC ADMINISTRATIVE PRACTICE

72. According to the Government, the scheme "Creating a tobacco-free environment in prison" was launched in 2009. The objective of a completely tobacco-free prison environment was set in 2016, and relevant information leaflets were distributed in prisons.

73. According to a leaflet from Viru Prison, the scheme offered the following incentives to prisoners wishing to quit smoking before the complete ban on smoking entered into force, as part of an incentive programme that ran from 16 May 2016 to 1 October 2017: (i) individual or group counselling, if necessary; (ii) the opportunity to borrow relevant literature, during the period concerned; (iii) additional fruit with dinner for non-smoking prisoners; (iv) the possibility of buying an extra 1kg of fruit and vegetables when at the shop; and (v) the opportunity to attend a cinema evening once a month.

III. OPINIONS OF THE CHANCELLOR OF JUSTICE

74. In 2015 the Chancellor of Justice (see paragraph 45 above) gave her opinion on a draft law being prepared by the Ministry of Social Affairs which, at the time, proposed amending the Tobacco Act (*tubakaseadus*) by introducing a complete smoking ban in prisons. This proposal was later excluded from the draft law submitted to the government and to Parliament.

75. In that opinion the Chancellor of Justice considered that such a ban would interfere with the right to self-realisation under Article 19 of the Constitution. She stated that from the prisoners' perspective, smoking was not only an unhealthy habit but also an activity that relieved stress and helped fight boredom. She stated that a total ban on smoking could be disproportionate and therefore unconstitutional. She added that the security risks posed by smoking in prison (noting that smoking was banned indoors anyway) could not be compared to those posed by alcohol or narcotic drugs. She added that those at liberty – as long as the risk of passive smoking to third parties was contained – were generally free to decide whether or not to damage their health by smoking.

76. The Chancellor of Justice noted that, even with the ban in force, there was a risk that illegal tobacco products would still enter prisons and be consumed in unauthorised places. She also pointed to the risk that banning tobacco products could – in the specific closed environment of prisons – lead to illicit trade and trigger tensions and the settling of scores among prisoners. Furthermore, it was not clear whether and how a ban on smoking in prisons would contribute to the overall aims of imprisonment (rehabilitation and reintegration into society), given that smoking was not considered a risk factor for criminal behaviour and was not generally prohibited. In the Chancellor of Justice's opinion, the State did not have an unlimited prerogative to impose its understanding of a healthy lifestyle on prisoners.

77. In 2016 the Chancellor of Justice, giving her opinion on the draft regulation amending Regulation no. 72 of the Minister of Justice on the Internal Prison Rules, essentially repeated her above-mentioned position expressed a year earlier.

IV. RELEVANT DOMESTIC CASE-LAW

78. In judgment no. 3-3-1-6-14 of 28 February 2014 the Supreme Court noted that a prison's inability to ensure compliance with the ban on smoking in prison cells could result in a violation of prisoners' rights. The prison could not limit its role to merely imposing the smoking ban, but had to also ensure that it was respected. Smoking had to be prevented on the prison's own initiative, regardless of any complaints from prisoners. If necessary, the prison had to place smoking and non-smoking prisoners in separate cells. The Supreme Court reasoned that keeping a person against his or her will in a room where smoking took place amounted to unlawful infliction of health damage and gave rise to a right to compensation. The Supreme Court also referred to the Court's case-law, according to which placement of a non-smoking prisoner in the same cell as a smoking prisoner had been found to constitute a violation of Article 3 of the Convention.

79. In judgment no. 3-3-1-30-14 of 22 May 2014 the Supreme Court emphasised that it was common knowledge that passive smoking was harmful to health. However, it was generally complicated, if not impossible, to prove health damage caused by passive smoking, since its effects were individual and built up over time. Against that background, the existence of health damage had to be presumed. The Supreme Court found that it was degrading to place a person in a situation where they were forced to inhale smoke. It was not lawful to force a prisoner to choose between not exercising his right to spend time outdoors or tolerating smoking in the exercise cubicle. Referring to the provisions of domestic law concerning the measures offered to help prisoners quit smoking, the Supreme Court concluded that it was contrary to their aim if a prisoner who had already quit smoking had to share an exercise cubicle with those who smoked there.

V. RELEVANT INTERNATIONAL MATERIAL

A. United Nations Standard Minimum Rules for the Treatment of Prisoners

80. The relevant parts of the United Nations Standard Minimum Rules for the Treatment of Prisoners ("the Nelson Mandela Rules"), A/RES/70/175, as the global key standards for the treatment of prisoners adopted by the United Nations General Assembly on 17 December 2015, provide as follows:

Rule 3

"Imprisonment and other measures that result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determination by depriving them of their liberty. Therefore the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation."

Rule 5

"The prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings."

B. European Prison Rules

81. The relevant parts of the European Prison Rules (Recommendation Rec(2006)2 of the Committee of Ministers to member States, adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies), as applicable at the relevant time, read as follows:

Basic principles

"1. All persons deprived of their liberty shall be treated with respect for their human rights.

2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.

3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources.

5. Life in prison shall approximate as closely as possible the positive aspects of life in the community."

82. The relevant parts of the commentary on the European Prison Rules (CM(2005)163-addfinal) provide that the undoubted loss of the right to liberty that prisoners suffer should not lead to the assumption that prisoners automatically lose their other rights. Further restrictions should be as few as possible, be specified in law and instituted only when they are essential for the good order, safety and security in prison. While life in prison can never be the same as life in a free society, active steps should be taken to make conditions in prison as close to normal life as possible.

C. World Health Organisation Framework Convention on Tobacco Control

83. Article 8 of the World Health Organisation Framework Convention on Tobacco Control (WHO FCTC), which Estonia ratified in 2005, reads as follows:

Article 8

Protection from exposure to tobacco smoke

"1. Parties recognize that scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease and disability.

2. Each Party shall adopt and implement in areas of existing national jurisdiction as determined by national law and actively promote at other jurisdictional levels the adoption and implementation of effective legislative, executive, administrative and/or other measures, providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and, as appropriate, other public places."

D. Council of the European Union Recommendation of 30 November 2009 on smoke-free environments

84. Council of the European Union Recommendation of 30 November 2009 on smoke-free environments (2009/C 296/02) recommends that Member States develop, implement, periodically update and review comprehensive multi-sectoral tobacco control strategies, plans or programmes which address, *inter alia*, the issue of protection from tobacco smoke in all places accessible to the general public or places of collective use, regardless of ownership or right to access.

85. Principle 1 of the Recommendation provides as follows:

"Effective measures to provide protection from exposure to tobacco smoke, as envisioned by Article 8 of the WHO Framework Convention, require the total elimination of smoking and tobacco smoke in a particular space or environment in order to create a 100 % smoke-free environment. There is no safe level of exposure to tobacco smoke, and notions such as a threshold value for toxicity from second-hand smoke should be rejected, as they are contradicted by scientific evidence. Approaches other than 100 % smoke-free environments, including ventilation, air filtration and the use of designated smoking areas (whether with separate ventilation systems or not), have repeatedly been shown to be ineffective and there is conclusive evidence, scientific and otherwise, that engineering approaches do not protect against exposure to tobacco smoke."

86. The Annex to the Recommendation, entitled "Guidelines on protection from exposure to tobacco smoke, as adopted by the Second Conference of the Parties to the WHO Framework Convention on Tobacco Control", sets out principles to guide the implementation of Article 8 of the WHO FCTC. Principle 2 provides that people should be protected from exposure to tobacco smoke and that indoor workplaces and indoor public places should be smoke-free. Under the definition of "workplace", the guidelines provide as follows:

"[c]areful consideration should be given to workplaces that are also individuals' homes or dwelling places, for example, prisons, mental health institutions or nursing homes. These places also constitute workplaces for others, who should be protected from exposure to tobacco smoke."

VI. RELEVANT COMPARATIVE LAW MATERIAL

A. Comparative study on restrictions on smoking in prisons

87. In 2024 the Court carried out a comparative study on restrictions on the smoking of tobacco products in prisons. The overview of relevant legislation and practice included forty-four Council of Europe member States and four non-member States (the United States of America, Canada, Australia and New Zealand).

88. The research indicates that the smoking of tobacco products in prisons is allowed, under certain conditions, in all the member States surveyed, except for one jurisdiction of the United Kingdom (Scotland), where a general ban on smoking tobacco products concerning both public and private prisons entered into force in 2018 (while the use of nicotine vapour products is allowed, subject to certain restrictions). In England and Wales, smoking has been banned under the Prison Rules since 2018 (except in open prisons), but under the applicable rules, private prisons may still designate certain rooms where smoking is permitted.

89. Unlike in the majority of Council of Europe member States, there is a general ban on smoking in all the non-member States surveyed, namely Australia (bans were introduced in different states between 2013 and 2019), Canada (a total ban in federal prisons was introduced in 2008, and in provincial prisons in 2014) and New Zealand (a ban came into effect in 2011). There is also a general smoking ban in federal prisons in the United States of America, which entered into force in 2014. At state level, some states have introduced a total ban of smoking in prisons, while in others, only indoor smoking is banned.

90. Where member States allow smoking in prison, various restrictions are put in place in terms of the categories of prisoners who are not allowed to smoke (such as minors, juveniles or those placed in solitary confinement or disciplinary cells) and/or in terms of the designation of premises in which smoking is allowed. In that connection, in almost all of the member States surveyed, smoking is only allowed in specifically designated areas, normally in courtyards and/or other specifically designated indoor facilities (Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, the Czech Republic, Denmark, Finland, France, Germany, Georgia, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Republic of Moldova, Monaco, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Türkiye, Ukraine and the United Kingdom (Northern Ireland)).

91. Furthermore, in some member States, smoking is allowed, under certain conditions, in prison cells (Azerbaijan, Belgium, Cyprus, the Czech Republic, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal,

Romania, Slovakia, Slovenia, San Marino, Switzerland, Türkiye and the United Kingdom (Northern Ireland)).

92. In those States where smoking is allowed in prisons, the protection of non-smokers from passive smoking is mainly ensured through the above-mentioned measure of designating specific places where smoking is allowed or by taking steps to accommodate smokers separately from non-smoking prisoners. In addition, measures to promote smoking cessation (such as advice and support for quitting smoking and addiction treatment) have been introduced in a number of member States.

93. In conclusion, regulations and restrictions concerning smoking in prisons in member States vary in their scope and intensity. However, while it is clear that none of the forty-four member States examined have relaxed their smoking-related regulations over the years, only in one jurisdiction of the United Kingdom steps have been taken towards a complete ban on smoking in prison.

B. Relevant selected case-law

94. The Belgian Constitutional Court, in its judgment of 12 March 2015 in case no. 32/2015, addressed the balance to be struck between the protection of staff from passive smoking and detainees' right to smoke. The applicant in that case, who worked at an immigration detention centre (not a prison), suffered from chronic bronchitis and sought a smoke-free work environment. The court examined whether domestic law, which allowed smoking in certain enclosed spaces in social service institutions and prisons, violated the Belgian Constitution and the European Social Charter by exposing workers to second-hand smoke. The court noted that people deprived of their liberty in such institutions found themselves in a comparable situation and thus also dealt with the issue of smoking in prisons. The court found that prisoners' cells should be considered their place of residence, where the provisions of domestic law banning smoking did not apply. On the other hand, for prison staff, prisons were their workplace. The court noted that the situation was not ideal, but that there was little other choice. A total ban on smoking in cells could only be introduced if detainees had sufficient opportunities to smoke. This was considered unfeasible, taking into account staff, regime and infrastructure. Moreover, given the increased risk of aggression, a total smoking ban without smoking opportunities was considered detrimental in terms of security. Thus, in summary, the court considered that the legislature could not be blamed for trying to strike a balance between the protection of workers' health from the nuisances of smoking in the prison workplace and the possibility for prisoners to smoke (but only in enclosed places that could be considered private rooms and in open exercise areas).

95. In the United Kingdom, the Supreme Court was called upon to address a complete smoking ban (along with a linked prohibition on having tobacco

products and a search and confiscation regime for such products) in Scotland's only high-security psychiatric facility, which had been in effect since 2011. In its judgment of 11 April 2017 in the case of *McCann v State Hospitals Board for Scotland* (2017 SC (UKSC) 121), the court considered that while the prohibition on having tobacco products was unlawful in terms of domestic law (as the hospital board had failed to comply with certain legal requirements), the ban was overall justified in terms of Article 8 of the Convention. It found that the complete ban amounted to an interference with the applicant's right to respect for his private life. However, it went on to find that the ban served legitimate aims of protecting the detained patient's health from the risks of smoking and protecting others from the health risks of second-hand smoke. No challenge was brought against the ban on smoking indoors. However, as concerns the ban on smoking outdoors, the court found that the previous practice of allowing supervised smoking within hospital grounds had caused operational difficulties, threatening to compromise the health of supervising staff, the welfare of patients and overall security. Against that background, it found that the hospital board had not acted disproportionately in imposing a complete smoking ban.

THE LAW

I. JOINDER OF THE APPLICATIONS

96. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATIONS OF ARTICLES 3 AND 8 OF THE CONVENTION

97. The first, third and fourth applicants complained that the total ban on smoking in prisons had violated their rights under Article 3 of the Convention. The second applicant complained that the ban had violated his rights under Articles 3 and 8 of the Convention. In his application, the first applicant stated that after the ban had entered into force, he had suffered from significant weight gain, difficulties in moving around, fatigue, dyspnoea, disturbed sleep and a resulting mental disorder. The second applicant submitted that after the ban had entered into force, he had suffered from headaches, sleeplessness and stress, he had become anxious and aggressive and he could no longer focus. He claimed that those symptoms had been present at the time he had lodged his application with the Court. The third and fourth applicants stated that they had had nicotine addiction, that the ban on smoking had led them to suffer long-term withdrawal symptoms and that the prison had not offered them nicotine replacement therapy to alleviate their symptoms.

98. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018), and in the light of the applicants' factual allegations concerning the impact that the ban on smoking had on them, considers that their complaints fall to be examined under Articles 3 and 8 of the Convention, which read as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. The parties' arguments

(a) The Government

99. The Government submitted a number of preliminary objections concerning the admissibility of the applicants' complaints.

100. Firstly, they argued that the first applicant had failed to exhaust domestic remedies as he had not appealed against the decision of the Tartu Administrative Court of 15 April 2020 dismissing his application for exemption from the State fee. He had not paid the relevant fee either. On 18 May 2020 the Tartu Administrative Court had refused to examine his claim. The Government argued that his repetitive application for exemption from the State fee was no longer relevant for the purposes of the exhaustion of domestic remedies (see paragraphs 15 and 16 above). In that connection, it was also irrelevant that the Supreme Court had previously declared the ban on smoking constitutional.

101. Secondly, the Government submitted that neither Article 3 nor Article 8 was applicable *ratione materiae* to the facts of the present case (see paragraphs 102-105 below). They further submitted, in the alternative and for the same reasons, that the applicants' complaints under Articles 3 and 8 were manifestly ill-founded.

102. As regards the applicability of Article 3, the Government took the view that the ban on smoking did not amount to inhuman or degrading treatment within the meaning of Article 3 of the Convention. The Court had never considered smoking a subjective right, the prohibition of which would

constitute ill-treatment. On the contrary, it had found that exposing non-smokers to passive smoking might constitute a violation of Article 3 of the Convention. The Government also pointed out that while separate smoking rooms and areas could provide a solution in certain situations, it was not the case in places of detention, where space was very limited. Before the ban on smoking had come into force, prisoners had been able to smoke in exercise yards, where the smoking area had been marked by a line drawn on the ground, or in exercise cubicles. These areas had been limited in size and therefore could not offer sufficient protection to non-smoking prisoners, who had therefore inevitably been exposed to tobacco smoke. The same applied to prison escort officers, who had had to be present during outdoor walks. It was impossible to provide a smoke-free environment for prison staff and non-smoking prisoners without making significant investments.

103. The Government asserted that, rather, it derived from the international instruments that an entirely smoke-free environment had to be ensured in closed institutions in order to protect the rights of others (see paragraphs 83-86 above). This was exactly what the Estonian regulation aimed to achieve, that is to say to ensure that non-smoking prisoners and prison staff were not forced to inhale tobacco smoke. The State could not be expected to comply with unrealistic demands when trying to meet its positive obligations under international law.

104. The Government also pointed to the long transitional period prior to the implementation of the ban on smoking and the measures taken to encourage prisoners to quit smoking and to alleviate the effects of quitting smoking (see paragraphs 47, 68 and 72-73 above). They argued that, against this background, the possible withdrawal symptoms were likely to have been rather mild and of limited duration. They also claimed that during the period of voluntary cessation (that is to say the period leading up to the ban coming into force), motivated prisoners with a severe nicotine addiction could be prescribed nicotine patches on the basis of a decision by a healthcare professional. After the ban on smoking entered into force, the prison medical service was responsible for providing nicotine replacement therapy. The Government asserted that, in any event, the applicants had not shown any confirmed withdrawal symptoms as a result of quitting smoking, nor had it been proven that they needed therapy.

105. As regards the applicability of Article 8, the Government submitted that smoking did not fall within the scope of its protection. The ban on smoking had not interfered with the applicants' private life – there was no sufficient link with the integrity of identity, the development of personality or the ability to establish and develop relationships with others within the meaning of that provision.

106. Thirdly, the Government argued that the applicants could not be considered victims of the alleged violations. Other than making mere claims, they had not succeeded in the domestic proceedings in proving that they had

suffered any negative effects, such as withdrawal symptoms or the need for therapy, as a result of the ban on smoking. Nor had they succeeded in establishing that the prison had failed to provide them with the necessary counselling or nicotine addiction therapy. The Government submitted statements issued by a doctor at Viru Prison to the effect that none of the applicants' medical records contained any information about possible withdrawal symptoms they might have suffered. The third applicant had complained of headaches, but had done so both before and after the ban had entered into force, and therefore the link between the ban and subsequent headaches could not be confirmed. The Government noted that, in the domestic proceedings, the second applicant had only referred to withdrawal symptoms that might have occurred (see paragraph 18 above), and that, therefore, his various claims in his application to the Court should be disregarded. They also emphasised that the Court had no competence to deal with *actio popularis* complaints.

107. The Government further submitted, in the alternative and for the same reasons as above (see paragraph 105 above), that if the Court were to find that the applicants could be seen as having "victim" status, they had not suffered any significant disadvantage.

(b) The applicants

108. The first applicant contested the Government's argument that he had not exhausted domestic remedies (see paragraph 100 above). He submitted that he had appealed against the Tartu Administrative Court's decision refusing to examine his claim (see paragraph 16 above). In his opinion, the higher courts should have assessed whether the refusal to grant him exemption from payment of the State fee had been justified.

109. The second applicant, responding to the Government's submission (see paragraph 106 above) and referring to his medical records (see paragraph 17 above), asserted that he had been diagnosed with nicotine addiction and that the harm to his health had not been merely hypothetical, but real.

110. As regards Article 3, the applicants stated that they did not dispute the harmful effects of smoking on health. However, they submitted that they had been long-term smokers and that the abrupt ban on smoking had had a significant negative impact on their mental and physical health. They likened the ban on smoking to forced treatment.

111. As regards Article 8, the applicants noted that a decision to smoke was a personal one and that by banning smoking – an activity that they found enjoyable and comforting – the State had interfered with their right to self-realisation.

2. The Court's considerations

(a) Exhaustion of domestic remedies by the first applicant

112. As to the Government's preliminary objection concerning the first applicant (see paragraph 100 above), the Court observes that the Tartu Administrative Court, by its decision of 15 April 2020, considered that his claim lacked prospects of success and refused to exempt him from payment of the State fee. The first applicant failed to appeal against that decision. He has not argued before the Court that an appeal against it would inevitably have failed or would have been ineffective for any other reason.

113. The Court observes that the first applicant subsequently lodged another (repeated) application with the same court for exemption from the State fee. He also appealed against the decision rejecting his claim for non-payment of the State fee. However, in the framework of these subsequent procedural steps (see paragraphs 15-16 above), the courts were no longer called upon to assess, on the merits, whether his claim had prospects of success so as to warrant his exemption from payment of the State fee. These procedural steps could not therefore be considered to be making use of effective domestic remedies.

114. Against the above procedural background, the Court upholds the Government's preliminary objection. It finds that domestic remedies have not been exhausted and that the first applicant's complaint must be rejected under Article 35 §§ 1 and 4 of the Convention.

(b) The applicants' victim status

115. Given the conclusion on the inadmissibility of the first applicant's complaint, the term "applicants" will hereinafter refer to the second, third and fourth applicants only.

116. The Government submitted that the applicants could not be considered to have "victim status" for the purposes of the Convention proceedings, given that they had not succeeded in proving that they had actually suffered any negative effects as a result of the ban on smoking or that they had been denied the treatment they had needed.

117. The Court has consistently held in its case-law that the Convention does not provide for the institution of an *actio popularis* and that its task is not normally to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to, or affected, the applicant gave rise to a violation of the Convention. Accordingly, in order to be able to lodge an application in accordance with Article 34 of the Convention, an individual must be able to show that he was "directly affected" by the measure complained of. This is indispensable for putting the protection mechanism of the Convention into motion, although this criterion is not to be applied in a rigid, mechanical and inflexible way throughout the

proceedings (see *Roman Zakharov v. Russia* [GC], no. 47143/06, § 164, ECHR 2015, and cases cited therein).

118. Turning to the facts of the present case, the Court considers that the applicants, as long-term smokers (a fact not disputed by the Government) were directly affected by the ban on smoking. An activity to which they were accustomed while detained was prohibited so they could no longer smoke in prison. The applicants' complaints could not therefore be considered an *actio popularis*. The extent to which the ban on smoking affected the applicants and the consequences (if any) they suffered as a result will have to be examined at the later stages of the Court's analysis.

119. The Government's objection that the applicants lacked victim status must accordingly be dismissed.

(c) Compatibility *ratione materiae*

120. The Government asserted that neither Article 3 nor Article 8 was applicable to the facts of the present case. For the same reasons, they submitted that the complaints were manifestly ill-founded.

(i) As regards Article 3

121. The Court reiterates that to come within the scope of the prohibition contained in Article 3 of the Convention, the treatment inflicted on or endured by the victim must reach a minimum level of severity. The assessment of this minimum level of severity is a relative one, depending on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities*, Blokhin v. Russia* [GC], no. 47152/06, § 135, ECHR 2016, with further references).

122. The Court further reiterates that Article 3 imposes on the State a positive obligation to ensure that a person is detained under conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the individual to distress or hardship exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, the person's health and well-being are adequately secured by, among other things, the provision of the requisite medical assistance and treatment (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

123. Turning to the facts of the present case, the Court notes that the applicants complained both about the ban on smoking (itself) and about the withdrawal symptoms they had suffered after the ban entered into force. The third and fourth applicants added that they had not received appropriate treatment to counter these negative effects.

124. As stated above, the Government have not questioned the applicants' claim that they had all been long-term smokers before the ban on smoking

entered into force. The Court is prepared to accept that the forced and abrupt break from a long-term smoking habit, together with the ensuing withdrawal symptoms, may cause mental and physical distress. In this connection, however, the Court notes that the Government submitted certificates from the prison doctor indicating that none of the applicants had complained of any withdrawal symptoms (see paragraph 106 above).

125. Whilst acknowledging that it might not always be easy or even possible to supply medical evidence of the occurrence and extent of (mental) distress (compare *Elefteriadis v. Romania*, no. 38427/05, § 54, 25 January 2011), the Court considers that, even if quitting smoking caused the applicants some level of stress and anguish, it cannot be concluded in the present case that the possible suffering attained the minimum level of severity (compare and contrast *Wenner v. Germany*, no. 62303/13, §§ 78-79, 1 September 2016, concerning the appropriate treatment for a drug-addicted prisoner).

126. Furthermore, although some of the applicants have alleged that they did not receive the appropriate treatment to tackle their withdrawal symptoms, the Court notes that they did not argue this in the domestic proceedings (see paragraph 38 above). Nor have they provided any evidence in the proceedings before the Court of ever having requested such treatment or counselling – which appears to be available under domestic law (see paragraphs 47-48 and 104 above) – or that their requests were dismissed.

127. Having regard to the above, the Court considers that there is no sufficient basis for concluding that the applicants were treated in such a way as to reach the threshold of Article 3 of the Convention. It follows that their complaint under Article 3 is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

(ii) As regards Article 8

128. The applicants submitted that the ban on smoking had interfered with their private life within the meaning of Article 8 of the Convention.

129. The concept of "private life" is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. It can therefore embrace multiple aspects of the person's physical and social identity. Article 8 protects in addition a right to personal development, and the right to establish and develop relationships with other human beings and the outside world (see *Denisov v. Ukraine* [GC], no. 76639/11, § 95, 25 September 2018, with further references therein). In general terms, "private life" secures to the individual a sphere within which he can freely pursue the development and fulfilment of his personality (see, for example, *Gough v. the United Kingdom*, no. 49327/11, § 182, 28 October 2014). Lastly, the notion of personal autonomy is an important principle underlying the interpretation of the guarantee afforded by Article 8 (ibid., § 183;

Pindo Mulla v. Spain [GC], no. 15541/20, § 137, 17 September 2024; and *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III).

130. The Court has observed that the ability to conduct one's life in a manner of one's own choosing may also include the opportunity to pursue activities perceived to be of a physically or morally harmful or dangerous nature for the individual concerned. The extent to which a State can use compulsory powers or the criminal law to protect people from the consequences of their chosen lifestyle has long been a topic of moral and jurisprudential discussion, the fact that the interference is often viewed as trespassing on the private and personal sphere adding to the vigour of the debate. However, even where the conduct poses a danger to health or, arguably, where it is of a life-threatening nature, the case-law of the Convention institutions has regarded the State's imposition of compulsory or criminal measures as impinging on the private life of the applicant within the meaning of Article 8 § 1 and requiring justification in terms of the second paragraph (see *Pretty*, cited above, § 62).

131. The Court has previously found Article 8 to be applicable, for example, where a prisoner was found guilty of a disciplinary offence and received a reprimand for possessing pictures from adult magazines (see *Chocholáč v. Slovakia*, no. 81292/17, §§ 52-56, 7 July 2022). Circumstances in which prisoners were prohibited from growing a beard (see *Biržietis v. Lithuania*, no. 49304/09, § 33, 14 June 2016) or in which a prisoner was obliged to cut his hair considerably shorter (see *Popa v. Romania* (dec.), no. 4233/09, §§ 32-33, 18 June 2013) were also considered to fall within the material scope of Article 8. Furthermore, although the Convention does not, as such, guarantee a right to the specific medical treatment preferred by the applicant, the Court has nonetheless examined complaints concerning access to certain medicines and forms of medical treatment from the angle of "private life" under Article 8 of the Convention, the latter being underpinned by the notion of personal autonomy (see, for example, *Abdyusheva and Others v. Russia*, nos. 58502/11 and 2 others, §§ 111-13, 26 November 2019, where non-prisoner applicants complained about the lack of access to opioid substitution treatment with methadone or buprenorphine; see also *A.M. and A.K. v. Hungary* (dec.), nos. 21320/15 and 35837/15, §§ 39-53, 4 April 2017; and *Durisotto v. Italy* (dec.), no. 62804/13, §§ 32-33, 6 May 2014).

132. In the present case, the applicants complained about the total ban on smoking in prison and the failure of the prison to provide them with treatment to counter the withdrawal effects they had faced when they were no longer allowed to smoke. Given the broad notion of "private life" and the manner in which it has been applied in its case-law, the Court is prepared to accept that the choice to smoke – an activity not generally banned in the respondent State – and the question of providing treatment to counter the withdrawal effects

of quitting smoking can be seen as falling within the material scope of the right to respect for private life.

133. Accordingly, Article 8 of the Convention is applicable to the facts of the case at hand. The Government's objection in that regard must therefore be dismissed.

(d) No significant disadvantage

134. The Court reiterates that the "significant disadvantage" admissibility criterion under Article 35 § 3 (b) of the Convention hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court. The assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case. The severity of a violation should be assessed taking account of both the applicant's subjective perceptions and what is objectively at stake in a particular case (see, for example, *Biržietis*, cited above, § 36).

135. In the present case, the prison's internal regulations completely prohibited smoking – an activity which had previously been allowed, albeit in limited circumstances – as of 1 October 2017. The applicants had all been in prison before that date and it is not disputed that they had been long-term smokers, including while serving their sentences. They argued that smoking was an activity which they found comforting and enjoyable (see paragraph 111 above) and claimed that the ban had caused them mental and physical distress.

136. Without expressing any opinion about the advisability of smoking tobacco products, the Court considers that the present case raises issues concerning restrictions on the personal choice of prisoners to engage in an activity not generally prohibited in the respondent State. From the applicants' point of view, this can arguably be seen as a matter of principle. The Court also has no reason to question their subjective assessment that the restriction on smoking caused them distress.

137. Accordingly, the Court does not find it appropriate to dismiss the present application with reference to Article 35 § 3 (b) of the Convention, and therefore also dismisses the preliminary objection by the Government.

(e) Conclusion as to admissibility

138. The second, third and fourth applicants' complaint under Article 8 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicants

139. As regards Article 8, the applicants claimed that although the protection of the health of others was grounds on which the right to private life could be restricted, the ban on smoking had been a disproportionate interference with their private life and their freedom of decision. They submitted that it was hypocritical to invoke health grounds, given that promoting healthy lifestyle was hardly a priority in prison (reiterating that prisoners could only spend one hour per day outdoors). The second applicant stated that it had been common for the prison officers themselves to smoke alongside prisoners.

140. While acknowledging that there were restrictions on smoking even for those at liberty, the applicants considered that a total smoking ban in prison was unparalleled and unjustified. They argued that the prison should instead designate specific smoking areas and/or separate smokers and non-smokers. Special smoking areas had already existed in prison. It could also be organised so that only prison officers who were themselves smokers would accompany prisoners to such areas.

141. The applicants also submitted, relying on the opinion of the Chancellor of Justice (see paragraphs 74-76 above), that the ban on smoking did not serve the purpose of preventing criminal behaviour.

(b) The Government

142. As to Article 8, the Government submitted that the ban was lawful. Being in prison imposed inherent restrictions on a prisoner's private life, including restrictions on the type of items – in so far as their possession could at all be considered to fall within the scope of private life – that a prisoner could have in prison. Prisons were best placed to assess which items might pose risk to prison security and people's safety. The ban on smoking served the legitimate aims of protecting the health of others (both prisoners and prison staff), guaranteeing prison security and making better use of prison resources. These aims were compatible with Article 8 § 2.

143. The Government stressed that the State was required to take positive measures in order to protect the health of non-smokers in prison, bearing in mind that the latter (both prisoners and staff) had very limited means of protecting themselves from passive smoking in the prison environment. In that regard, prisons could not rightfully be compared with life outside prison. The Government argued that more lenient measures, such as some form of partial ban on cigarettes in prison, could not ensure effective protection from passive smoking. At the same time, fulfilling the State's positive obligation to protect the health of non-smokers in prison could not impose a

disproportionate burden on the State, such as requiring it to convert all prisons to ensure that smoking did not harm the health of non-smokers.

144. As regards prison security, the ban on smoking (and the related ban on having cigarettes in prison) had reduced the possibilities of cigarettes being used as an illegal form of currency in prison in the context of illegal debt relationships, limited the risk of fire (caused by attempts to smoke cigarettes indoors) and enabled prisons to devote fewer (human) resources on handing out and collecting cigarettes before and after outdoor exercise, carrying out searches to find supposedly lost cigarettes, carrying out searches to find cigarettes that prisoners had attempted to bring into cells and dealing with the related disciplinary charges. A more lenient measure of allowing smoking in some limited circumstances would not have been effective in achieving this aim. The Government submitted that, in fact, the number of smoking and cigarette-related incidents in prison had significantly decreased since the entry into force of the ban on smoking.

145. As to the proportionality of the ban on smoking, the Government again pointed out that the transition to a smoke-free prison had taken place over a longer period of time, during which the number of cigarettes allowed had been gradually limited and prisoners had been offered incentives to quit smoking. In such circumstances, withdrawal symptoms could not have been overly severe or prolonged. Medical care had been provided to those who had withdrawal symptoms. The Government stressed that the smoking ban also applied to prison officers.

146. Lastly, the Government pointed to the international trend towards stricter restrictions on smoking. While smoking was allowed in prisons in many States Parties to the Convention, this should not lead to the conclusion that there was a "consensus on allowing smoking".

2. Court's assessment

(a) Preliminary observations and general principles

147. The Court has emphasised that individuals in custody are in a vulnerable position and that the authorities are under a duty to protect them (see, for example, *Szafrański v. Poland*, no. 17249/12, § 22, 15 December 2015).

148. The Court has on a number of occasions considered the impact of passive smoking on the health and well-being of non-smoking prisoners. It has held, in the context of Article 3, that States are required to take measures to protect a prisoner from the harmful effects of passive smoking-where, in the circumstances of a case, medical examinations and the advice of doctors indicate that this is necessary for health reasons (see, *Elefteriadis*, cited above, § 48). In the case of *Sylla and Nollomont v. Belgium* (nos. 37768/13 and 36467/14, §§ 40-41, 16 May 2017), passive smoking due to the applicant having to share a prison cell with a smoker was seen, under Article 3, as one

of the aggravating factors of otherwise inadequate conditions of detention. However, in the light of the lack of a common approach among the Council of Europe member States with regard to the regulation of smoking and protection against passive smoking in prison, the Court has not ruled on whether Article 8 of the Convention requires the complete segregation of smokers and non-smokers (see *Stoine Hristov v. Bulgaria (no. 2)*, no. 36244/02, §§ 37-46, 16 October 2008, and *Aparicio Benito v. Spain* (dec.), no. 36150/03, ECHR 13 November 2006). The Estonian Supreme Court, relying on the Court's case-law, has also held that failure to protect non-smoking prisoners from exposure to second-hand smoke could violate their rights (see paragraphs 78-79 above).

149. However, the present case is the first time that the Court has been called upon to assess the issue of smoking in prisons from the opposite angle, that is to say to analyse, from the Convention perspective, the impact of a total ban on smoking in prison on prisoners with a long-term smoking habit.

150. The Court reiterates that prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right to liberty, where lawfully imposed detention expressly falls within the scope of Article 5 of the Convention (see, among many authorities, *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 69, ECHR 2005-IX, with further references). These other rights include those protected under Article 8 (see, for example, *Dickson v. the United Kingdom* [GC], no. 44362/04, § 66, ECHR 2007-V, and *Chocholáč*, cited above, §§ 52-56). Any restrictions on these rights must be justified, although such justification may well be found in the considerations of security, in particular the prevention of crime and disorder, which inevitably flow from the circumstances of imprisonment (see *Hirst*, cited above, § 69).

151. It is primarily the responsibility of the national authorities to make the initial assessment as to where the fair balance lies in assessing the need for an interference in the public interest with individuals' rights under Article 8. Accordingly, in adopting legislation intended to strike a balance between competing interests, States must in principle be allowed to determine the means which they consider to be best suited to achieving the aim of reconciling those interests. This assessment by the national authorities remains, however, subject to review by the Court, which makes the final assessment as to whether an interference in a particular case is "necessary", as that term is to be understood within the meaning of Article 8 (see *Vavřička and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, § 273, 8 April 2021).

152. A certain margin of appreciation is, in principle, afforded to domestic authorities as regards that assessment; its breadth depends on a number of factors dictated by the particular case. The margin will tend to be relatively narrow where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights. Where a particularly important facet of

an individual's existence or identity is at stake, the margin allowed to the State will also be restricted. Where there is no consensus within the Contracting Parties to the Convention, either as to the relative importance of the interest at stake or as to the best means of protecting it, particularly where the case raises sensitive moral or ethical issues, the margin will be wider (ibid.). The respondent State's margin of appreciation will usually be wide if it is required to strike a balance between competing private and public interests or Convention rights (ibid., § 275).

153. The Court reiterates that a State can, consistently with the Convention, adopt general measures which apply to pre-defined situations regardless of the individual facts of each case even if this might result in individual hard cases (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 106, ECHR 2013 (extracts)). As can be seen from that case-law, in order to determine the proportionality of a general measure, the Court must primarily assess the legislative choices underlying it. The quality of the parliamentary and judicial review of the necessity of the measure is of particular importance in this respect, including to the operation of the relevant margin of appreciation. It follows that the more convincing the general justifications for the general measure are, the less importance the Court will attach to its impact in the particular case (ibid., §§ 108-09, and *Humpert and Others v. Germany* [GC], nos. 59433/18 and 3 others, § 120, 14 December 2023).

(b) Application in the present case

154. Having found Article 8 to be applicable (see paragraph 133 above), the Court also considers it established on the facts of the case that there has been an interference with the applicants' right to respect for their private life. The Court further notes that it is not disputed by the parties that the ban on smoking was "in accordance with the law" within the meaning of Article 8 § 2.

155. Moreover, the applicants and the Government accepted that the ban on smoking served the legitimate aim of protecting the health of others. More specifically, the ban on smoking was intended to protect the health of non-smoking prisoners and prison staff from the harmful effects of passive smoking. In addition, the Government, relying on the findings of the Supreme Court, referred to prison security and more efficient use of prison resources as legitimate aims of the smoking ban. The Court accepts that the latter grounds could be linked to the aim of preventing disorder or crime.

(i) Margin of appreciation in the present case

156. The loss of the ability to smoke cannot be regarded as an inevitable consequence of a custodial sentence in terms of the right to respect for private life. Moreover, given that in the present case all the applicants were convicted

and serving their prison sentences, the ban on smoking, in the Court's view, cannot be seen as an inherent part of the punitive element of the custodial sentence. Indeed, in all but one of the member States surveyed, prisoners continue to be able to smoke (and could do so in Estonia until 2017), subject to limitations of varying scope and intensity.

157. The Court does not lose sight of the fact that in certain circumstances member States have an obligation under the Convention to take positive measures to protect prisoners against the harmful effects of passive smoking (see, for reference, paragraph 148 above). At the same time, it observes that it has previously acknowledged, in a judgment delivered in 2008, that there is no uniform approach or solution among the Contracting States with regard to the protection of non-smokers from passive smoking in prisons (see *Stoine Hristov*, cited above, § 42, compare also *Aparicio Benito v. Spain* ((dec.) no. 36150/03, 13 November 2006).

158. While there is no uniform approach to confining the negative effects of second-hand smoke in prisons, the Court nonetheless takes note of the general international trend towards stricter tobacco control with the aim of protecting people from exposure to tobacco smoke (see paragraphs 83-86 above). This trend, in broad terms, is also evident in the prison context, as reflected in the prison-specific comparative study carried out in the context of the present case (see paragraph 93 above).

159. In that regard, according to the contemporary comparative-law information available to it, almost all of the member States surveyed have taken steps to restrict smoking in prisons, and normally allow it only in specifically designated areas (either in courtyards and/or other specifically designated indoor facilities, see paragraphs 90-91 above). At the same time, the comparative study also revealed that, in the overwhelming majority of member States, the protection of individuals from exposure to tobacco smoke in prison was not considered to require a total smoking ban.

160. The Court observes that while smoking is a habit likely to lead to addiction, making it difficult to quit, the activity itself cannot be considered an indispensable or inextricable facet of an individual's identity or existence. At the same time, the decision to smoke – or not – can be seen as part of the freedom to make choices about one's own body and health, and, as such, an exercise of personal autonomy. The Court further notes that the aims of tobacco control in prison must be balanced against the standards enshrined in the "Nelson Mandela Rules" and the European Prison Rules, which emphasise that prison regimes should seek to minimise differences between prison life and life at liberty (see paragraphs 80-82 above). In this connection, the Court also reiterates its well-established case-law that restrictions on Convention rights specific to prisoners must be justified by reference to considerations of security or other necessary and inevitable consequences of imprisonment, or flow from an adequate link between the restriction and the

circumstances of the prisoner in question (see *Hirst*, § 69, and *Dickson*, § 68, both cited above).

161. In view of the above, and noting that the ban in the present case was implemented not only with the aim of protecting health but also in the overall interests of preventing disorder and crime, the Court considers that the Estonian authorities enjoyed a considerable margin of appreciation when addressing the issue of smoking in prison. However, this margin is not unlimited, and the final assessment of whether the interference was necessary remains subject to review by the Court to verify its conformity with the requirements of the Convention.

(ii) "Necessary in a democratic society"

162. As highlighted above (see paragraph 150 above), prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right to liberty. It is, thus, inconceivable, that a prisoner forfeits his Convention rights merely because of his status as a person detained following conviction (see *Hirst*, §§ 69-70; *Dickson*, § 67; and *Chocholáč*, § 54, all cited above).

163. At the core of the present case is the applicants' right to respect for their private life. This is a right underpinned by the notion of personal autonomy, which entails, as a matter of principle, the possibility to make choices about one's own life and health.

164. While prisoners do not forfeit their right to private life and autonomy simply owing to detention, the manner in which they can choose to exercise their private life in prison is nonetheless constrained to a considerable degree. It can be argued that, in this context of already limited personal autonomy, the freedom of choice over matters that prisoners can still decide for themselves – such as whether to smoke – becomes all the more precious to those individuals. In that connection, the Court notes (as also pointed out by the Estonian Chancellor of Justice, see paragraph 75 above), that, from the prisoners' perspective, smoking may be viewed not only as a mere unhealthy habit but also as a means of relieving anxiety and tension.

165. It is against this background that the Court must examine whether, by adopting the complete ban on smoking in prisons, the Estonian authorities stayed within the margin of appreciation afforded to them.

166. In the present case, the ban on smoking (along with the ban on having smokable tobacco products) was introduced through amendments to the Internal Prison Rules, followed by changes to Viru Prison's house rules (see paragraphs 5 and 6 above). The prohibition was adopted through general measures, not specifically addressed to the applicants, and entered into force on 1 October 2017.

167. The Court observes that the ban in question was not adopted by Parliament, but rather resulted from the combined effect of a ministerial regulation and Viru Prison's house rules. While the Court by no means doubts

the Supreme Court's conclusion that the ban contained in the Internal Prison Rules was in keeping with the relevant provisions of the Imprisonment Act on which it was based, it nonetheless notes that the ban did not benefit from direct parliamentary review and debate.

168. The social and economic impacts of the smoking ban, as well as its constitutionality, were analysed (prior to its adoption) in the explanatory memorandum accompanying the draft amendments to the Internal Prison Rules and Viru Prison's house rules and subsequently by the Supreme Court in the context of constitutional review proceedings. In that connection, the Court notes that the domestic authorities' proportionality assessment appears to have been focused on how the complete ban on smoking – while interfering with the right to property and right to free self-realisation – contributed to the aims of health protection and prison security. In addition, it was found that no less restrictive means were feasible or that they would not be as effective in achieving the stated aim as the complete ban (see paragraphs 36-37, 54, 61 and 66 above).

169. However, from the smokers' perspective, the domestic analysis seems to have focused on the ban's limited (physical) impact in terms of withdrawal effects and the possibility of counselling and treatment. In that regard, the Court observes that the understanding of personal autonomy, together with the importance of prisoners' freedom of choice to decide on matters concerning their own body and health, seems to have been completely absent from the domestic discussion. Indeed, as appears from the explanatory memorandum to the draft regulation amending Regulation no. 72 of the Minister of Justice on the Internal Prison Rules, smoking among prisoners was seen as an expression of prison subculture rather than an exercise of choice (see paragraph 61 above).

170. While acknowledging, as it did above, that the member States' margin of appreciation in regulating smoking in prisons is considerable, the Court takes the view that it is not all-embracing or unlimited. It notes that, while there is an overall international trend towards limiting smoking in society at large, as well as a trend towards restricting smoking in member States' prisons, smoking tobacco remains legal for persons at liberty, and, on the basis of the limited examples in the prison context, it cannot be concluded that there is a consensus among the member States on the need to ban smoking in prison settings.

171. The Court welcomes the efforts to protect health and security in prisons by limiting the exposure of non-smokers to second-hand smoke and other risks associated with smoking. It also acknowledges that, in terms of regulating smoking in prisons through the adoption of general measures, the authorities cannot be expected to assess the proportionality of smoking restrictions in each individual case.

172. However, it finds that the national authorities, by imposing a complete ban on smoking in prisons without assessing its importance and

impact from the perspective of personal autonomy of prisoners who smoke, failed to provide relevant and sufficient reasons for that far-reaching and absolute prohibition and thus exceeded the margin of appreciation afforded by the Convention.

173. The Court concludes that there has been a violation of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

174. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

175. Each applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage, stating that they had experienced suffering and distress as a result of the ban on smoking, which, they pointed out, had been in force for over four years and seven months by the time their just satisfaction claims had been submitted.

176. The Government considered that, should the Court find a violation of the applicants' rights, such a finding would constitute sufficient just satisfaction. They referred, in that regard, to the fact that the applicants had not proven that they had experienced any personal suffering or distress. They also referred to the health-damaging nature of smoking and argued that there should be no compensation for the inability to intoxicate oneself.

177. The Court, having regard to the circumstances and the nature of the violation of the applicants' rights, considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage which the applicants may have suffered.

B. Costs and expenses

178. The applicants did not lodge any clearly worded claims for costs and expenses incurred before the domestic courts or the Court. However, for each of them, a "list of procedural expenses" was submitted, together with their observations, in relation to the proceedings before the Court (the amount indicated being EUR 14,000 for the second applicant, EUR 12,000 for the third applicant and EUR 13,200 for the fourth applicant).

179. The Government submitted that the above costs were severely exaggerated, given that the applicants were represented by the same lawyer, who had only started representing them after the case had been notified and had drawn up a joint seven-page set of observations on their behalf. The "lists

of procedural expenses" submitted for each applicant were nearly identical, containing fees for "analysis of the Government's observations" and "preparing answers for the European Court of Human Rights". The Government thus asked the applicants' claim to be dismissed in its entirety, arguing that it had been submitted in bad faith.

180. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum.

181. The Court notes, firstly, that the Government did not object to the fact that the applicants had, in principle, submitted claims in respect of costs and expenses incurred in the proceedings before the Court. The Court considers that the applicants' intention to claim costs and expenses is sufficiently clear.

182. However, given that the same lawyer jointly represented all the applicants in respect of whom a violation has been found, and having regard to the nature of the dispute, the Court considers it reasonable to award the second, third and fourth applicants EUR 1,500 each for the proceedings before it, plus any tax that may be chargeable to them.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join the applications;

2. *Declares*, unanimously, the first applicant's application (no. 3184/21) inadmissible;

3. *Declares*, by a majority, the second, third and fourth applicants' (applications nos. 17982/21, 43852/21, 44600/21) complaint under Article 8 admissible;

4. *Declares*, unanimously, the remainder of the second, third and fourth applicants' (applications nos. 17982/21, 43852/21, 44600/21) complaints inadmissible;

5. *Holds*, by four votes to three, that there has been a violation of Article 8 of the Convention in respect of the second, third and fourth applicants;

6. *Holds*, by four votes to three,
   (a) that the respondent State is to pay the second, third and fourth applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros) each, plus any tax that may be chargeable to them, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above-mentioned amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

7. *Dismisses*, by six votes to one, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 4 November 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Ioannis Ktistakis
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Concurring opinion of Judge Zünd;
(b) Concurring opinion of Judge Arnardóttir;
(c) Joint partly dissenting opinion of Judges Roosma and Ní Raifeartaigh;
(d) Partly dissenting opinion of Judge Pavli;
(e) Statement of partial dissent of Judge Serghides.

CONCURRING OPINION OF JUDGE ZÜND

1. I agree with the outcome and the reasoning of the judgment. I write separately to highlight the underlying principles.

2. Prisoners continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention, save for the right to liberty. This includes the right to respect for private life, as protected under Article 8. Private life secures to the individual a sphere within which that person can freely pursue the fulfilment of his or her personality and his or her personal autonomy.

3. This decision-making sphere in respect of how the individual wishes to live becomes all the more important if he or she, due to lawfully imposed detention, does not enjoy the right to liberty.

4. Restrictions on the right to private life may be justified for reasons of necessity, inevitably linked to the smooth functioning of the detention facility.

5. In this context, it may be necessary, in order to protect against passive smoking, to forbid smoking in cells shared by persons with different habits or, alternatively, to separate smokers and non-smokers. These measures are justified for the protection of health and of the rights of others.

6. However, a complete ban on smoking cannot be justified, because it is at least feasible to provide for a separate place, inside or outdoors, where smokers may occasionally have the possibility to smoke tobacco.

7. In a democratic society it is simply not necessary to ban smoking completely. There exist less interventionist solutions. This is also why, in my view, the quality of law is not a decisive issue here - that is, whether the ban was provided for through parliamentary legislation or only by internal prison rules.

CONCURRING OPINION OF JUDGE ARNARDÓTTIR

1. I agree in principle with the reasoning and conclusions of the majority. I write separately only to emphasise certain additional elements, which allow me to do so.

2. First, I note that Article 8 of the World Health Organisation Framework Convention on Tobacco Control limits the Member States' obligation to protect from exposure to second-hand smoke to indoor workplaces, public transport, indoor public places and, as appropriate, other public places. Prisons, however, provide inmates with their habitual dwelling place, thus constituting the space in which they have a right to exercise their private life and autonomy. While "careful consideration" must be given to the fact that prisons also constitute the workplace of others (see Annex to the Council of the European Union Recommendation of 30 November 2009 on smoke-free environments, 2009/C 296/02), there appears to be no indication under international and European law that the fight against exposure to second-hand smoke extends to outdoor areas in prisons, where smoking was indeed permitted in Estonia prior to the introduction of the complete ban. As emphasised in the majority's reasoning, there is also no consensus in the domestic law of the Contracting Parties to the Convention on whether there is any need to ban smoking completely in prisons.

3. Under sections 29-31 of the Estonian Tobacco Act 2005, smoking is allowed in designated smoking rooms in various establishments, such as the premises of State and local government authorities, in institutions of higher education and culture, at recreational and sports centres and in the healthcare sector. It is also generally allowed outdoors and within the confines of private homes. Smoking in prison is, however, not expressly regulated by the Act. In 2015 the Ministry of Social Affairs prepared a proposal for amendments to the Act, with a view to introducing the complete ban on smoking in prisons. The Chancellor of Justice was opposed to the proposal, which was subsequently abandoned and never presented to Parliament (see §§ 74-76 of the judgment). By 2016, however, only a year later, the Minister of Justice had already begun the work towards amending the Internal Prison Rules, in order to introduce the same ban (see § 77 of the judgment).

4. The Court has held that in order to determine the proportionality of general measures of this kind, it must primarily assess the underlying legislative choices. The quality of parliamentary and judicial review of the necessity of the measure is of particular importance in this respect, including to the operation of the relevant margin of appreciation (see *Animal Defenders Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 108, ECHR 2013 (extracts)). I agree with the majority that the reasoning given by the Estonian Supreme Court was problematic. In this respect, I note that it did not address in any meaningful way the notion of personal autonomy underpinning the interpretation of Article 8 of the Convention, which implies,

within the already restricted environment of prison, a certain amount to freedom for prisoners to decide on matters concerning their private life, including their own body and health, in accordance as far as possible with the conditions of life at liberty (compare *Chocholáč v. Slovakia*, no. 81292/17, § 68, 7 July 2022, and *Biržietis v. Lithuania*, no. 49304/09, § 57, 14 June 2016; see also the "Nelson Mandela Rules" and the European Prison Rules, discussed in §§ 80-82 of the judgment). In my view, however, it is equally significant that the complete ban on smoking in prison was introduced by executive regulation and was thus never subjected to pluralistic parliamentary debate, which would have allowed for a more careful balancing at the domestic level of all the competing interests at stake.

5. Having regard to the above considerations, I am able to conclude that the national authorities failed to provide relevant and sufficient reasons for the absolute ban on smoking in prisons and thus exceeded the margin of appreciation afforded to them under the Convention.

JOINT PARTLY DISSENTING OPINION OF JUDGES ROOSMA AND NÍ RAIFEARTAIGH

1. We find much force in the opinion of Judge Pavli but voted, with some hesitation, in favour of the admissibility of the complaint under Article 8 of the Convention. However, we respectfully but firmly disagree with the majority that there has been a violation of Article 8 in the present case, for the reasons that are set out below; indeed, several of the points raised by Judge Pavli could also be seen as weighing towards a conclusion of no violation on the merits. Our disagreement with the majority concerns the application of the "necessary in a democratic society" test.

(a) Preliminary and contextual observations

2. We start by making some preliminary and contextual observations. First, the smoking ban in Estonian prisons was not adopted unexpectedly or without prior notice. On the contrary, smoking was limited to outdoor areas as of 2010, and subsequently the number of cigarettes per day was gradually reduced until complete prohibition from 1 October 2017. The authorities accompanied the ban with supportive measures, such as the possibility of medical treatment and counselling for those withdrawing from nicotine addiction. The Court has unanimously ruled that the Article 3 complaint in the present case is inadmissible, and we are therefore now dealing with the applicants' rights solely in the context of Article 8. Secondly, the case-law of the Court has established that the authorities have an obligation pursuant to Article 3 of the Convention to protect the health of non-smoking prisoners from the effects of passive smoking. Thirdly, while there is no formal hierarchy between the rights enshrined in the Convention, Article 3 is a non-derogable right, whereas Article 8 may be subject to restrictions in accordance with its paragraph 2. This means that the State's obligations under Article 3 towards the non-smoking prisoners may leave it with relatively restricted room to manoeuvre with regard to the Article 8 rights of the remaining prisoners. It also means that the vulnerability of prisoners, which is often a key point in Articles 3 and 8 prisoner cases, is not so straightforward in the present context, in that the prisoners who do not wish to be subjected to passive smoking are a vulnerable sub-set of an already vulnerable population, namely the prison population as a whole. Fourthly, in general, the Court has held that matters of healthcare policy (and public health) are in principle within the margin of appreciation of the domestic authorities, who are best placed to assess priorities, use of resources and social needs (see *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, § 119, ECHR 2012 (extracts); *Vavřička and Others*, cited above, §§ 274 and 280; and *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 160, 27 November 2023). Finally, the State's margin of

appreciation will usually be wide if it is required to strike a balance between competing private and public interests or Convention rights (see, for example, *Evans v. the United Kingdom* [GC], no. 6339/05, § 77, ECHR 2007-I, with further references). All of these factors are relevant to the proportionality analysis and the margin of appreciation in the present case, to which we now turn.

3. In its analysis of whether the restriction was "necessary in a democratic society", the majority appear to place emphasis on the absence of parliamentary scrutiny prior to the introduction of the smoking ban (see paragraphs 153 and 157). We consider this emphasis to be somewhat misplaced, for the reasons set out below. The judgment also states that the domestic authorities' proportionality assessment was inadequate, in that it considered the prisoners' position only from the point of view of the ban's limited (physical) impact in terms of withdrawal effects and the possibility of counselling and treatment, and that "the understanding of personal autonomy, together with the importance of prisoners' freedom of choice to decide on matters concerning their own body and health" seems to have been "completely absent from the domestic discussion", with the explanatory memorandum to the draft regulation treating it merely as "an expression of prison subculture rather than an exercise of choice" (see paragraph 169). We consider that this is not an entirely fair summary of the analysis that was conducted at the domestic level, again for reasons that are set out below. We wish to elaborate upon each of these two issues and also set out some further reasons why we consider that there has been no violation of the applicants' rights under Article 8 in the present case.

(b) The significance of parliamentary scrutiny - or its absence

4. When a measure restricting a Convention right or freedom is introduced at the domestic level, it will usually have resulted from some combination of processes carried out in the executive, parliamentary and/or judicial spheres. In our view, the case-law establishes that what should be reviewed by this Court, having regard to the principle of subsidiarity, is whether the relevant Convention rights and interests were appropriately weighed during the domestic processes, considered as a whole. It would be a mistake to place excessive weight on one particular stage of the domestic process, such as whether there was parliamentary scrutiny of the measure and, if so, its extent. Of course, particularly in case of doubt, the preparatory materials and parliamentary debate may shed light on the aims sought to be achieved by a restriction, the assessment of possible alternatives, and the balancing of the various rights and interests at stake. Also, if there has been a particularly good Convention-compliant analysis at the parliamentary level, that may also be of considerable assistance in the assessment of the domestic process. However, the following elements should not be lost sight of.

5. First, it is the Court's longstanding practice to be very deferential as to the level of the domestic norm required to enact a restriction – whether this be the Constitution, an Act of Parliament or of (central, regional or local) government or court practice (see, as a recent example, *Mikyas and Others v. Belgium* (dec.), no. 50681/20, § 55, 9 April 2024, where the wearing of the Islamic veil in schools was prohibited by a regulation implementing a circular, adopted by the Council for Official Education in the Flemish Community; *Leyla Şahin v. Turkey* [GC], no. 44774/98, §§ 84-98, ECHR 2005-XI, where a similar prohibition was enacted by means of a circular issued by the vice-chancellor of a university; or *Humpert and Others v. Germany* [GC], nos. 59433/18 and 3 others, §§ 116-117, 14 December 2023, where the traditional principles of the career civil service, as applied by the domestic courts in the interpretation of the Basic Law, played an important role). The Court has always understood the term "law" in its "substantive" sense, not its "formal" one (see *Leyla Şahin*, cited above, § 88). Moreover, the Convention does not set out rules on which regulation needs to be enacted at which level domestically. Indeed, this is a matter that falls within the State's sovereignty in terms of its internal constitutional organisation, and it would be inconceivable for the Court to carry out an intensive review of whether a particular norm has been properly enacted at an appropriate level of the domestic constitutional order. In addition to the sovereignty argument, the Court is simply not well placed to examine the organisational structure of various countries. Also, what constitutes a "law" is normally dealt with in the context of the "lawfulness" analysis, that is, whether a restriction was "in accordance with the law". The conclusion that a restriction was "in accordance with the law" (as, in the present case, at paragraph 154 of the judgment) sits uneasily with the view that there was insufficient parliamentary scrutiny by reason of the sub-legislative level of the measure in question (see paragraph 167 of the judgment), a conclusion reached in the course of the proportionality analysis. In the present case, the Supreme Court carried out a detailed analysis of the formal constitutionality of the pertinent regulation (see paragraphs 28-33 of the judgment) and the majority do not doubt the Supreme Court's conclusion (see paragraph 167 of the judgment). However, the fact remains that they relied on the absence of parliamentary review and debate in reaching their ultimate conclusion that there had been a violation of Article 8 (ibid.).

6. Secondly, in analysing whether a restriction was "necessary in a democratic society", what is particularly important is whether the relevant Convention interests were weighed at the domestic level, taking into account the domestic processes (executive, legislative and judicial) in their entirety. The Court in *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 108, ECHR 2013 (extracts)) referred to the importance of the quality of the parliamentary *and* judicial review of the necessity of a general measure. In *Humpert and Others* (cited above, § 146), the Court, in its

application of *Animal Defenders International,* referred to the "convincing ... justifications of a general measure" and proceeded to find those justifications not in the parliamentary debate but rather in the extensive assessment of the domestic courts.

7. The function of the parliamentary review and debate is not merely to lend more democratic legitimacy to the enacted restriction. Its importance, if and when it occurs, is to provide an opportunity for in-depth analysis of the reasons for the restriction, an assessment of its potential effects, and a weighing up of the alternatives and balancing of the interests and rights at stake. If this is done correctly, then there should not, in principle, be a substantial difference in the outcome before this Court depending on whether the preparatory and explanatory materials were prepared for parliamentary legislation or for ministerial regulation. In the present case the introduction of the amendments to the Internal Prison Rules was preceded by an analysis reflected in the explanatory memorandum (see paragraphs 50-66 of the judgment; compare with the reasoning contained in the decision imposing the restriction in *Mikyas and Others*, cited above, § 6). Further, while there is undoubtedly an additional political legitimacy which derives from the fact that a parliamentary debate took place, this Court should exercise caution when employing a "quality of the parliamentary review" argument in its assessment of the proportionality of a measure. This gives rise to questions such as whether the mere fact of increased political attention and perhaps controversy, accompanied by a plethora of reports and debates, should necessarily be given greater weight in the proportionality assessment (for a detailed critical analysis, see the separate opinions of Judge Kūris and Judges Wojtyczek and Paczolay in the case of *L.B. v. Hungary* ([GC], no. 36345/16, 9 March 2023) or whether cross-party support is a trump card which legitimises the restriction of a fundamental right (for a discussion distinguishing, *inter alia*, between parliamentary enactment by a majority, amidst serious disagreement, and cross-party support in Parliament, see the separate opinion of Judge Sajó in *Parrillo v. Italy* [GC], no. 46470/11, ECHR 2015). It should not be forgotten that majoritarian decisions are not always respectful of rights protected by the Convention. What is of fundamental importance, in our view, is that the balancing of interests at the domestic level as a whole (taking into account the executive, parliamentary or judicial processes in their totality) was carried out in accordance with the relevant Convention norms and rights.

8. Thirdly, general measures, including measures which appear on their face to be blanket bans, may function differently in different legal systems; contrast the outcomes, for example, in *Hirst v. the United Kingdom (no. 2)* ([GC], no. 74025/01, ECHR 2005-IX) with that in *Kalda v. Estonia (no. 2)*, no. 14581/20, 6 December 2022. In *Kalda*, which also concerned a blanket ban on prisoners' voting rights, the Court found no violation of Article 3 of Protocol No. 1 by reason of the fact that the constitutionality of the measure

and the individual circumstances of the applicant could effectively be assessed by the courts in the domestic constitutional review proceedings. Although the individual circumstances of the applicants in the present case played a lesser role in the domestic analysis of the justifiability of the restriction, the role of the Estonian courts remained the same, in particular that of the Supreme Court, which, in its role as constitutional court, has the power to strike down regulations as well as legislative acts of the *Riigikogu*. It is interesting to note that although the Supreme Court considered that both the individual prison authorities and the Minister of Justice had specific experience and knowledge in the relevant field and therefore enjoyed a wide margin of appreciation in assessing the dangerousness of various items in a prison environment (see paragraph 29 of the judgment), it cannot be claimed that a high level of deference was shown by the domestic courts towards the law-maker, akin to that discerned by the Court in *Animal Defenders International*, cited above, § 115) or *Chocholáč v. Slovakia* (no. 81292/17, §§ 73-77, 7 July 2022). The above elements underline the point that the Court should and does assess the domestic decision-making processes – be it at the parliamentary, regulatory or judicial level – in their entirety and in their relationship to each other. In other words, the absence of a (thorough) parliamentary review in the present case may not necessarily weigh heavily in favour of finding that a particular restriction exceeded the State's margin of appreciation.

(c) Proportionality

9. We turn now to the proportionality analysis that was in fact carried out at the domestic level in this case. It will be recalled that the smoking ban in the present case went through two phases, namely, an executive process followed by judicial review proceedings. In the first phase, the draft regulation amending Regulation no. 72 of the Minister of Justice on the Internal Prison Rules was accompanied by a thorough explanatory memorandum addressing the constitutionality of the proposed ban (including the weighing of possible alternatives) and its social and economic impact on the relevant actors (see paragraphs 50-66 of the judgment). The Chancellor of Justice, acting in her capacity as the guardian of constitutionality and issuing critical opinions on the initial draft law and later on the draft regulation amending the Internal Prison Rules (see paragraphs 74-77 of the judgment), can be regarded as having contributed considerably to the debate on the necessity of the ban on smoking in prisons prior to its adoption.

10. The second phase of the process occurred when the adoption and entry into force of the smoking ban was followed by constitutional review proceedings (see paragraphs 24-39 of the judgment). During those proceedings, besides the applicants in that case and Viru Prison, the Chancellor of Justice, the Minister of Justice and the Minister of Social

Affairs gave their opinions on the constitutionality of the ban. In its judgment, the Supreme Court examined in detail the formal and substantive constitutionality of the smoking ban. In the first stage of its analysis, the Supreme Court confirmed that the Minister of Justice had acted within the confines of the Imprisonment Act when enacting the ban on smoking in the Internal Prison Rules. The content of this analysis is relevant for present purposes, although it was in the form of an analysis of whether the regulations were *intra vires* the legislation, because it provides a context for the proportionality assessment stage which followed and included an identification of the aims of the smoking ban that was carried through to the second stage. As can be seen from paragraphs 29-32 of the Court's judgment, the Supreme Court considered that the terms "people's safety" and "security and order in prison" in section 15(2) of the Imprisonment Act meant that any prohibition of items in prison was required to serve the aims of a prison sentence, comply with the notion of human dignity and avoid causing unnecessary suffering or distress to prisoners (see paragraph 29 of the judgment). The aims included: (a) the protection of non-smokers from passive smoking (paragraph 30); (b) the prevention of the risk of fire in prison (paragraph 32); and (c) the prevention of cigarettes being used as an illegal form of currency and indirectly contributing to the spread of debt-based relationships and a criminal environment (paragraph 32). The permitted aims did not, however, encompass (d) the freeing of smoking prisoners from nicotine addiction (paragraph 31); or (e) saving public resources *per se,* although resources were, to some limited extent, relevant (see paragraphs 31 and 32 on the relevance of resources). With regard to (d), the Supreme Court held that the aim of a prison sentence did not include preventing prisoners from engaging in any self-damaging activity undertaken knowingly and of their own will. We observe that this is in line with the Court's own case-law to the effect that Article 8 encompasses the ability to conduct one's life in a manner of one's own choosing, which may also include "the opportunity to pursue activities perceived to be of a physically or morally harmful or dangerous nature for the individual concerned" (see *Pretty v. United Kingdom* (no. 2346/02, § 62, ECHR 2002-III); see also *Dániel Karsai v. Hungary*, no. 32312/23, § 85, 13 June 2024, and *Pasquinelli and Others v. San Marino*, no. 24622/22, § 77, 29 August 2024*)*. Thus, in the Estonian Supreme Court's analysis, a paternalistic motive of protecting prisoners from their own harmful actions was not permitted; but, *inter alia,* notions of human dignity and avoiding unnecessary suffering and distress were built in at the outset of the analysis.

11. Having determined that the ban introduced by regulation was *intra vires* the legislation, the Supreme Court moved to the second stage of the analysis. Here it examined whether there had been an interference with (smoking) prisoners' rights and considered that it did interfere with both property rights and the right to free self-realisation (see paragraph 34). It then

applied the test of whether the restriction was necessary in a democratic society. In this regard it considered that the ban served the legitimate aims already identified at the first stage of its analysis, referred to above. In its analysis, the Supreme Court took into account the argument made by the Chancellor of Justice that smoking-related health risks had been sufficiently mitigated by the prohibition of indoor smoking in prison, but considered that there was no reason to doubt the Minister's assessment that, in comparison to a complete ban, permitting smoking in certain limited areas in prison increased the chances that tobacco products would still reach prohibited areas, thus requiring more prison resources to address the problem. Moreover, a total ban was more effective in preventing risk of fire and the use of cigarettes as a form of currency (see paragraph 37). It concluded by finding that the ban was proportionate. In reaching this conclusion, it accepted that withdrawal symptoms could be unpleasant but said that a prisoner would need medical treatment only in the most severe cases, and that services such as counselling and treatment had been offered and the introduction of the ban had been gradual.

12. Regarding the allegedly insufficient judicial reasoning in respect of personal autonomy and freedom of choice, we note the following. First, the Supreme Court did acknowledge that the ban on tobacco products interfered with the right to free self-realisation (see paragraph 34 of the judgment) which broadly corresponds with the pertinent aspect of Article 8 of the Convention, namely personal autonomy. The Supreme Court's proportionality analysis was undertaken in respect of both prisoners' property rights and the right to free self-realisation (see paragraph 38). Secondly, it had referred at the outset to the dignity of the prisoner and the need to prevent unnecessary distress and suffering. Thirdly, it held that the restriction had to be necessary in a democratic society and could not distort "the core" of the rights in question. Admittedly, the Supreme Court did not explore the concept of self-realisation or personal autonomy at a more abstract level, and instead focused on the physical withdrawal symptoms caused by the smokers' long-term dependency, the available counselling and treatment, and the fact that the smoking ban had been introduced on a gradual basis. This may have been because of the way in which the analysis had been framed by the preceding *vires* assessment or, indeed, by the applicants themselves (as indeed they framed their complaints before this Court; see paragraphs 9, 17, 23 and 97 of the judgment). In any event, the question arises as to what precisely the majority considers to have been omitted in the domestic courts' analysis concerning the applicant's Article 8 right. In this regard it might be said that the Court's own judgment suffers from the same defect it attributes to the domestic courts. There is a general reference to "the understanding of personal autonomy, together with the importance of prisoners' freedom of choice to decide on matters concerning their own body and health" (see paragraph 169) without further elaboration on the nature of this right, either

in general or in the specific context at hand, that is, where the conduct is harmful to others and takes place in a prison setting. Nor do the majority specify the criteria according to which restrictions on prisoners' personal autonomy and their freedom of choice to decide on matters concerning their own body and health should be weighed in a prison context, in circumstances where the exercise of this personal autonomy and freedom of choice may entail risk to the health of others, as well as to prison security. The majority dismiss considerations such as the smoking ban's limited (physical) impact in terms of withdrawal effects and the possibility of counselling and treatment as insufficient, without explaining how better to reconcile the conflicting rights and interests, or what weight should be given to a rather abstract concept of personal autonomy, disconnected from the concrete reality in which the issue arose. This sparse substantive analysis by the majority of precisely what remaining aspects of the personal autonomy of a smoking prisoner should have been weighed in the balance is disappointing, particularly having regard to the lack of established criteria on this matter in the Court's case-law (save for the case-law weighing on the opposite side of the balance, namely the Court's condemnation of the exposure of non-smoking prisoners to passive smoking under Article 3). This results in a situation where the domestic court is criticised for failing properly to weigh up the Article 8 right of a prisoner who wishes to smoke, and yet the Court itself fails to elaborate on the nature of that right or to provide guidance on how the balancing exercise should be conducted in view of the other factors in the balance.

13. Some substantive guidance from the majority on the "freedom to smoke" would have been particularly useful in view of the undisputable European trend to restrict smoking both outside and within prisons. In addition to the restrictions recently enacted in France, mentioned by Judge Pavli in his separate opinion, one might refer to the rather extensive restrictions on smoking in Milan (Italy), that were extended as from 1 January 2025 to all public or publicly used outdoor areas, including streets and roads, with the exception of isolated areas where it is possible to respect the distance of 10 metres from other people.[1] The comparative study carried out by the Court (see paragraphs 87-93 of the judgment) indicates that the majority of the member States surveyed have taken measures to regulate, restrict and discourage smoking in prisons, primarily to protect the health of non-smokers, or for other reasons. While in Europe only Estonia and two jurisdictions of the United Kingdom (Scotland, and England and Wales) currently have a total or near-total ban on smoking in prisons, this should not be construed as a consensus among the member States that smoking in prison should never be banned. Rather, one would wonder if the jurisdictions named

[1] Available at https://www.comune.milano.it/en/-/ambiente.-dal-1-gennaio-divieto-di-fumo-esteso-a-tutte-le-aree-pubbliche-all-aperto (last accessed in October 2025).

are part of the general trend towards a fully smoke-free environment, but just a few steps ahead of their neighbours. In any event, it is hard to believe that the current situation is indicative of a commonly held perception as to any inherent value of smoking or the necessity of providing for this possibility in prisons. For example, in a passive smoking case, the Belgian Constitutional Court appears to have adopted a different rationale, focusing instead on the perceived security threat associated with the hypothetical implementation of a complete ban on smoking (see paragraph 94 of the judgment). The Estonian authorities saw a security threat in smoking.

14. Finally, we consider it relevant that the right invoked by the applicants – to smoke in a prison – is not one of the core rights attracting the protection of Article 8 of the Convention, as it does not concern a particularly important aspect of the applicant's existence and identity (compare, in a different context, *Parrillo*, cited above, § 174, and, *a contrario, Hämäläinen v. Finland* [GC], no. 37359/09, § 67, ECHR 2014). As is clear from Judge Pavli's separate opinion and our own hesitations on the admissibility issue, there are strong doubts as to the very applicability of Article 8 to the asserted right. But even assuming Article 8 is applicable, the asserted right to smoke within prison can at best be seen as falling on the periphery of the interests protected by Article 8. Another way of putting this is to say that the impact on the applicants' Article 8 rights was not severe. This in turn suggests that it is an interest that should not weigh particularly heavily in the balancing exercise. Indeed, it is perhaps for this reason that the Court's judgment has so little to say about the right in question, other than the very general statement that it is a matter of personal autonomy falling within the range of freedom to choose on matters concerning one's own body and health. On the other side of the balance, of course, fall the Article 3 rights of non-smoking prisoners, the authorities' entitlement to have regard to security and order within prisons, and to a lesser degree, the resource implications of balancing those considerations.

(d) Conclusion

15. Having regard to the above, we are of the view that the domestic processes in which the relevant interests were assessed and balanced were not deficient in terms of Convention analysis, and that the conclusion reached remained with the respondent State's margin of appreciation regarding the matter in question. We are accordingly of the view that there has been no violation of Article 8 of the Convention.

PARTLY DISSENTING OPINION OF JUDGE PAVLI

1. The Chamber majority have today established a new fundamental right under Article 8 of the Convention: the right to smoke in prison. The ruling, if it stands, will have immediate repercussions for detention facilities throughout the forty-six States Parties to the Convention, including in those countries or jurisdictions that already have, or may be considering introducing, restrictions on smoking within prisons or other comparable facilities.

2. I am unable to find that such a right exists under Article 8, under any of the theories or grounds put forward in today's judgment. The unusual number of separate opinions attached to this judgment speaks eloquently of the complexities of recognising such a right, and the way it should be defined or delimited. But first and foremost, my dissent rests on the fact that if everything becomes a "fundamental right", it tends to cheapen incrementally the main currency of the Convention.

The process for identifying new rights under the fertile Article 8

3. The present case highlights some broader (and persisting) methodological challenges in our Article-8 jurisprudence. The text of the provision and the nature of the rights it safeguards – in particular "the right to respect for private and family life" – certainly lend themselves to elastic interpretation. Many have argued that, over the past several decades, these rights have been construed by the Court in ways that have been at times expansive. Article 8 has become an umbrella for the broad protection of personality rights, in their many incarnations;[1] for the most part, securing needed protection for essential or otherwise legitimate aspects of privacy, but at times raising questions of potential overreach.

4. The Court's case-law has responded, in part, by requiring that interferences with many recognised aspects of private or family life ought to meet a certain "threshold of severity" or seriousness in order to fall within the scope of Article 8. This threshold is defined primarily in terms of the gravity of the impact on the applicant's physical or psychological integrity, social

[1] By way of example, rights and interests as diverse as the following have been found by the Court to come under the scope of Article 8: the right to beg in the streets; appearing naked in public spaces; the right of physical access to municipal facilities for people with disabilities; home access to the municipal water supply; the right not to be subjected to sexist stereotypes in court judgments; access to social welfare benefits; access to parental leave and allowances, under certain circumstances; the right not to be excluded from a relative's inheritance; and a range of post-mortem situations, such as the right to disinter and relocate the remains of dead relatives ("private and family life" thus extending into the afterlife). See *Case-Law Guide on Article 8*, §§ 87 et seq.; available at https://ks.echr.coe.int/web/echr-ks/article-8.

standing and relationships, and so on. Further finetuning has been sought through doctrines such as the purpose-based or consequence-based approaches, developed first for employment disputes in *Denisov v. Ukraine* ([GC], no. 76639/11, 25 September 2018). However, the threshold of severity is not applied systematically throughout all areas of Article 8 case-law,[2] or even in all cases within the same thematic area.

5. Be that as it may, cases such as the present one expose the limitations of the existing methodology in containing inflationary tendencies in the interpretation of Article 8. What is needed, in my view, is an approach that goes beyond – or rather anticipates – the *in concreto* assessment of the seriousness of the impact on the individual by considering, first and foremost, the *nature of the invoked "new right" and its normative standing* among European legal systems and the rest of the democratic world. One way to do this, especially in borderline cases where the applicability of Article 8 may be questionable, is by assessing whether national jurisdictions treat such a "right" as being of a fundamental or constitutionally-protected character – as opposed to one enjoying merely statutory protection or customary standing. If it falls into the first category, a strong case can be made that it deserves the protection of the Convention. Conversely, if it falls into the second category, this would suggest that the matter may properly belong within the sovereign discretion of the States.

6. What is proposed here may not always be a straightforward exercise, but it could be a useful starting point in setting some objective guardrails in the identification of "new rights" or (if one prefers) new aspects of Article-8 rights. Had such an approach been followed in the present case, I doubt that today's outcome would stand.

A general autonomy interest?

7. Coming back to the present case, the Court has been invited by the applicants to hold that there is an Article-8 right to smoke in prison, although it has never established to date that there is a right to smoke *anywhere*. In fact, virtually all of our smoking-related case-law involves claims brought by non-smokers, including detainees, challenging the effects of second-hand smoking on their health and life enjoyment (see paragraph 148 of the judgment and the cases cited therein).

8. It is thus necessary to start by considering whether Article 8 of the Convention protects a general right to smoke among the broader population. If no such Article-8 right arises outside prisons, it cannot become a prison-specific entitlement.

9. The majority rely on the argument that smoking being a generally lawful (if heavily regulated) activity among adults, it ought to be protected as

[2] Ibid, at § 93.

part of the sphere of individual autonomy in making life choices – including by inhaling addictive substances that are detrimental to one's health. People do, after all, find a degree of pleasure in habits that their doctors may not approve of. But that is not enough, in my view, to turn such a general "liberty interest" into a fundamental right protected by the Convention, which furthermore does not include a general "liberty clause".

10. First, such a right cannot stem merely from the fact that the activity at stake happens to be generally legal, at a given point in time, in one or even multiple jurisdictions. This is so, at least in the absence of any legislative or judicial recognition that the activity is protected *as a matter of fundamental rights*. For example, it was lawful until very recently in France to smoke in public parks, beaches and certain other open-air locations; that is no longer the case as of late June 2025, due to legislative intervention.[3] The fact that the law chooses to permit certain conduct at a given point in time is not enough to create any hard or permanent entitlements. Nor does the fact, *per se*, that the large majority of European legal systems currently seem to allow some degree of smoking in prisons (see paragraph 88 of the judgment). We drive on the right side of the road in most of Europe, without creating any fundamental rights or freedoms in the process. Thus, what was until yesterday a policy choice for each State to make in setting their public health or penitentiary policies has been transformed by today's judgment into an individual "trump card", enshrined in a supranational bill of rights.

11. Secondly, smoking is merely a lifestyle choice that, however addictive it may become, can hardly be considered a core trait of one's personality or a significant means of self-fulfilment. The majority view recognises as much (see paragraph 160 of the judgment). I am therefore not persuaded that it belongs on the same normative level as the other privacy interests relied on by the majority in finding Article 8 applicable in the present case – such as aspects of detainees' sexuality or personal image (see paragraph 131 of the judgment). As various supreme national courts have found, smoking is not a "basic choice going to the core of what it means to enjoy individual dignity and independence."[4] This is so despite the deep-rooted traditions of smoking in many societies.

12. The same would apply in my view to the UK Supreme Court's holding in *McCann v. The State Hospitals Board for Scotland* [2017] UKSC 31, which relied principally on residual autonomy and the right to engage in self-harmful behaviour, with particular (and perhaps prudent) emphasis on

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[3] See *Décret n° 2025-582 du 27 juin 2025 relatif aux espaces sans tabac et à la lutte contre la vente aux mineurs des produits du tabac et du vapotage*.

[4] See *B v. Waitemata District Health Board* [2013] NZSC 88, 59 (Supreme Court of New Zealand). See also, in United States federal jurisprudence, *Grusendorf v. Oklahoma City*, 816 F.2d 539, 541 (10th Cir. 1987); and *Steele v. County of Beltrami*, 238 Fed. Appx 180, 181 (8th Cir. 2007) ("Our own research has revealed no relevant authority supporting these rights [to smoke] under any theory.")

this Court's judgment in *Pretty v. the United Kingdom* (no. 2346/02, 29 April 2002). It is questionable, however, whether the ability to smoke can be compared to the weight of Article-8 interests that come into play in making momentous end-of-life decisions or being subjected to solitary confinement as a mental-health patient (see *Munjaz v. the United Kingdom*, no. 2913/06, 17 July 2012, also cited in *McCann*).[5] Nor do I find that the highly pragmatic ruling of the Belgian Constitutional Court (see paragraph 94 of the judgment) provides strong support for elevating smoking to a fundamental aspect of privacy.

13. Thirdly, it is equally implausible to speak of a *general* right to smoke if we look at current practices in contemporary European societies. In fact, it is much easier to speak of a right *not* to be exposed to others' second-hand smoking, in both public and private environments where people congregate: in public institutions, but also many private settings, whether closed or even in the open air. We expect nowadays not to be exposed to passive smoking in government offices, schools, hospitals, in our jobs and in virtually all other indoor common spaces and increasingly, as the French example shows, even while enjoying various open-air activities. Given this state of affairs, one simply cannot speak of a "right" to smoke *within facilities that are shared with others* – when such an option is elsewhere limited, essentially, to the confines of one's own home or equivalent private premises. This, however, is a very thin foundation on which to build claims of a fundamental right.[6] The fact that there have been no Strasbourg cases challenging such general restrictions also suggests that they are not controversial among the general public.

14. I will concede that there is a certain "liberty interest" in being able to do things that may be potentially harmful to oneself (but not necessarily to others) without the State breathing down our necks. An obvious example is the moderate consumption of alcohol, endorsed in many places by centuries of tradition. The United States had to pass a constitutional amendment in the 1910s in order to pursue its (ultimately unsuccessful) experiment with Prohibition. In twenty-first century Europe, however, it is hard to sustain that smoking belongs in the same category as enjoying the occasional glass of wine, due to the pervasive awareness of its harmful effects on public health and the scope of the restrictions imposed on the ability to smoke outside strictly private settings.

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[5] See also the interesting discussion in *R v. Nottinghamshire Healthcare NHS Trust* [2009] HRLR 31, 927, where it was argued that the less a privacy claimant can rely upon the nature of the place in which the activity is pursued (a high-security psychiatric hospital in that case), the more he or she must rely upon the proximity of the activity to one's personal identity or physical and moral integrity.

[6] One can think of a good number of activities that people may be able to pursue within the full privacy of their homes that would not necessarily be legal, or otherwise viable, in public spaces (and even less so in a prison environment).

A "home" for detainee smokers?

15. Even assuming *arguendo* that a "residual" right to smoke might exist among the general population, it is highly questionable whether such a right could survive within the constraints of a prison environment.

16. The main arguments in support of such a position are that prisoners should retain all rights that are not inherently incompatible with penitentiary life; and that prison is their "home", at least for those serving longer sentences. However, the obvious challenge is that prison is also the only "home" for prisoners who are non-smokers, as well as the work environment for prison personnel. Both of these categories are entitled not to be exposed to the health hazards and general nuisance of second-hand smoking.

17. In such circumstances, a prisoner's insistence on a right to smoke is not really a classical (negative) State interference with one's presumed privacy interests. It is much closer to a positive claim, seeking to impose on the State an obligation to ensure, somehow – and the rights of others notwithstanding – his or her right to smoke. Under our case-law, such obligations are typically subject to conditions of reasonableness and of not imposing on public authorities, and the public purse, an excessive burden (see *Gaskin v. the United Kingdom*, 7 July 1989, § 42, Series A no. 160). They are therefore subject to a balancing of interests and costs, including by comparison to other forms of leisure activities that might have the added benefit of not being noxious to others.[7]

18. One relevant question that then arises in this context is, what is special about smoking? There are many other meaningful or destressing activities that are either not viable in a prison environment, or would require significant investment or adjustment of ordinary penitentiary practices – such as drinking the occasional cold beer, taking a walk in a wooded area, or keeping a pet. Do prisoners who smoke have a superior claim to pet lovers?

19. It seems, in fact, that the only viable argument in favour of smoking in prisons comes down to *tradition*: that smoking has historically been a way of relieving stress and anxiety, and of bringing a degree of pleasure in an environment where few other distractions are available[8] (though that might be a somewhat old-fashioned view of penitentiary life, with modern ideas of rehabilitation emphasising a variety of other forms of leisure, and perhaps healthier pastimes). Tobacco was also commonly used as a form of currency among prisoners. But this cannot be enough to override the competing

[7] It is curious, in this respect, that the Estonian Government have not relied in their submissions on the public-health-related costs of smoking within a population for whose health and well-being the State is financially responsible. Smoking rates in prison tend to be significantly higher than among the general population.

[8] As someone who used to enjoy the occasional cigarette, especially during exam seasons, I can sympathise.

considerations; it also used to be traditional for adults to smoke unperturbed in the presence of children.

20. It is even harder to argue that the *threshold* of an Article-8 "interference" has been met in the specific circumstances of the present case, when one looks at the specific evolution of the Estonian legal framework and the measures adopted in the relevant facilities where the applicants are serving their sentences. It is noteworthy here that the Chamber majority have not engaged in any kind of assessment of whether the specific alleged interferences met the threshold of gravity that is normally required under the "private life" limb of Article 8 (see paragraph 4 of this Opinion, above). It is relevant in this regard that in the period prior to the introduction of the full ban, the applicants were limited to smoking no more than five cigarettes during the daily fresh-air hour (see paragraph 68 of the judgment); in other words, they were unable to smoke for 23-hour stretches of time. It seems doubtful that this was sufficient to sustain their nicotine addiction, or that the added sacrifice of a complete ban would have been significant. During the transitory period, the daily cigarette allowance was gradually lowered to just one per day.

21. Lastly, at the risk of stating the obvious, the Court's position on the scope of Article 8 is entirely separate from the *policy* question of whether it is a good idea to introduce a complete smoking ban in prisons, or how to go about it. It is reasonable to assume that the prevailing practices in Europe reflect an understanding that retaining at least some ability for prisoners to smoke may, on balance, represent better prison management policy. This is, however, a regulatory choice that belongs to the States and on which, in my view, Article 8 of the Convention has little to say (subject only to what follows immediately below).

Claims related to treatment for withdrawal symptoms

22. In contrast to the smoking ban itself, I consider that prisoners' claims related to an absence of State-provided nicotine withdrawal and alleviation treatment following the introduction of such a ban would, in principle, fall within the scope of Article 8. This would be justified in view of the non-negligible and likely effects on their physical and psychological health. Such claims have been put forward by two of the applicants in the present case. However, for the reasons indicated in paragraph 126 of the judgment, which I find persuasive, those claims have not been sufficiently made out (or indeed exhausted domestically) to be admissible.

23. In conclusion, and in view of the above considerations, I consider that the second, third and fourth applicants' claims under Article 8 of the Convention either fall outside the scope of that provision *ratione materiae*, or are inadmissible on other grounds. I have also voted with the majority to dismiss the applicants' Article 3 claims on *ratione materiae* grounds (see paragraph 127 of the judgment and operative provision no. 4).

STATEMENT OF PARTIAL DISSENT OF JUDGE SERGHIDES

1. As indicated in the introductory paragraph of the judgment, the case concerns the total ban on smoking in Estonian prisons, which, according to the applicants – who were all prisoners at the time the ban entered into force – violated their rights under Article 3 and 8 of the Convention.

2. I voted in favour of points 1-6 of the operative provisions of the judgment, but against point 7, which dismisses the reminder of the applicants' claim for just satisfaction.

3. In particular, I respectfully disagree with paragraph 177 of the judgment and the corresponding point 7 of the operative provisions, holding that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage which the applicants may have suffered. I refer, *inter alia*, to my partly dissenting opinion in *L.F. and Others v. Italy* (no. 52854/18, 6 May 2025, paragraph 12 of the opinion), where I explain my disagreement with such a practice.

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	17982/21	Vainik v. Estonia	28/03/2021	**Rene VAINIK** 1975 Jõhvi Estonian	Denis PISKUNOV
2.	3184/21	Lvov v. Estonia	06/01/2021	**Denis Olegovich LVOV** 1976 Rae vald Estonian	Denis PISKUNOV (until 11 March 2025)
3.	43852/21	Šmeljov v. Estonia	21/08/2021	**Nikolai ŠMELJOV** 1973 Narva Not known	Denis PISKUNOV
4.	44600/21	Tsajun v. Estonia	31/08/2021	**Dmitri TSAJUN** 1977 Jõhvi Estonian	Denis PISKUNOV