



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

THIRD SECTION

**CASE OF V.K. v. RUSSIA**

*(Application no. 68059/13)*

JUDGMENT

STRASBOURG

7 March 2017

**FINAL**

**07/06/2017**

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of V.K. v. Russia,**

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

Helena Jäderblom, *President*,

Branko Lubarda,

Luis López Guerra,

Helen Keller,

Dmitry Dedov,

Pere Pastor Vilanova,

Alena Poláčková, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 7 February 2017,

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

## PROCEDURE

1. The case originated in an application (no. 68059/13) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr V.K. (“the applicant”) on 20 October 2013. The President of the Section acceded to the applicant’s request not to have his name disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicant was represented by Ms E. Shadrina and Ms O. Sadovskaya, lawyers practising in St Petersburg and Nizhniy Novgorod respectively. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been ill-treated by teachers at a public nursery school and that the investigation into his allegations of ill-treatment had been ineffective.

4. On 8 July 2014 the complaint was communicated to the Government and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court. It was also decided to apply Rule 41 of the Rules of Court and grant priority treatment to the application.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 2001 and lives in St Petersburg.

### **A. The applicant's ill-treatment at a public nursery school and his parents' complaints to various local authorities**

6. In August 2004 the applicant started attending public pre-school educational institution no. 42 ("the nursery school"). His teachers were Ms K., Ms P. and an assistant teacher, Ms Ch.

7. In the spring of 2005 the applicant's parents noticed a change in his behaviour. In particular, he became nervous and unwilling to go to nursery school. During the summer holidays of that year the applicant's physiological state significantly ameliorated and his mood returned to normal. However, as soon as he resumed nursery school in September 2005 he again became nervous and frightened of the dark and noises. He resisted going to school and refused to discuss school with his parents or sisters.

8. On 7 November 2005, when picking him up from the nursery school, the applicant's mother noticed that his eyes were twitching and that he had a bruise on his left temple. The applicant complained that his neck and eyes were aching. The teacher, Ms P., told the applicant's mother that the children had been given eye drops containing an antibiotic. According to her, one of the children in the class had an eye infection and it was necessary to take preventive measures against its spreading among the children.

9. On 8 November 2005 the applicant was examined by an ophthalmologist, who noted a bruise on his temple. She found no symptoms of any eye infection or disease. She recommended a consultation with a neurologist in order to verify whether the eye tics could have neurological causes.

10. On the same day the applicant started to display mouth tics.

11. On 14 November 2005 the applicant's mother lodged a complaint with the local department of the Federal Authority for Consumer Protection and the Supervision of Public Well-being. She complained that the teachers at nursery school no. 42 had administered eye treatment to her son without her consent and had used physical force against him. Her son had developed nervous tics as a result.

12. On 15 November 2005 the applicant was examined by a neurologist and was diagnosed with hyperkinesia (a state of excessive restlessness which is manifested in a wide variety of disorders that affect the ability to control motor movement and which is mainly psychological in nature).

13. On 16 November 2005 the applicant's mother complained to the local department of education about the incident of 7 November 2005 and asked that the applicant be transferred to another nursery school.

14. By a letter of 23 November 2005 the local department of the Federal Authority for Consumer Protection and the Supervision of Public Well-being informed the applicant's mother that the director of nursery school no. 42 had been disciplined for breaching sanitary standards.

15. By a letter of 29 November 2005 the local department of education replied to the applicant's mother, stating that the facts described in her complaint had been confirmed in part and that the director of the nursery school, teachers Ms K. and Ms P. and medical nurse Ms Pt. had been disciplined. It had been decided to transfer the applicant to another public nursery school.

16. When the applicant learnt that he would not have to return to nursery school no. 42, he was happy and told his parents that he had been mistreated by Ms K. and Ms P. In particular, he had been punished for a failure to sleep during the afternoon sleeping hours. Sometimes he had been made to lie on a folding bed in the toilets. The lights in the toilets had been switched off and the teachers had told him that he would be eaten by rats. The applicant had felt very frightened as he had once seen a rat in the toilets. On other occasions he had been forced to stand in the entrance hall, barefoot and wearing only his underpants, for the entire duration of the sleeping hours. He had been very cold. The applicant had also on occasions been hit on the back with a fist. On one occasion the teachers had taped his mouth shut with sellotape. After he had started to suffocate, he had tried to remove the sellotape. The teachers had then taped his hands behind his back. Some other children had also been subjected to similar punishments. They had been threatened that if they complained to their parents about the teachers they would be punished.

17. The applicant also told his parents in detail about what had happened on 7 November 2005. He had been given eye drops twice. In the morning Ms K. had bent his head back with such force that his neck had ached. In the afternoon, she had sat on the applicant's legs and tried to force his eyes open with her hands. Frightened, the applicant had resisted. Ms K. had then slapped his face.

18. On 23 November 2005 the applicant's father was questioned by the police in connection with a complaint lodged by Ms K. and Ms Pt. that he had assaulted them. The applicant's father stated to the police that his conflict with Ms K. and Ms Pt. had arisen because his four-year-old son had been mistreated by the staff of the nursery school. He denied assaulting them. The criminal proceedings against the applicant's father were discontinued after one of the nursery school staff members stated in writing that Ms Pt. had attempted to convince her and other staff members to falsely accuse the applicant's father of assaulting Ms K. and Ms Pt.

19. On 21 December 2005 the local department of education informed the applicant's mother that the director of nursery school no. 42 had been dismissed.

20. By a letter of 13 March 2006 the local department of education informed the applicant's father that an internal inquiry had established that teachers Ms K. and Ms P. had made some of the children sleep outside the sleeping quarters. That fact, although denied by Ms K. and Ms P., had been

confirmed by assistant teacher Ms Ch. and by the grandmother of one of the children. Ms K. and Ms P. had been disciplined.

21. By a letter of 17 July 2006 the Vice-Governor of St Petersburg informed the applicant's mother that medical nurse Ms Pt. had been disciplined.

## **B. Civil proceedings**

22. On 21 February 2006 the applicant's mother sued nursery school no. 42 for compensation for the damage sustained by the applicant to his health.

23. On 30 June 2006 the Kirovskiy District Court of St Petersburg approved a friendly settlement agreement between the applicant's mother and nursery school no. 42. Under that agreement, the nursery school was to pay the applicant's mother 5,000 Russian roubles (RUB) (approximately 150 euros (EUR)) in compensation for medical expenses.

## **C. Criminal investigation into the allegations of ill-treatment**

### *1. Pre-investigation inquiry*

24. On 29 September 2006 the applicant's mother complained to the Kirovskiy district prosecutor's office about her son's ill-treatment by the staff of nursery school no. 42. She described the incident of 7 November 2005, complained that during the sleeping hours her son had been occasionally locked in the toilets with the lights off, and submitted that as a result of such treatment he had developed nervous tics. She also submitted that she had not received an adequate response to her complaints to the local department of education and the local department of the Federal Authority for Consumer Protection and the Supervision of Public Well-being.

25. By letter of 27 October 2006 the Kirovskiy district prosecutor's office informed the applicant's mother that an inquiry had been opened into her allegations of ill-treatment. It also noted that the local department of education had failed in its obligation under section 9 of the Minors Act to inform the district prosecutor's office of the applicant's ill-treatment (see paragraph 134 below).

26. On 2 November 2006 the investigator questioned several of the parents of the children who had attended nursery school no. 42 with the applicant. Some of them stated that their children had never complained about being mistreated by teachers Ms P. or Ms K. Others stated that their children had told them about being locked in the entrance hall or in the toilets, where they had on occasion seen rats. They also confirmed that on 7 November 2005 eye drops had been given to the children without the parents' consent.

27. Assistant teacher Ms Ch. stated to the investigator that on 7 November 2005 two children had shown symptoms of eye infection. Teacher Ms K. had consulted medical nurse Ms Pt., who had decided to give eye drops to all children in order to prevent the spread of the infection. The parents' consent had not been obtained. The drops had been given by the teacher herself rather than by the medical nurse. Ms K. had used physical force against those children who had resisted. Many of them had been frightened and had cried. Immediately after that the applicant's eyes had started twitching. Ms Ch. also stated that both Ms K. and Ms P. had many times made certain children, including the applicant, sleep on folding beds in the toilets or in the entrance hall. Ms K. and Ms P. had often shouted at the children and had punished them by sending them to the toilets. She had once seen a child tied with string to his chair.

28. The investigator also questioned Ms K., who denied mistreating the applicant or other children. She stated that on 7 November 2005 the children had been given eye drops by the medical nurse. The children had submitted to the treatment without any resistance or stress. No physical force had been used against the applicant or other children. The applicant had already had nervous tics before 7 November 2005.

29. On an unspecified date at the beginning of November 2006 the applicant was questioned by the investigator. The applicant's mother and a psychologist were present during the questioning. The applicant described the incident of 7 November 2005. He also stated that he and some other children had often been made to sleep on a folding bed in the entrance hall or in the toilets with the lights turned off or left standing in the entrance hall with few clothes on. They had been frightened and cold.

30. On 8 November 2006 the Kirovskiy district prosecutor's office refused to open a criminal investigation against the teachers of nursery school no. 42, finding no evidence of a criminal offence. The applicant's parents were not given a copy of that decision.

31. On 12 January 2007 the Kirovskiy district prosecutor's office cancelled its decision of 8 November 2006 and resumed the pre-investigation inquiry.

32. The investigator then questioned Ms P. and medical nurse Ms Pt., who gave the same testimony as Ms K.

33. During the following year the Kirovskiy district prosecutor's office issued two more decisions (on 22 January and 6 July 2007 respectively) refusing to open a criminal investigation against the teachers of nursery school no. 42 on the ground that there was no evidence of a criminal offence having been committed.

34. The applicant's mother challenged those decisions before the Kirovskiy District Court. However, before the District Court could examine her complaints against the decisions, the Kirovskiy district prosecutor's office annulled them (on 20 June and 24 December 2007 respectively) and

resumed the pre-investigation inquiry. No investigative measures were performed during this one-year period.

35. On 27 September 2007 the applicant's medical documents were examined by a child psychiatrist at the request of the applicant's mother. The psychiatrist found that before November 2005 the applicant had not suffered from any neurological or psychiatric disorders. He had, however, on occasions suffered allergic reactions. The psychiatrist further noted that in 2005 the applicant had been subjected to a prolonged, psychologically traumatic experience at the nursery school. Against the background of that prolonged, traumatic experience, the incident of 7 November 2005 involving the use of violence had served as a trigger for his present neurological disorder. An allergic reaction to the eye drops could have also contributed to the development of the disorder. The psychiatrist concluded that there had been a causal link between the traumatic experience suffered by the applicant in the nursery school from September 2005 to November 2005 and his persistent neurological disorder.

36. On 24 December 2007 the Kirovskiy district prosecutor's office noted that the pre-investigation inquiry was incomplete and that it was necessary to question the children who had attended the nursery school with the applicant and their parents, to obtain an expert opinion on the contra-indications and side-effects of the eye drops given to the children, and to question other teachers at the nursery school.

37. On 17 January 2008 the case was transferred to the Kirovskiy district police department for further pre-investigation inquiry.

38. In February 2008 the investigator questioned the parents of some of the children who had attended the nursery school with the applicant. They stated that they did not have any complaints against teachers Ms P. and Ms K. None of them gave the investigator permission to question their children.

39. The investigator also questioned one of the teachers at nursery school no. 42. The teacher stated that she could not give any useful information.

40. On 29 February 2008 the Kirovskiy district police department refused to open a criminal investigation against Ms P. and Ms K., having found no evidence of a criminal offence. The applicant's parents were informed about that decision on 4 May 2008 and received a copy of it on an unspecified later date.

41. On 23 May 2008, after being criticised by the St Petersburg prosecutor's office for delays in the conduct of the pre-investigation inquiry and for its ineffectiveness, the Kirovskiy district police department cancelled the decision of 29 February 2008 and resumed the pre-investigation inquiry.

42. On 11 June 2008, in reply to a complaint by the applicant's mother, the St Petersburg prosecutor's office again criticised the Kirovskiy district



prosecutor's office for delays in the conduct of the pre-investigation inquiry and for its ineffectiveness.

43. On 26 June 2008 the Kirovskiy district police department informed the staff of nursery school no. 42 that criminal proceedings into the applicant's allegations of ill-treatment would not be opened because the prosecution had become time-barred.

44. On 30 June 2008 the Kirovskiy district police department refused to open a criminal investigation into the allegations of ill-treatment, finding no evidence of a criminal offence. On 4 July 2008 the Kirovskiy district prosecutor's office quashed that decision and ordered a further inquiry.

45. On 11 July 2008 the Kirovskiy district police department refused to open a criminal investigation against Ms K. It found that, although there was evidence that Ms K.'s actions amounted to cruel treatment of minors, an offence under Article 156 of the Criminal Code, the criminal proceedings had become time-barred.

46. On 29 July 2008 the St Petersburg prosecutor's office quashed the decision of 11 July 2008, finding that the inquiry had been incomplete. It noted that it was necessary to question the children who had attended the nursery school with the applicant and with their parents; to establish the seriousness of the damage sustained by the applicant to his health; to obtain and analyse the documents regulating the actions of the staff of public nursery schools; and to investigate Ms P.'s actions.

47. On 9 August 2008 the investigator questioned the father of a child who had attended the nursery school with the applicant. He stated that his son had never complained of being ill-treated by the nursery school teachers.

48. On 11 August and then again on 11 September 2008 the Kirovskiy district police department refused to open a criminal investigation against Ms K. on the ground that there was no evidence of a criminal offence having been committed. Those decisions were cancelled on unspecified dates.

49. In reply to new complaints lodged by the applicant's mother, on 21 November 2008 the St Petersburg prosecutor's office again criticised the Kirovskiy district prosecutor's office for the delays in the conduct of the pre-investigation inquiry and for its ineffectiveness.

50. On 1 December 2008 the investigator questioned the mother of another child who had attended the nursery school with the applicant. She stated that her daughter had never been mistreated by the staff of the nursery school.

## *2. Investigation*

51. On 19 January 2009 the Kirovskiy district police department opened a criminal investigation against Ms K. and Ms P.

52. On 4 March 2009 the applicant was granted the procedural status of victim. The applicant's mother was recognised as his representative.

**(a) Evidence collected during the investigation**

53. In the course of the criminal investigation, which lasted at least until December 2014, the police department collected the following evidence.

*(i) Statements by the applicant*

54. On 4 March 2009 the applicant was questioned by the investigator in the presence of his counsel, his mother and a teacher. The applicant stated that Ms K. and Ms P. had often punished him and some other children. In particular, on many occasions they had made him sleep in the toilets and had threatened that he would be eaten by rats. Ms K. had once taped his mouth and hands with sellotape. She had also slapped him on the face when he had refused to open his eyes to receive eye drops. On another occasion Ms K. had splashed paint over his friend's face because she had not liked his drawings. The applicant also stated that Ms K. and Ms P. had forbidden him from telling his parents about those punishments.

55. On 24 March 2009 the applicant was taken by the investigator to nursery school no. 42, where he repeated his previous statements. In particular, he showed the investigator the spot in the toilets where his folding bed had been placed and the place in the entrance hall where he and other children had been forced to stand wearing only their underwear and T-shirts and keeping their arms up and apart during the entire duration of the sleeping hours. He further showed the investigator where and how he had been bound with sellotape and where and how he had been given eye drops. He also showed the investigator a closet in which he had been locked in the dark. Lastly, he told the investigator that if he did not sleep during the sleeping hours Ms K. and Ms P. would hold his head against the bed until it started to ache. The applicant's lawyer, the applicant's mother, a psychologist and a teacher were present during the questioning.

56. On 9 June 2009 the applicant was questioned again. He repeated his previous statements. He also added that Ms K. had hit him on the back.

*(ii) Statements by the suspects*

57. Ms P. was questioned by the investigator on 6 February and 21 May 2009, 23 August 2011 and 13 March 2014. She initially cited her right to remain silent and refused to testify. She then denied ill-treating the applicant or other children. She stated that the applicant had had nervous tics since September 2005. During the last round of questioning she asked that the criminal proceedings be discontinued as time-barred.

58. Ms K. was questioned on 5 February and 22 June 2009 and 13 March 2014. She also initially refused to testify. She then denied ill-treating the applicant or other children. She stated that the applicant had

had nervous tics since the summer of 2005 and that assistant teacher Ms Ch. had given false testimony against her in revenge for critical remarks she had made in respect of Ms Ch.'s unsatisfactory work. During the last round of questioning she again refused to testify and asked that the criminal proceedings be discontinued as time-barred.

*(iii) Witness statements*

59. On 10 April 2009 medical nurse Ms Pt. was questioned. She stated that she had been the one who had administered eye drops to the children on 7 November 2005 because one of them had had an eye infection. When she had learned from the applicant's mother that the applicant had eye tics, she had talked to Ms K. and Ms P., who had affirmed that the applicant had had nervous tics before 7 November 2005. She had never seen Ms K. and Ms P. mistreating the children. However, when questioned on 24 October 2011 and 24 July 2012 Ms Pt. stated that she had lied during the previous rounds of questioning about having given the eye drops to the children on 7 November 2005. In fact the eye drops had been given by Ms K. without her (that is to say Ms Pt.'s) permission. She had lied about that fact because she had had felt sorry for Ms K. and had not wanted her to be punished.

60. On 19 June 2009 and 21 October 2010 assistant teacher Ms Ch. was questioned. She stated that on 7 November 2005 Ms K. had given eye drops to the children on the advice of the medical nurse. Ms K. had used physical force against those children who had resisted. Many of them had been frightened and had cried. Immediately after that the applicant's eyes had started twitching. Ms Ch. also stated that on many occasions she had seen Ms K. and Ms P. make the applicant and some other children sleep on folding beds in the toilets or in the entrance hall. Ms K. and Ms P. had often shouted at the children and had punished them by locking them up in the toilets. She had once seen a child tied with string to his chair. She added that she had never talked to the applicant's parents except at the nursery school.

61. On 30 June 2009, 24 and 30 August 2011, and 12 and 13 March 2014 the investigator held confrontations between Ms Ch. and Ms P., between Ms Ch. and Ms K., and between Ms Pt. and Ms Ch. They all reiterated their previous statements.

62. In April and May 2009, October and November 2011 and July 2012 the investigator questioned six teachers from nursery school no. 42. They stated that they had never seen Ms K. or Ms P. mistreating the children. Some of them also stated that the applicant had already had nervous tics before the incident of 7 November 2005. One of them stated that assistant teacher Ms Ch. had sometimes taken the applicant home in the evenings because she lived in the same block of flats as the applicant. Ms Ch. had often shouted at the children in the nursery school and the children had been afraid of her.

63. On 21 September 2009 the investigator questioned the former director of nursery school no. 42. She stated that Ms K. and Ms P. had been competent and affectionate teachers who had been appreciated by the children and their parents. She had never received any complaints about them.

64. On 12 December 2011 and 16 July 2012 the investigator questioned the then director of nursery school no. 42, who had taken up that position in December 2005. She gave positive references for Ms P. and Ms K. She stated that she had never seen them mistreating the children or received any complaints from the parents in respect of her.

65. In April, May and September 2009, September and November 2011, and July 2012 the investigator questioned the parents of several children who had attended the nursery school with the applicant. Most of them stated that their children had never complained of having been mistreated by Ms K. or Ms P. One of them stated that her son had on occasions been punished by the teachers; in particular he had been made to sleep outside the sleeping quarters, in the changing room. Her son had also told her that he had seen a rat in the toilets. She had, moreover, seen some children carrying heavy folding beds from one place to another upon the instruction of the teachers. Lastly, she stated that her son had told her on 7 November 2005 that Ms K. had used force against the applicant (who had resisted and cried) when administering eye drops to him. Another parent stated that Ms K. had locked her son up in the toilets on two occasions and had once made him sleep outside the sleeping quarters, near the toilets. Another parent stated that her daughter had told her about the applicant and another boy being made to sleep separately from the others. She however did not know the details.

66. Between 16 November and 2 December 2011 the investigator questioned four of the children who had attended the nursery school with the applicant. They all stated that Ms K. and Ms P. had been kind to them and had never mistreated them or other children.

67. The applicant's mother was questioned on 10 March and 9 April 2009 and on 14 October 2010. She described the applicant's change in behaviour and mood after he had started to attend nursery school. She described the incident of 7 November 2005 and her son's subsequent development of nervous tics. She also related a conversation she had had with her son during which he had for the first time told her about being mistreated by Ms K. and Ms P. She also stated that her son continued to suffer from nervous tics and to undergo treatment for them. Lastly, she told the investigator that although Ms Ch.'s sister was her neighbour she did not have any friendly relationship with her.

68. On 24 November 2011 and 28 February 2014 the applicant's father was questioned. He made similar submissions as the applicant's mother.

69. On 7 December 2011 and 28 February 2014 the investigator held confrontations between the applicant's mother and one of those teachers at the nursery school who had already been questioned in November 2011. They both reiterated their previous submissions.

70. On 13 December 2011 and 12 March 2014 the investigator held confrontations between Ms Ch. and one of the teachers of the nursery school. Ms Ch. confirmed her previous submissions, while the teacher stated that Ms P. and Ms K. had never mistreated the children, that Ms Ch. had shouted at the children, that Ms. Ch. had sometimes babysat the applicant and that the applicant had had nervous tics before November 2005.

71. On 17 March 2014 the investigator questioned the applicant's neighbour who lived on the same landing, who stated that the applicant's tics had started in November 2005. She also stated that the applicant's parents were on good terms with Ms Ch.'s sister but that she had not noticed any kind of relationship between the applicant's parents and Ms Ch. herself.

72. On 12 March 2014 the applicant's mother produced material from the civil case file and asked that it be included in the criminal case file. In particular, she asked for the inclusion of the written statement by one of the staff members of nursery school no. 42 (see paragraph 18 above) that medical nurse Ms Pt. had attempted to convince her and other staff members to give false testimony against the applicant's family. On 17 March 2014 the investigator refused the requests, finding that the documents from the civil case file were irrelevant to the criminal case.

*(iv) Expert opinions*

73. On 10 April 2009 a panel of psychiatrists and psychologists examined the applicant and issued an expert opinion. They found that the applicant continued to suffer from nervous tics. Given that such tics could have had both organic and neurological causes, it was impossible to establish a causal link between the events of November 2005 and the applicant's current neurological disorder. Given the applicant's age at the material time and the time that had passed since the events in question, the applicant could not accurately recall those events. He was therefore psychologically incapable of testifying within the framework of the criminal proceedings.

74. On 9 October 2009 a panel of medical experts examined the applicant's medical records and issued an expert opinion. They noted that his nervous tics could have had both organic and neurological causes. It was therefore impossible to establish a causal link between the events of September-November 2005 and the applicant's current neurologic disorder.

75. On 14 January 2011 a panel of experts in psychiatry and psychology examined the applicant and analysed his medical records. When interviewed by the experts, the applicant stated that he wanted to forget about what had

happened to him in the nursery school but he was constantly being reminded of those events because of the investigation. He affirmed that his tics were aggravated each time that he remembered, or had to discuss, the treatment to which he had been subjected in the nursery school. The experts confirmed that the aggravation of the tics was indeed related to the applicant's memories of the nursery school. The experts found that before November 2005 the applicant had not suffered from any psychiatric disorder. There had been a causal link between his nervous disorder and the prolonged, psychologically traumatic experience to which he had been subjected in the nursery school from September to November 2005. Many years later he still continued to suffer from nervous tics. He had therefore suffered damage of medium severity to his health. The experts further noted that the applicant did not suffer from any memory or intellectual disorder and that his intellectual development corresponded to his age; he was therefore capable of understanding and relating the relevant events accurately. However, his ability to remember the events had decreased with time. If in 2006 he had been still capable of remembering the events in question accurately, with the passage of time his memory of the events had become unrealistic and distorted. His statements – both in 2009 and at that current moment – could not therefore be relied upon in the criminal proceedings. Moreover, given that each discussion of the relevant events revived his memories of the traumatic experience and prevented him from moving on, his further participation in investigative measures was inadvisable.

76. On 6 April and 2 November 2011 the investigator questioned a psychiatric expert chosen by the applicant's mother. The expert stated that she disagreed in part with the expert opinion of 14 January 2011. In her opinion, the applicant had suffered severe damage (rather than damage of medium severity) to his health.

77. On 25 and 26 October and 23 December 2011 and 28 February 2014 the investigator questioned some of the experts who had participated in the expert examinations mentioned above. They confirmed the findings contained in the respective expert opinions.

*(v) Other medical evidence*

78. On 11 March 2009 the psychologist treating the applicant stated to the investigator that the applicant had been suffering from a neurological disorder since November 2005. His health had improved as a result of the treatment.

79. On 17 July 2009 the applicant's mother submitted to the investigator a copy of a medical certificate showing that the applicant did not have any anomalies in the brain. She argued that the certificate proved that the applicant's neurological disorder was psychological rather than organic in nature.

80. On 11 November 2009 the investigator questioned a child psychiatrist who, after examining the applicant's medical records, stated that there was a causal link between the traumatic experience suffered by the applicant in the nursery school from September until November 2005 and his persistent neurological disorder.

81. On 22 April 2010 a psychiatrist and a psychologist analysed the applicant's medical records at the applicant's mother's request. They found that in the absence of any anomalies in the applicant's brain, his neurological disorder could not be organic in nature. It was highly probable that they had been caused by psychological trauma. Given that the nervous tics had appeared for the first time in November 2005, there was a causal link between the ill-treatment in the nursery school to which the applicant had been subjected from September until November 2005 and his nervous tics. Finally, the experts noted that the applicant was of normal intellectual development and did not suffer from any memory or intellectual disorders. His statements to the investigator had been detailed and consistent. There were therefore no reasons to consider that the applicant could not remember the relevant events accurately and was psychologically incapable of testifying within the framework of the criminal proceedings.

**(b) The course of the investigation**

82. The investigation was suspended from 2 until 16 September, from 23 until 30 September, from 9 until 12 October, from 15 October until 5 November and from 6 until 11 November 2009; from 15 September until 11 October, and from 22 October until 28 November 2010; from 15 December 2010 until 11 January 2011, from 15 January until 28 March, from 28 until 29 July, from 16 June until 4 August, and from 5 until 6 September 2011; and from 30 December 2011 until 9 July 2012. The decisions to suspend the investigation were taken by the investigator on the basis of medical certificates showing that Ms K. was on maternity leave and could not therefore participate in investigative measures. All those decisions were annulled by the investigators' superior as unlawful.

83. On 17 July 2009 the Kirovskiy district police department discontinued the criminal proceedings against Ms K. and Ms. P., finding that their actions in the period from September to November 2005 amounted to battery or other violent acts causing physical pain and cruel treatment of minors, offences under Article 116 § 1 and 156 § 1 of the Criminal Code. The prosecution of those offences was time-barred. There was insufficient evidence of premeditated infliction of damage of medium severity to health, an offence under Article 112 of the Criminal Code. Moreover, according to the experts, the applicant could not remember the relevant events accurately and was psychologically incapable of testifying within the framework of the criminal proceedings.

84. On 27 July 2009 the Kirovskiy district prosecutor's office quashed the decision of 17 July 2009, finding that the investigation was incomplete, and ordered further investigative measures.

85. On 29 August 2009 the applicant's mother complained to the Kirovskiy district prosecutor's office that, despite her having lodged numerous requests, she had still not been given copies of the decisions of 17 and 27 July 2009.

86. On 11 November 2009 the Kirovskiy district police department discontinued the criminal proceedings against Ms K. and Ms. P. for the same reasons as those set out in the decision of 17 July 2009.

87. On 25 June 2010 the Kirovskiy District Court found that the decision of 11 November 2009 had been unlawful because the findings contained in that decision had been contradictory. It held, in particular, that in order to resolve those contradictions it was necessary to perform a new psychiatric examination of the applicant.

88. On 19 July 2010 the Kirovskiy district prosecutor's office quashed the decision of 11 November 2009 and ordered further investigative measures.

89. By a letter of 26 August 2010 the St Petersburg prosecutor's office criticised the Kirovskiy district prosecutor's office for the delays and the ineffectiveness of the investigation. On the same day the Kirovskiy district prosecutor's office gave instructions to the Kirovskiy district police department as regards further investigative measures to be performed.

90. On 5 December 2011 Ms K. asked the investigator to discontinue the proceedings. She was suspected of inflicting damage to health of medium severity, an offence under Article 112 of the Criminal Code. The statutory limitation period for that offence was six years. The proceedings had therefore become time-barred. On the same day the prosecutor refused Ms K.'s request, finding that the previous expert examinations had yielded contradictory results. It was therefore necessary for a new expert examination to be performed in order to establish the severity of the damage sustained to the health of the applicant. The investigation could not therefore be discontinued.

91. On 15 December 2011 Ms P. also asked the investigator to discontinue investigations as time-barred. On the same day the prosecutor refused the request for the same reasons as those for which Ms K.'s similar request had been refused.

92. On 8 February 2012 the Kirovskiy District Court examined Ms K.'s complaint against the decision of 5 December 2011 and dismissed it. It found that it was necessary for an additional expert examination to be performed in order to establish the severity of the damage sustained by the applicant to his health. If experts were to find that the applicant had sustained severe damage to his health, the limitation period would be ten years and the proceedings would not have become time-barred.



93. On 13 July 2012 Ms K. again asked the investigator to discontinue the investigation because the proceedings had become time-barred. On the same day the investigator refused the request for the same reasons as those above.

94. On 7 August 2012 the investigator found that after 16 June 2011 the investigation had been extended in breach of the procedure and time-limits provided by law. The investigative measures carried out between 16 June 2011 and 9 July 2012 had therefore been unlawful and all evidence collected during that period was inadmissible.

95. On 10 August 2012 the Kirovskiy district police department discontinued the criminal proceedings against Ms K. and Ms P., finding that there was insufficient evidence of a criminal offence under Article 112 of the Criminal Code. It noted that only four witnesses had confirmed that ill-treatment had occurred: the applicant, the applicant's mother, Ms Ch. and Ms Pt. (in her statements of 24 July 2012). The experts had found that, because of his young age at the material time, the applicant's description of the events was unreliable and his further participation in investigative measures was inadvisable. There were therefore doubts about the credibility of his statements. The applicant's mother's statements were equally unreliable because she had learned about the events from the applicant. Ms Pt.'s statements of 24 July 2012 contradicted her previous statements and statements by other witnesses. They could not therefore be considered reliable either. The expert opinions establishing a causal link between the alleged ill-treatment and the applicant's neurological disorder could not serve as evidence of ill-treatment because it was not within the experts' remit to establish whether or not ill-treatment had occurred. The expert opinions had been made on the assumption that such ill-treatment had indeed taken place. Ms Ch.'s statements therefore constituted the only evidence of such ill-treatment. The investigator considered that those statements were insufficient to prove that ill-treatment had indeed taken place. The investigator further noted that all evidence collected between 16 June 2011 and 9 July 2012 had been declared inadmissible. Given that that evidence did not contain any proof of ill-treatment, it was not necessary to collect it again.

96. The applicant's parents learned about that decision on 24 August 2012 and received a copy of it on 27 August 2012.

97. On 9 October 2012 the applicant's mother challenged the Kirovskiy district police department's decision of 10 August 2012 to discontinue the criminal proceedings before the Kirovskiy District Court against Ms K. and Ms P. On 23 October 2012 the applicant's mother also challenged that decision before the St Petersburg prosecutor's office.

98. On 23 November 2012 the St Petersburg prosecutor's office found that the decision of 10 August 2012 had been lawful.

99. On 2 August 2013 the Kirovskiy District Court rejected the complaint lodged by the applicant's mother on 9 October 2012. It found that the investigation had been thorough and effective. The breaches of procedure committed during the investigation – such as the failure to promptly notify the applicant's mother about certain procedural decisions taken by the investigator or the investigator's failure to comply with the prosecutor's instructions – were insufficiently serious as to warrant the quashing of the decision of 10 August 2012.

100. On 24 December 2013 the St Petersburg City Court quashed the decision of 2 August 2013 on appeal and found that the decision of 10 August 2012 to discontinue the investigation had been unlawful. It found that the investigation had been ineffective. In particular, given that all evidence collected between 16 June 2011 and 9 July 2012 had been declared inadmissible, it was necessary to undertake anew the investigative measures carried out during that period and to carry out further investigative measures. The court also noted that although, according to the experts, the statements that the applicant had given after 2006 were unreliable, the statements that he had given before then could be taken into account in the assessment of evidence. The City Court also criticised the District Court for the delays in the examination of the complaint lodged by the applicant's mother on 9 October 2012 and the resulting excessive length of the judicial proceedings.

101. On 5 March 2014 the applicant's mother applied to the investigator, asking that Ms P. and Ms K. be charged with the premeditated infliction of severe damage to health. The investigator refused her request, finding that there was no evidence of the premeditated infliction of severe damage to health.

102. On 18 March 2014 the Kirovskiy district police department discontinued the criminal proceedings against Ms P. and Ms K., finding that their actions did not amount to a criminal offence under Article 112 of the Criminal Code.

103. On 20 March 2014 the applicant's mother challenged that decision before the St Petersburg prosecutor's office, submitting that the investigation had been incomplete. On 18 April 2014 the St Petersburg prosecutor's office found that the decision of 18 March 2014 to discontinue the criminal proceedings had been lawful.

104. On 23 May 2014 the Kirovskiy District Court held that the decision of 18 March 2014 had been unlawful, finding that the investigator's assessment of evidence had been selective and that he had disregarded some facts and evidence (such as a bruise on the applicant's face), some witness statements, and expert opinions. It also found that the investigation had been excessively long.

105. On 9 June 2014 the Kirovskiy district police department annulled the decision of 18 March 2014 and resumed the investigation. After two

written requests for a copy of that decision, the applicant eventually received it on 30 June 2014.

106. On 19 July 2014 the Kirovskiy district police department discontinued the criminal proceedings against Ms P. and Ms K. The investigator found that although they had indeed given eye drops to the applicant, thereby causing damage of medium severity to his health, there was no evidence of intent to cause such damage. The infliction of damage to health had not therefore been intentional or premeditated. The police department further added that although the applicant had indeed had a bruise on his face, it was not possible to establish how he had received that bruise. The applicant's testimony was unreliable due to his young age and mental development at the time of his giving it, while the allegations of ill-treatment made by the applicant's mother and by Ms Ch. had been countered by the statements of all other witnesses – namely the staff of the nursery school and the parents of other children – that Ms P. and Ms K. had never mistreated the applicant or other children. The investigator concluded that the evidence collected was contradictory and that it was not possible to resolve that contradiction. Any further investigative measures would be useless. Given that suspects should benefit from any doubt, it could not be found that Ms P.'s and Ms K.'s actions amounted to a criminal offence under Article 112 of the Criminal Code.

107. On 29 August 2014 the St Petersburg prosecutor's office annulled the decision of 19 July 2014, finding that the investigation had been ineffective and incomplete. In particular, the criminal proceedings had been unlawfully discontinued even though it had been established that Ms P. and Ms K. had mistreated the applicant and had caused damage to his health.

108. On 12 September 2014 the Kirovskiy district police department discontinued the criminal proceedings against Ms P. and Ms K. for the same reasons as those given in the decision of 19 July 2014.

109. On 15 October 2014 the St Petersburg prosecutor's office annulled the decision of 12 September 2014, finding that the investigator had not complied with the prosecutor's decision of 29 August 2014.

110. On 10 November 2014 the Kirovskiy district police department discontinued the criminal proceedings against Ms P. and Ms K., repeating verbatim the decision of 12 September 2014.

111. On 4 December 2014 the Kirovskiy district police department again refused to open criminal proceedings against Ms P. and Ms K. under Article 156 of the Criminal Code (cruel treatment of minors), finding that the prosecution had become time-barred.

**(c) The applicant's complaints about the ineffectiveness of the investigation**

112. The applicant's mother several times asked the investigator to declare the expert opinions of 10 April 2009 and 9 October 2009 inadmissible as evidence. She argued in particular that the panel of experts

of 10 April 2009 had not included an expert in child psychiatry. The investigator refused the requests made by the applicant's mother, finding that the expert opinions of 10 April 2009 and 9 October 2009 had been obtained in accordance with the procedure prescribed by law and had contained clear findings.

113. The applicant's mother lodged numerous complaints about the alleged ineffectiveness of the investigation with the Kirovskiy district police department, the Kirovskiy district prosecutor's office, the St Petersburg prosecutor's office, the Prosecutor General and the Kirovskiy and Krasnogvardeyskiy District Courts of St Petersburg. She complained that the investigation had been flawed by delays, in particular on account of the numerous unlawful suspensions of the investigation, and that she had often been denied access to the case file. She also complained that, although sufficient evidence of ill-treatment had been gathered, Ms P. and Ms K. had still not been charged with a criminal offence. She further argued that the applicant had sustained severe damage to his health (rather than damage of medium severity) as a result of the ill-treatment he had suffered. She also challenged the investigator's refusals to declare the expert opinions of 10 April 2009 and 9 October 2009 inadmissible as evidence.

114. By letters of 16 and 18 November 2011 the St Petersburg prosecutor's office informed the applicant's mother that the investigator and the officials of the Kirovskiy district prosecutor's office responsible for supervising the case had been disciplined for the delays during the investigation and its ineffectiveness.

115. On 2 December 2011 the Kirovskiy district prosecutor's office noted that the investigation had been conducted with serious delays and shortcomings. In particular, the investigator had not performed all requisite investigative measures, such as an additional medical examination of the applicant.

116. On 12 January 2012 the Kirovskiy District Court found that it had no authority to assess whether the evidence was sufficient for charges to be brought. It was for the investigator to assess the collected evidence and to decide whether charges were to be brought.

117. On 3 February 2012 the Kirovskiy district prosecutor's office found that the investigator's refusals (see paragraph 112 above) to declare the expert opinions of 10 April and 9 October 2009 inadmissible as evidence had been lawful.

118. On 7 February 2012 the Kirovskiy District Court found that the rights of the applicant's mother had indeed been breached by the failure to provide her with copies of the numerous decisions to suspend the investigation. However, given that all of those decisions had been annulled, it was not necessary to examine the applicant's complaint relating to those decisions. Moreover, given that the decisions had been annulled by the investigator's superiors, the court concluded that those superiors had

exercised effective supervision over the course of the investigation. On 18 April 2012 the St Petersburg City Court quashed that decision on appeal for procedural defects.

119. On 13 August 2012 the Kirovskiy District Court found that the investigator had still not organised an additional expert examination of the applicant, even though he had been instructed to do so in August 2010 and again in August 2011. It also found that the applicant's mother had been unlawfully denied access to some documents in the case file. On 16 October 2012 the St Petersburg City Court quashed that decision on appeal for procedural defects.

120. On 24 August 2012 the Krasnogvardeyskiy District Court of St Petersburg found that the complaints lodged by the applicant's mother about the delays and the ineffectiveness of the investigation were well-founded. However, given that on 10 August 2012 the investigation had been discontinued for lack of evidence of a criminal offence, they had to be dismissed. On 15 November 2012 the St Petersburg City Court quashed that decision on appeal. It found that some of the complaints lodged by the applicant's mother had not been examined, that the decision had been based on certain documents that had not been examined during the hearing and that the court, even though it had found some of the complaints to be well-founded, had nevertheless dismissed them.

121. On 14 February 2013 the Kirovskiy District Court found that the investigator's decisions issued between 15 September 2010 and 6 October 2011 to suspend the investigation had been unlawful. The rights of the applicant's mother had, moreover, been breached by the investigator's failure to inform her about the suspensions of the investigation. Her complaint that the investigator had intentionally delayed the investigation with the aim of rendering the proceedings time-barred was, however, unsubstantiated. The investigation had been discontinued for lack of evidence of a criminal offence rather than on the ground that the proceedings had become time-barred.

122. On 24 April 2013 the Kirovskiy District Court found that the applicant's mother had been unlawfully denied access to certain documents in the case file. It however rejected the remainder of her complaints relating to the alleged ineffectiveness of the investigation. In particular, the court established that the investigator had not complied with the prosecutor's instructions as to additional investigative measures to be performed. However, the prosecutor had later confirmed the investigator's decision to discontinue the investigation, thereby agreeing that it was no longer necessary to comply with his previous instructions and to undertake the investigative measures in question. The investigator's actions had therefore been lawful. On 6 August 2013 the St Petersburg City Court upheld that decision on appeal, finding it lawful, well-reasoned and justified.

123. On 17 March 2014 the Kirovskiy district police department replied to the applicant's mother that all necessary investigative measures had been performed and that all relevant facts had been established. It was therefore not necessary to carry out any further investigative measures. On the same day the Kirovskiy district prosecutor's office also replied to the applicant's mother that the investigation had been thorough and complete and that there was no need for any further investigative measures.

#### **D. The applicant's medical documents**

124. The applicant is regularly examined by a neurologist. After the initial diagnosis of hyperkinesia on 15 November 2005 (see paragraph 12 above), he was examined by a neurologist on 2 February, 24 April and 10 October 2006 and 26 January, 25 April, and 18 and 22 May 2007. He complained of nervous tics, sleeping difficulties, nervousness and fears. The neurologist noted that the symptoms had been caused by a prolonged, psychologically traumatic experience at the nursery school in 2005. The applicant was prescribed treatment.

125. From September 2007 until June 2008 the applicant followed a course of treatment for nervous tics.

126. On 22 October 2008 the applicant's medical documents were examined by a child psychiatrist, who found that the applicant continued to suffer from a neurological disorder of medium severity.

127. From March until June 2009 the applicant underwent a new course of treatment for nervous tics. He underwent a further course of treatment between January and April 2010.

128. Further medical certificates stated that in 2014 the applicant was still suffering from a neurological disorder and was following treatment for it.

## **II. RELEVANT DOMESTIC LAW**

### **A. The Criminal Code**

129. The statute of limitation is set as follows:

- two years for minor offences;
- six years for offences of medium severity;
- ten years for serious offences;
- fifteen years for especially serious offences.

The statute of limitation stops running when the conviction enters into force (Article 78).

130. Premeditated infliction of severe damage to health, that is to say damage resulting, *inter alia*, in a psychiatric disorder, is punishable by up to

eight years' imprisonment (Article 111 § 1). The same degree of damage inflicted on a minor is punishable by up to ten years' imprisonment (Article 111 § 2).

131. Premeditated infliction of damage to health of medium severity resulting in a lengthy illness is punishable by up to three years' imprisonment (Article 112 § 1). The same degree of damage to health inflicted on a minor is punishable by up to five years' imprisonment (Article 112 § 2).

132. Battery or other violent acts causing physical pain are punishable by up to three months' imprisonment (Article 116).

133. Cruel treatment of minors by parents, teachers or other staff members of educational institutions is punishable by up to three years' imprisonment (Article 156).

### **B. The Minors Act**

134. The Federal Law on Basic Measures for Preventing Child Neglect and Delinquency of Minors, no. 120-FZ of 24 June 1999 ("the Minors Act") provides that state authorities dealing with minors, such as local departments of education, have an obligation to safeguard the rights and legitimate interests of minors and to protect minors from discrimination, physical or psychological violence, insulting behaviour, rough treatment, and sexual or other forms of exploitation. They must immediately inform the appropriate prosecutor's office about any breaches of the rights or freedoms of minors. They must also immediately inform the police about any cruel treatment of minors or other criminal acts against minors committed by parents or other persons (section 9 § 2 (1) and (5)).

### **C. Legal status of nursery schools**

135. The regulations for pre-school educational institutions, approved by Governmental Decree no. 677 of 1 July 1995 (in force at the material time) governed the functioning of public and municipal pre-school educational institutions and served as a model for private pre-school educational institutions (paragraph 1). It provided that a pre-school educational institution ("a nursery school" or "a pre-school") was an educational institution offering upbringing, learning, supervision, care and health improvement to children between the ages of two months and seven years<sup>1</sup> and following various pre-school educational curricula (paragraph 3).

136. Nursery schools were responsible for the life and health of the children entrusted to them. They were also responsible for providing quality

---

1. At seven years old children start compulsory education at primary school.

education to children in accordance with the curricula and taking into account their age, psychological development, abilities, interests and needs (paragraph 9).

137. Nursery schools might be founded either by federal or regional executive authorities (public nursery schools) or by municipal authorities (municipal nursery schools) (paragraph 12).

138. A nursery school was registered as a separate legal entity (paragraph 11). It was to have a statute, a bank account and a seal (paragraph 14).

139. A nursery school started operating after receiving a State licence to provide education (paragraph 15) and obtaining State certification that it had met the formal official requirements of the curriculum (paragraph 16). It was assessed by the authorities every five years for compliance with State-established standards in respect of the content, level and quality of pre-school education (paragraph 15.1).

140. A nursery school might choose a curriculum from a set of officially approved curricula or develop its own curriculum, which had to meet the educational standards established by the State (paragraph 19).

141. Nursery schools were to employ medical staff, who were responsible – together with the nursery school's management – for their pupils' health and physical development (paragraph 23).

142. The relationship between a nursery school and the parents of its pupils were governed by a contract, which was to specify the rights and obligations of each party in respect of the process of upbringing, education, supervision and care (paragraph 30).

143. Relationships between the staff of nursery schools and children should be based on the principles of cooperation, respect and freedom of development, taking into account the personal characteristics of each child (paragraph 32).

144. The director of a public nursery school was appointed in accordance with its statute and Russian law. The director of a municipal nursery school was appointed by the municipal authorities (paragraph 40). The director employed and dismissed the teachers, who had to have all the necessary professional qualifications. The director managed the nursery school belongings (*имущество*) within the limits set by the founders. He or she was responsible to the founders for the operation and management of the nursery school (paragraphs 34 and 41).

145. The founders provided the nursery school with land for permanent use, as well as with buildings and all necessary equipment. The founders retained ownership of the property but the nursery school might exercise the right of operational management (*право оперативного управления*) over it (paragraph 42).

146. Nursery schools were financed by their founders from the State or municipal budget and from other sources. The level of such financing was



calculated on the basis of State-established rates per one pupil. Nursery schools might be also financed in part by payments from parents, donations from legal entities or private persons, and by other means (paragraphs 45-46).

147. A nursery school was liable for its obligations within the limits of its belongings and monetary funds (see paragraph 44). The Civil Code, as in force at the material time, provided that a State institution (such as a nursery school) was liable for its obligations within the limits of its monetary funds. If an institution's own monetary funds were insufficient, its founders – who owned its belongings (*умыщество*) – bore subsidiary liability for such obligations (Article 120 § 2).

#### **D. Public officials**

148. The Plenary of the Supreme Court of the Russian Federation held, in its Ruling no. 19 of 16 October 2009, that for the purposes of Article 285 of the Criminal Code (abuse of power by a public official) and Article 286 of the Criminal Code (actions by a public official which clearly exceed his or her authority) a public official is an individual who – permanently, temporarily or by proxy – is vested with official powers or performs “managerial and regulatory functions” or “administrative and economic functions” in governmental or municipal bodies, public or municipal institutions, public companies or the armed forces of the Russian Federation or other military structures (paragraph 2).

149. Individuals vested with official powers are individuals who have rights and obligations relating to the functioning of legislative, executive or judicial authorities, as well as employees of law-enforcement and supervisory bodies who have coercive or regulatory power in respect of third parties having no subordinate relationship to them or who are empowered to take mandatory decisions in respect of individuals, legal entities or institutions, irrespective of their status (paragraph 3).

150. “Managerial and regulatory functions” are functions of a public official relating to the management of the staff of a government body or a public or municipal institution (such as, for example, a nursery school) or a branch thereof, such as employing staff, determining their duties and working procedures, and applying disciplinary measures. Such functions also include the taking of decisions having legal consequences, such as the granting of sick leave by a doctor or the administering of State examinations by a teacher (paragraph 4).

151. “Administrative and economic functions” are functions of a State official relating to the use and disposal of property, funds and other assets of companies, institutions or military units and the taking of other economic decisions, such as decisions on the payment of salary or bonuses to staff or

decisions relating to accounting and the oversight of financial operations (paragraph 5).

### III. RELEVANT COUNCIL OF EUROPE MATERIAL

152. PACE Recommendation 1934 (2010) on child abuse in institutions ensuring full protection of the victims provides as follows:

“4. With regard to the cases of child abuse which have recently been uncovered and continue to be uncovered, and the existing standards referring to sexual, physical and emotional abuse of children, the Assembly recommends that the Committee of Ministers ask member states to:

4.1. ensure legislative protection, notably by:

4.1.1. adopting legislation to explicitly prohibit all forms of violence against children: physical and mental violence, injury or abuse (including sexual abuse), neglect or negligent treatment, maltreatment or exploitation, including in childcare institutions, public and private educational institutions, correctional facilities and leisure associations, and thus criminalising any intentional abuse of a child made by a person in a recognised position of trust, authority or influence over the child;

4.1.2. providing for *ex officio* prosecution in cases of child abuse in any context; ...

4.1.4. ensuring that prescription periods for child abuse offences under civil and criminal law are coherent and appropriate in view of the gravity of the offences and, in any case, do not begin before the victim reaches the age of majority; ...

4.1.8. defining as illegal and excluding certain practices with regard to the punishment of minors in institutions which are contrary to their dignity and rights ...”

153. PACE Resolution 1803 (2011) on Education against violence at school provides as follows:

“17.1.1. penal and/or disciplinary standards should clearly prohibit all acts committed at school which can be qualified as “violent”, including physical or degrading punishment of pupils, violence against pupils by school staff, violence by third persons against pupils on school premises and violent behaviour by pupils against other pupils, school staff or school property ...

17.1.3. all acts of violence should be investigated and recorded and, where an act is of a sufficiently serious nature, it should be reported to the competent law-enforcement or disciplinary authorities; in this context, appropriate complaints mechanisms should be set up for pupils in education settings”.

154. Recommendation CM/Rec (2009)10 of the Council of Europe Committee of Ministers on integrated national strategies for the protection of children from violence reads as follows:

“The state has an explicit obligation to secure children’s right to protection from all forms of violence, however mild. Appropriate legislative, administrative, social and educational measures should be taken to prohibit all violence against children at all times and in all settings and to render protection to all children within the state’s jurisdiction. Legal defences and authorisations for any form of violence, including for the purposes of correction, discipline or punishment, within or outside families, should be repealed. Prohibition should imperatively cover:

... g. all forms of violence in school;

h. all corporal punishment and all other cruel, inhuman or degrading treatment or punishment of children, both physical and psychological ...”.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

155. The applicant complained that he had been ill-treated by teachers of a public nursery school and that the investigation into his allegations of ill-treatment had been ineffective. He relied on Article 3 of the Convention, which reads as follows:

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

#### A. Admissibility

156. In their initial observations the Government pleaded non-exhaustion of domestic remedies. They submitted that the criminal proceedings against the teachers of the nursery school who had allegedly ill-treated the applicant were still pending and that the applicant’s complaints were premature.

157. The Court observes that after this argument was raised the criminal proceedings were discontinued (see paragraphs 110 and 111 above). Accordingly, the Court does not find it necessary to examine the Government’s objection in respect of non-exhaustion of domestic remedies as it has lost its rationale (see, for similar reasoning, *Samoylov v. Russia*, no. 64398/01, § 39, 2 October 2008, and *Kopylov v. Russia*, no. 3933/04, § 119, 29 July 2010).

158. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

#### B. Merits

##### *1. Submissions by the parties*

159. In their initial observations the Government submitted that it was impossible to answer the question of whether the applicant had been ill-treated by the teachers because the criminal proceedings were still pending.

160. In their further observations they referred to the cases of *Costello-Roberts v. the United Kingdom* (25 March 1993, Series A no. 247-C); *Stork v. Germany* (no. 38033/02, § 103, 13 July 2006); *Radio France and Others v. France* ((dec.), no. 53984/00, § 26, ECHR 2003-X (extracts)); and *Islamic Republic of Iran Shipping Lines v. Turkey* (no. 40998/98, § 79, ECHR 2007-V) and argued that the Russian State did not bear responsibility for the actions of teachers of nursery schools. Nursery schools were not “governmental organisations” because they did not exercise governmental powers. They did no more than look after children and provide basic pre-school education. Moreover, the teachers in the present case had clearly abused their responsibilities. The applicant had concluded a friendly settlement agreement with them and had apparently been satisfied with its terms.

161. The Government further submitted that the domestic authorities had conducted a thorough investigation into the applicant’s allegations of ill-treatment. They had commissioned several expert examinations and had questioned the applicant, the suspects and more than thirty witnesses, including the staff of the nursery school and the parents of children who had attended the school with the applicant. The Government conceded that there had been unjustified delays in the investigation that could be attributed to the authorities. They argued in this connection that the St Petersburg and Kirovskiy District prosecutors had criticised the investigator for the delays and had ordered rectifying measures. The applicant had been granted the procedural status of victim and had had full access to the criminal case file. All his complaints had been examined and many of them allowed. In particular, following his complaints the refusals to open criminal proceedings had been annulled and further investigative measures had been ordered.

162. The Government also submitted copies of nine judgments dating from 2013 and 2014 convicting teachers at public nursery and secondary schools for cruel treatment of minors and sentencing them to fines or correctional labour.

163. According to the applicant, it had been established on the basis of evidence collected at the domestic level that the applicant’s nursery school teachers had locked him in the dark in the toilets, where he had previously seen rats, and told him that he would be eaten by rats; had made him stand in the lobby in his underwear and with his arms up for prolonged periods of time; and had once taped his mouth and hands with sellotape. They had, moreover, used force against him when giving him eye drops. The eye drops had been given without the consent of his parents and without any medical necessity therefor having first been established by a medical professional (the applicant referred to *Nevmerzhitsky v. Ukraine*, no. 54825/00, ECHR 2005-II (extracts)). Indeed, neither the necessity of the treatment nor whether or not it would harm the applicant (given his state of health and

medical history) had been assessed by a doctor or even a nurse. Given that the applicant had had a known allergy to antibiotics, his health had been put at unnecessary risk.

164. The applicant submitted that his medical records showed that before November 2005 he had not suffered from any neurological disorder. In particular, even though he had been regularly examined by doctors, including the medical staff of the nursery school, his medical records dating from before November 2005 had not contained mention of nervous tics or any other neurological symptoms. The causal link between the ill-treatment and his current neurological disorder had been firmly established by medical experts. It followed that as a result of the treatment at the hands of the teachers of the nursery school to which he had been subjected from September until November 2005 the applicant had sustained serious damage to his health, from which he continued to suffer. Given his young age and vulnerability, and the long-lasting effects of the ill-treatment, that amounted to torture.

165. The applicant further argued that the Russian State bore responsibility for the ill-treatment because it had been committed by teachers of a public nursery school. Relying on the regulations for pre-school educational institutions (summarised in paragraphs 135-147 above), he submitted that all decisions concerning the opening, operation and closing of public nursery schools were taken by the State authorities. In particular, the State authorities opened nursery schools, appointed their directors and certified them as meeting the formal official requirements of curriculum. Nursery schools were regularly inspected for compliance with the law and were financed from the State budget. Places in nursery schools were allocated by the local education departments, which decided which nursery school each child would attend.

166. The applicant also submitted that the State had not complied with its positive obligation to protect his health and well-being (he referred to *Grzelak v. Poland*, no. 7710/02, 15 June 2010, and *Ilbeyi Kemaloğlu and Meriye Kemaloğlu v. Turkey*, no. 19986/06, 10 April 2012). Firstly, the domestic law did not provide for effective measures of deterrence against the ill-treatment of children (see *O’Keeffe v. Ireland* [GC], no. 35810/09, ECHR 2014 (extracts)). The applicant argued that the examples of case-law submitted by the Government showed that the offence of cruel treatment of minors was punished very leniently in Russia. He considered the sentences imposed in those cases to have been disproportionate to the suffering and damage caused to the children concerned. Secondly, even after the authorities had learned about the applicant’s ill-treatment by the teachers, they had not taken any measures to protect the other pupils at the nursery school from similar treatment. Nor had they informed the appropriate prosecutor’s office about the allegations of ill-treatment, even though they had had an obligation under the Minors Act to do so.

167. Lastly, the applicant complained that the investigation into his allegations of ill-treatment had been ineffective. In particular, the authorities had opened criminal proceedings three years after receiving a formal complaint about ill-treatment from the applicant's mother. As a result, the necessary investigative measures had been undertaken only after a very substantial delay, which had undermined their effectiveness. The investigation had lasted for almost ten years. The authorities had issued numerous decisions to discontinue the criminal proceedings; all of those decisions had been annulled as unlawful and three of them had been identically worded. Although the investigator's superiors had ordered additional investigative measures, those measures had never been undertaken.

## 2. *The Court's assessment*

### (a) **As regards whether the applicant was ill-treated**

168. As the Court has stated on many occasions, ill-treatment must attain a certain minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum is relative: it depends 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 *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV). Treatment has been held by the Court to be "inhuman" because, *inter alia*, it had been premeditated, had been applied for hours at a stretch and had caused either actual bodily injury or intense physical and mental suffering, and also "degrading" because it had been such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. The question of whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 of the Convention (see *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX).

169. A measure which is of therapeutic necessity from the point of view of established principles of medicine cannot in principle be regarded as inhuman and degrading. The Convention organs must nevertheless satisfy themselves that the medical necessity has been convincingly shown to exist. Furthermore, the Court must ascertain that the procedural guarantees are complied with and that the manner in which the treatment is administered does not trespass the threshold of a minimum level of severity envisaged by

the Court's case law under Article 3 of the Convention (see *Nevmerzhitsky*, cited above, § 94, with further references).

170. Further, allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

171. Turning now to the present case, the Court observes that the applicant's description of the treatment to which he had allegedly been subjected at the hands of the staff of the nursery school is detailed and consistent. It is supported in part by the statements by the assistant teacher and by some of the parents of other pupils who confirmed the incident of 7 November 2005 and described some of the punishments used by the teachers against the applicant and some other pupils (see paragraphs 60 and 65 above). A panel of experts found on 14 January 2011 that the applicant had been subjected to a prolonged, psychologically traumatic experience at the nursery school between September and November 2005 that had resulted in a persistent neurological disorder (see paragraph 75 above), thereby confirming earlier findings to the same effect made by specialist doctors (see paragraphs 80 and 81 above). The domestic authorities found it established, on the basis of that evidence, that the teachers had subjected the applicant to battery and cruel treatment of minors but discontinued the criminal proceedings against them as time-barred (see paragraphs 83 and 111 above). The authorities also found it established that the teachers had caused damage of medium severity to the applicant's health but decided against prosecuting them because the investigation had failed to prove an intent to cause damage to health, such intent being an essential element of the offence of premeditated infliction of damage to health of medium severity (see paragraphs 106, 108 and 110 above). The Court finds the above elements sufficient to establish to the standard of proof required in Convention proceedings that the staff of the nursery school subjected the applicant to the treatment complained of.

172. The Court will next examine whether the treatment complained of attained the minimum level of severity required to fall within the scope of Article 3 of the Convention. The applicant claimed that on several occasions he had been locked in the dark in the toilets and told that he would be eaten by rats, had been forced to stand in the lobby in his underwear and with his arms up for prolonged periods of time and on one occasion had had his mouth and hands taped with sellotape. He had been told that if he complained to his parents he would be subjected to further punishment, which must have exacerbated his feelings of fear and vulnerability. The teachers had moreover used physical force (which had resulted in a bruise

on his face) to administer eye drops to the applicant without his parents' consent and without any medical prescription having first been obtained or indeed any medical necessity having first been established by a medical professional. The Court has regard to the applicant's extremely young age at the time (four years). It also takes note of the fact that the applicant was subjected to such treatment for at least several weeks and that many years afterwards he continues to suffer from its consequences, in particular in the form of a post-traumatic neurological disorder (see paragraphs 124-128 above). Moreover, the above acts were perpetrated by teachers in a position of authority and control over the applicant and some of them were aimed at educating him by humiliating and debasing him. The Court considers that the cumulative effect of all the above-described acts of abuse rendered the treatment sufficiently serious as to be considered inhuman and degrading within the meaning of Article 3 of the Convention.

**(b) As regards whether the respondent State bore responsibility for the ill-treatment**

173. To decide whether the respondent State bore responsibility for the applicant's ill-treatment by the teachers at the public nursery school the Court must determine whether the teachers acted as private persons or as State agents and, in particular, whether the impugned acts were sufficiently connected to the performance of their professional duties.

174. A Contracting State will be responsible under the Convention for violations of human rights caused by acts of its agents carried out in the performance of their duties. The Court has held that where the behaviour of a State agent is unlawful, the question of whether the impugned acts can be imputed to the State requires an assessment of the totality of the circumstances and consideration of the nature and circumstances of the conduct in question (see *Reilly v. Ireland* (dec.), no. 51083/09, § 53, 23 September 2014, with further references).

175. The Court reiterates that whether a person is an agent of the State for the purposes of the Convention is defined on the basis of a multitude of factors, none of which is determinative on its own. The key criteria used to determine whether the State is responsible for the acts of a person, whether formally a public official or not, are as follows: manner of appointment, supervision and accountability, objectives, powers and functions of the person in question (see *Kotov v. Russia* [GC], no. 54522/00, §§ 92 et seq., 3 April 2012).

176. As far as the State's responsibility for the acts of school teachers is concerned, that issue was first examined in the cases of *Campbell v. the United Kingdom* and *Cosans on behalf of Cosans v. the United Kingdom*. In that case the European Commission of Human Rights found that the State bore responsibility for the administration of corporal punishment in State schools in Scotland. It held that where the State provided for and organised compulsory education in State schools, the State was accountable under the



Convention for the acts of the school authorities, including teachers, and, in particular, for the administration of corporal punishment where it formed part of State-approved educational policy (see *Campbell v. the United Kingdom*, no. 7511/76, Commission (Plenary) decision of 15 December 1977, and *Cosans on behalf of Cosans v. the United Kingdom*, no. 7743/76, Commission (Plenary) decision of 15 December 1977).

177. In another case the Court found that corporal punishment administered by the headmaster of an independent school also engaged State responsibility because a State could not absolve itself from its obligations to pupils under Articles 3 and 8 of the Convention by delegating its duties to private bodies or individuals (see *Costello-Roberts*, cited above, §§ 25-28).

178. In a more recent case the Court preferred to examine sexual abuse of a pupil by her teacher in a non-State school from the standpoint of the State's positive obligation to protect children against abuse by private individuals, by providing an effective deterrence mechanism and by taking individual protective measures if the State knew or ought to have known about the risk of abuse (see *O'Keefe*, cited above, §§ 144-52).

179. In cases concerning negligent actions by school staff the Court also made its assessment as to the compliance of the State concerned with its positive obligations. In particular, it found that the State had a positive obligation under Article 2 of the Convention to safeguard the right to life and to protect the health and well-being of pupils, who were especially vulnerable and were under the exclusive control of the authorities (see *Molie v. Romania* (dec.), no. 13754/02, §§ 29 and 39-41, 1 September 2009, which concerned the death of a fifteen-year-old teenager following an accident on his school's sports ground, and *Ilbeyi Kemaloğlu and Meriye Kemaloğlu*, cited above, § 35, which concerned the negligent failure on the part of a school headmaster to inform the shuttlebus service of the early dismissal of classes due to bad weather, which resulted in a seven-year-old boy freezing to death as he was trying to return home alone).

180. Turning now to the circumstances of the present case, the Court notes that the applicant was ill-treated by teachers of a public nursery school on school grounds and during school hours. The Court observes at the outset that nursery schools in Russia are incorporated as separate legal entities in the form of public or municipal institutions. Such institutions have very strong institutional and economic links with the State or the municipality respectively (compare *Saliyev v. Russia*, no. 35016/03, §§ 64-68, 21 October 2010). In particular, their real estate and equipment belong to the State or the municipality, they are bound by legal constraints attached to the use of their assets and property, and they receive State or municipal funding (see paragraphs 145-146 above). It is also significant that by virtue of the law the State or the municipality respectively bears subsidiary liability for any debts and obligations of such institutions (see paragraph 147 above). The Court notes in this connection that it has already

found on a number of occasions that the debts of Russian public and municipal institutions are to be regarded as State debts (see, for example, *Yavorivskaya v. Russia*, no. 34687/02, § 25, 21 July 2005; *Gerasimova v. Russia* (dec.) no. 24669/02, 16 September 2004; and the relevant judgment of *Gerasimova v. Russia*, no. 24669/02, § 17, 13 October 2005; and *Pogulyayev v. Russia*, no. 34150/04, § 19, 3 April 2008 – all three cases concerned the debts of public or municipal institutions: respectively a municipal hospital, a municipal social security service and a public institution of higher education).

181. Further, nursery schools are undoubtedly set up to provide the basic public service of general interest of caring for and educating young children. Although nursery schools enjoy a certain freedom in determining their educational programmes, they must apply educational standards established by the State and have a set of official curricula to choose from. They are licensed, certified as meeting formal official requirements of curriculum, and are regularly assessed by the authorities (see paragraph 139-140 above). The Court also notes that the director of a nursery school is appointed by State or municipal authorities and is responsible to them for the operation and management of the nursery school (see paragraph 144 above). Most importantly within the context of the present case, the director is responsible for the health and well-being of the nursery school's pupils (see paragraphs 136 and 141 above). The director also employs the teachers and has disciplinary authority over them.

182. To sum up, a public or municipal nursery school provides a public service and has very strong institutional and economic links with the State, and its educational and economic independence is considerably limited by State regulation and regular State inspection. Under Russian law a nursery school's liability, and through it the State's liability, is engaged by the acts or omissions of teachers committed while performing their functions. The Court considers that the above factors are sufficient to find that, while performing their functions, teachers of public or municipal nursery schools may be regarded as State agents.

183. In the present case the applicant was ill-treated while in the exclusive custody of a public nursery school which, under State supervision, fulfilled the public service of general interest of caring for and educating young children in the spirit of respect and protecting their health and well-being. The applicant was ill-treated during school hours by teachers while fulfilling their duty of care for him. The impugned acts were connected to their role as teachers. Consequently, the State bore direct responsibility for their wrongful acts against the applicant.

184. Accordingly, the Court considers that the State is responsible under Article 3 of the Convention on account of the inhuman and degrading treatment of the applicant by the nursery school teachers and that there has been a violation of the substantive aspect of that provision.

**(c) As regards whether the respondent State complied with its procedural obligation**

185. The Court reiterates that irrespective of whether treatment contrary to Article 3 has been inflicted through the involvement of State agents or by private individuals, the requirements as to an official investigation are similar. For the investigation to be regarded as “effective”, it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. Any deficiency in the investigation which seriously undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard, and a requirement of promptness and reasonable expedition is implicit in this context. In cases under Articles 2 and 3 of the Convention where the effectiveness of the official investigation has been at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time. Consideration has been given to the opening of investigations, delays in taking statements, the length of time taken for the initial investigation and the unjustified protraction of the criminal proceedings resulting in the expiry of the statute of limitations (see *C.A.S. and C.S. v. Romania*, no. 26692/05, § 70, 20 March 2012, and *S.M. v. Russia*, no. 75863/11, § 68, 22 October 2015). The victim should be able to participate effectively in the investigation in one form or another, in particular, by having access to the materials of the investigation (see *Buntov v. Russia*, no. 27026/10, § 125, 5 June 2012, with further references).

186. After examining the particulars of the Russian prosecution system - which comprises a “pre-investigation inquiry” followed by an investigation proper – the Court found in *Lyapin v. Russia* that in cases of credible allegations of treatment proscribed under Article 3 of the Convention, it was incumbent on the authorities to open a criminal case and conduct an investigation, a “pre-investigation inquiry” alone not being capable of meeting the requirements of effective investigation under Article 3 of the Convention. It held that the mere fact of the investigating authority’s refusal to open a criminal investigation into credible allegations of ill-treatment was indicative of the State’s failure to comply with its obligation under Article 3 to carry out an effective investigation (see *Lyapin v. Russia*, no. 46956/09, §§ 133-40, 24 July 2014). In the subsequent case of *Razzakov v. Russia* the Court further held that a delay in commencing a criminal investigation could not but have a significant adverse impact on its effectiveness, considerably undermining the investigating authority’s ability to secure the evidence concerning the alleged ill-treatment (see *Razzakov v. Russia*, no. 57519/09, § 61, 5 February 2015; see also *Bataliny v. Russia*, no. 10060/07, § 103, 23 July

2015; *Manzhos v. Russia*, no. 64752/09, § 40, 24 May 2016; and *Zakharin and Others v. Russia*, no. 22458/04, § 68, 12 November 2015).

187. Turning to the present case, the Court notes that the applicant's parents promptly complained about his ill-treatment by the staff of the nursery school, first to the local department of education on 16 November 2005 (see paragraph 13 above), and then to the police on 23 November 2005 (see paragraph 18 above). The local department of education, however, failed in its statutory obligation to inform the appropriate prosecutor's office of the applicant's allegations of ill-treatment, that failure being acknowledged by the district prosecutor (see paragraphs 25 and 134 above). The police did not take any action in respect of the applicant's father's complaint either. It was not until 27 October 2006, almost a year later and after a new complaint had been lodged by the applicant's parents, that the appropriate prosecutor's office opened a pre-investigation inquiry (see paragraph 25 above).

188. Over the following two years and three months the prosecutor's office and the police department issued eight decisions refusing to open a criminal investigation, all of which were cancelled on the ground that the pre-investigation inquiry had been incomplete. It is significant that very few investigative measures were carried out within the framework of the pre-investigation inquiry during that period and that there were lengthy periods of inactivity between them: in particular, the investigator questioned the applicant and several witnesses in the first week of November 2006, a witness in January 2007, several witnesses in February 2008 and a witness in August 2008. Ultimately, the police department decided to open a criminal investigation on 19 January 2009, that is more than three years after the first complaint about ill-treatment. That delay could not but have had a significant adverse impact on the effectiveness of the investigation.

189. The most serious consequence resulting from the three-year delay in opening a criminal investigation was that the prosecution of the teachers became time-barred under domestic law which provides that the statute of limitation stops running when the conviction enters into force (see paragraph 129 above). Indeed, by the time the investigation was opened, prosecution for the offences under Articles 116 and 156 of the Criminal Code (battery or other violent acts causing physical pain and cruel treatment of minors) had already become time-barred. The investigation in respect of those offences was therefore discontinued, even though the domestic authorities found it established that the teachers had subjected the applicant to violent acts causing physical pain and cruel treatment (see paragraphs 45, 83 and 111 above). The Court has already found in a number of cases where the authorities' failure to show diligence resulted in the prosecution becoming time-barred that the effectiveness of the investigation was irreparably damaged and the purpose of effective protection against acts of ill-treatment was frustrated (see, among many other authorities, *Beganović*

*v. Croatia*, no. 46423/06, § 85, 25 June 2009; *Nikiforov v. Russia*, no. 42837/04, § 54, 1 July 2010; *Ablyazov v. Russia*, no. 22867/05, §§ 57 and 59, 30 October 2012; *Yazıcı and Others v. Turkey (no. 2)*, no. 45046/05, § 27, 23 April 2013; and *İzci v. Turkey*, no. 42606/05, § 72, 23 July 2013). The Court cannot but find that in the present case too the expiry of the limitation period irreparably damaged the effectiveness of the investigation.

190. It is true that the authorities, in an effort to find another applicable provision, attempted to prosecute the teachers under Article 112 of the Criminal Code (premeditated infliction of damage to health of medium severity), for which the limitation period was longer. That attempt turned out to be futile because, in contrast to the offence of cruel treatment of minors, an essential element of that offence was the intent to cause damage to health. As the prosecuting authorities were unable to prove such intent, the investigation was ultimately discontinued for lack of evidence (see paragraphs 106, 108 and 110 above). It is also noteworthy that the investigation under Article 112 was remarkably slow, as acknowledged by the Government (see paragraphs 114 and 161 above), and lasted for almost six years, until October 2014, even though prosecution for that offence had also become time-barred by the end of 2011.

191. Another important consequence of the considerable delay in opening a criminal investigation was that the passage of time affected the investigating authority's ability to secure evidence concerning the alleged ill-treatment. In particular, it undermined the reliability of the applicant's testimony, thereby weakening the evidentiary basis for the prosecution. The experts found in April 2009 and then again in January 2011 that, given the applicant's young age at the material time and the time that had elapsed since the alleged ill-treatment, he could no longer remember the events accurately and his statements could not be relied upon in the criminal proceedings. The delay in opening an investigation therefore resulted in the applicant's statements being discarded as unreliable evidence (see, for example, paragraphs 83 and 106 above).

192. Another serious defect of the investigation was the applicant's parents' limited access to the case file and the repeated failure of the investigating authorities to notify them promptly about important procedural decisions or to provide them with copies of relevant documents from the case file (see, for example, paragraphs 85, 96, 118, 119 and 121 above). As a result, the applicant's parents were unable to contest the relevant actions of the investigative authorities in court. The applicant's parents' inability to participate effectively in the investigation also undermined its effectiveness.

193. Lastly, the Court observes that the investigator refused, without any valid reason, the applicant's mother's request to include in the criminal case file relevant material from the civil case file (see paragraph 72 above). It considers that this decision could also have undermined the effectiveness of the investigation.

194. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the applicant's allegations of ill-treatment. Accordingly, there has been a violation of Article 3 of the Convention under its procedural limb.

## II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

195. The applicant complained that the investigation into his allegations of ill-treatment had been ineffective, contrary to Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

196. The Court observes that this complaint concerns the same issues as those examined in paragraphs 185-194 above under the procedural limb of Article 3 of the Convention. Therefore, the complaint should be declared admissible. However, having regard to its conclusion above under Article 3 of the Convention, the Court considers it unnecessary to examine those issues separately under Article 13 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

197. 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

198. The applicant asked the Court to afford him redress for the non-pecuniary damage sustained by him as a result of the ill-treatment, the indifference shown by the authorities towards him and the ineffective investigation. He left the amount to the determination of the Court.

199. The applicant also claimed the following amounts in respect of pecuniary damage:

– the applicant claimed 52,624 Russian roubles (RUB) (about 920 euros (EUR)) for the medical expenses he had incurred and submitted the relevant bills and invoices;

– he also claimed RUB 576,288 (about EUR 10,000) for future medical expenses for treatment and rehabilitation. The cost of the future medical treatment was calculated taking into account the fact that at the moment of the submission of the just satisfaction claims a month of the treatment

prescribed to the applicant cost RUB 5,819 (about EUR 100). The applicant also stated that he had not followed any medical rehabilitation courses before 2014 because he had not been able to afford a rehabilitation course, which cost RUB 54,740 a year (about EUR 950). In 2014 a charitable organisation had covered the costs of his medical rehabilitation. However, he could not expect it to pay for such courses for years to come;

– lastly, the applicant claimed RUB 5,940,000 (about EUR 103,500) for the loss of income suffered by his parents, who had had to resign from their jobs to take care of him.

200. The Government argued that they were not liable to compensate him for damage to his health caused by private persons. In any event, the applicant had already signed a friendly settlement agreement in respect of his claims for pecuniary and non-pecuniary damage (see paragraph 23 above).

#### *1. Pecuniary damage*

201. The Court notes at the outset that the applicant's mother indeed signed a friendly settlement agreement with the nursery school. However, the amount paid pursuant to that agreement only covered the medical expenses incurred between November 2005 and June 2006. The applicant did not receive any compensation for the medical expenses incurred after June 2006 or any other related expenses.

202. The Court further notes that the applicant still suffers from a neurological disorder caused by treatment contrary to Article 3 of the Convention, for which the respondent State was found to be responsible. There is therefore a causal link between the violation found and the applicant's past and future medical expenses. By contrast, given that the applicant did not submit any medical documents confirming that he needed round-the-clock supervision by his parents, necessitating their resignation from their jobs, the Court does not discern any causal link between the violation found and the parents' loss of income.

203. The Court further reiterates that a precise calculation of the sums necessary to make complete reparation (*restitutio in integrum*) in respect of the pecuniary losses suffered by an applicant may be prevented by the inherently uncertain character of the damage flowing from the violation. An award may still be made notwithstanding the large number of imponderables involved in the assessment of future losses, though the greater the lapse of time involved the more uncertain the link between the breach and the damage becomes. The question to be decided in such cases is the level of just satisfaction, in respect of either past or future pecuniary loss, which it is necessary to award to an applicant, and is to be determined by the Court at its discretion, having regard to what is equitable (see *Mikheyev v. Russia*, no. 77617/01, § 158, 26 January 2006, and

*Denis Vasilyev v. Russia*, no. 32704/04, § 166, 17 December 2009, with further references).

204. Bearing in mind the uncertainties of the applicant's situation and the fact that he has suffered, and will continue to suffer, material losses as a result of the need for continuous medical treatment, the Court considers it appropriate, in the present case, to make an award in respect of pecuniary damage based on its own assessment of the situation (see *Mikheyev*, cited above, § 162, and *Denis Vasilyev*, cited above, § 169). Given the long-lasting nature of the applicant's condition and the need for specialised and continuous medical treatment, and taking into account the fact that the applicant's mother has already received compensation for the medical expenses incurred before June 2006, the Court – basing its estimate for future expenses on the amount of the expenses he had incurred in the past (see paragraph 199 above) – awards him EUR 3,000 in respect of pecuniary damage, plus any tax that may be chargeable on this amount.

## 2. *Non-pecuniary damage*

205. The Court reiterates its finding that the Russian authorities were responsible for the applicant's ill-treatment by the teachers of a public nursery school and that the investigation into his allegations of ill-treatment was ineffective. Taking into account the applicant's extremely young age at the material time and the long-lasting consequences of the ill-treatment on his health, the Court awards the applicant EUR 25,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

## **B. Costs and expenses**

206. Submitting the relevant bills, invoices, legal fee agreements and time-sheets, the applicant claimed RUB 212,044 (about EUR 3,695) for legal fees and postal and transport expenses incurred in the domestic proceedings; EUR 12,900 as compensation to the applicant's mother, who had acted as his legal representative before the domestic authorities; and RUB 30,962 (EUR 540) and EUR 25,986 for the costs and expenses incurred before the Court, covering postal expenses and legal fees respectively.

207. The Government submitted that the legal fees incurred before the Court had not been yet paid by the applicant. Moreover, the applicant had not proved that all the expenses had been necessary.

208. 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 have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 8,000, covering costs under all heads.



### C. Default interest

209. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb on account of the applicant's ill-treatment by the teachers of a public nursery school;
3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb on account of the authorities' failure to investigate effectively the applicant's complaints about ill-treatment;
4. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;
5. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
    - (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
    - (ii) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (iii) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable to the applicant, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 March 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips  
Registrar

Helena Jäderblom  
President