



State directly responsible for mistreatment of a four year old by his public nursery school teachers

The case of [V.K. v. Russia](#) (application no. 68059/13) concerned the mistreatment of a four year old boy by teachers at his public nursery school which resulted in him developing a neurological disorder. In today's **Chamber judgment**¹ in the case the European Court of Human Rights held, unanimously, that there had been: **two violations of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights as regards both the young boy's ill-treatment by his teachers and the authorities' failure to effectively investigate his allegations.

V.K., the applicant, claimed in particular that his teachers: had forcibly given him antibiotic eyedrops without a medical prescription or his parents' consent; had locked him in the dark in the toilets, telling him that he would be eaten by rats; had forced him to stand in the nursery lobby in his underwear with his arms up for prolonged periods; and, on one occasion, had sellotaped his mouth shut.

The Court considered that V.K.'s account of the abuse had been detailed, consistent and corroborated by an assistant teacher, certain parents of other pupils at the school and a report by a panel of experts. It further found that the abuse had been sufficiently serious to be considered inhuman and degrading. It bore in mind V.K.'s extremely young age at the time; the type of punishments he had been subjected to over a period of at least several weeks; the fact that those punishments, by teachers who were in a position of authority and control over him, had been aimed at educating him by humiliating and debasing him; and the long-lasting consequences for him in the form of a post-traumatic neurological disorder.

Furthermore, that ill-treatment had occurred while V.K. had been in the exclusive custody of a public nursery school which, under State regulation and supervision, fulfilled the public service of general interest of caring for and educating young children. Consequently, the State bore direct responsibility for the teachers' abuse of V.K..

Lastly, a three-year delay in opening a criminal investigation into V.K.'s allegations of ill-treatment had had a significant adverse impact on the investigation's effectiveness, the most serious consequence of which had been that the prosecution of the teachers had become time-barred.

Principal facts

The applicant, V.K., is a Russian national who was born in 2001 and lives in St Petersburg (Russia).

In the spring of 2005 V.K.'s parents noticed that he had become nervous and unwilling to go to the nursery school he had started attending the previous year.

On 7 November 2005, when picking him up from school, his mother remarked that her son's eyes were twitching and that he had a bruise on his left temple. A teacher, Ms P., told her that one of the school children had an eye infection and, to prevent it spreading, all the children had been given antibiotic eye drops. Soon after V.K. developed eye and mouth tics and was examined by both an

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

ophthalmologist, who found no eye infection, and a neurologist, who diagnosed hyperkinesia (a state of excessive restlessness affecting the ability to control motor movement and which is mainly psychological in nature).

Shortly after this incident, V.K.'s parents complained to various local authorities, including the police. On 16 November 2005 V.K.'s mother notably complained to the local department of education that her son had been administered eye treatment using physical force and without parental consent. As a result, her son had developed nervous tics. She therefore asked that he be transferred to another nursery. The department replied that her complaints had been confirmed in part, that the nursery's director as well as two of the teachers had been disciplined and that V.K. was to be transferred to another nursery.

On learning that he would not have to return to the nursery, V.K. told his parents that he had been mistreated by two teachers, Ms P. and Ms K.. He claimed in particular that: on several occasions he had been locked in the dark in the toilets and told that he would be eaten by rats and had been forced to stand in the nursery lobby in his underwear with his arms up for prolonged periods; and, on one occasion, had had his mouth sellotaped. He had also been told that, if he complained to his parents, he would be punished further.

V.K. repeated the same account of his alleged mistreatment when questioned during the ensuing pre-investigation inquiry and criminal investigation. The authorities also questioned a number of witnesses during these proceedings, including: the suspects and the medical nurse who denied any mistreatment; directors – past and present – of the nursery who stated that they had never had any complaints about Ms P. or Ms. K.; the parents of children who attended the school, most of whom stated that their children had never complained of being mistreated; and, an assistant teacher as well as some parents who confirmed the incident with the eye drops and described some of the punishments used by the teachers against certain school children, including V.K..

The pre-investigation inquiry was opened on 27 October 2006 following a complaint lodged by V.K.'s parents. Over the following two years and three months the prosecuting authorities issued eight decisions refusing to open a criminal investigation. All these decisions were quashed because they were considered to be incomplete.

The police department eventually decided to open a criminal investigation on 19 January 2009. Aside from recording the various witness statements (mentioned above), the investigators also collected other evidence from experts in psychiatry and psychology. In particular, in January 2011 a panel of experts examined V.K. and analysed his medical records. They concluded that V.K. had not suffered from any psychiatric disorder before November 2005 and that he had been subjected to a prolonged, psychologically traumatic experience at the nursery from September to November 2005 that had resulted in a persistent neurological disorder. On the basis of that evidence, the authorities found it established that the teachers had subjected V.K. to violent acts causing physical pain and cruel treatment. Ultimately, however, the investigation was discontinued in July 2009 because the prosecution of the teachers under Articles 116 and 156 of the Criminal Code (battery or other violent acts causing physical pain and cruel treatment of minors) had become time-barred.

In the meantime, the authorities had also attempted to prosecute the teachers under Article 112 of the Criminal Code (premeditated infliction of medium severity damage to health). An essential element of that offence was, however, the intent to cause damage to health and, as the prosecuting authorities had been unable to prove such intent, this investigation was eventually discontinued in November 2014 for lack of evidence.

The decisions to discontinue the investigation were also based on expert advice in April 2009 and January 2011 that, given V.K.'s young age at the time of the alleged mistreatment and the time that had elapsed since, his statements could no longer be considered reliable.

V.K.'s mother lodged numerous complaints with various authorities about delays in the investigation, being denied access to the case file and the authorities' repeated failure to notify her of important procedural decisions. Most recently, in March 2014, the police department replied that the investigation had been thorough and that there was no need for any further investigative measures.

V.K. continues to suffer from nervous tics, has sleeping difficulties, nervousness and fears. He is regularly examined by a neurologist and follows treatment for a neurological disorder.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment) and Article 13 (right to an effective remedy), V.K. alleged that he had been ill-treated by his teachers at a public nursery school and that the ensuing investigation into his allegations had been ineffective.

The application was lodged with the European Court of Human Rights on 20 October 2013.

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

Helena Jäderblom (Sweden), *President*,
Branko Lubarda (Serbia),
Luis López Guerra (Spain),
Helen Keller (Switzerland),
Dmitry Dedov (Russia),
Pere Pastor Vilanova (Andorra),
Alena Poláčková (Slovakia),

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

[As regards whether V.K. was ill-treated](#)

The Court considered that it had been proved – to the standard required in Convention proceedings – that V.K. had been ill-treated by his nursery school teachers. In particular, V.K.'s description of the treatment to which he had been subjected by his teachers was detailed, consistent and corroborated in part by the assistant teacher at his school and by some of the parents of other pupils. Furthermore, the report of January 2011 by a panel of experts concluded that V.K. had been subjected to a prolonged, psychologically traumatic experience at the nursery school between September and November 2005 that had resulted in his having a persistent neurological disorder. On the basis of that evidence, the authorities themselves had concluded that the teachers had subjected V.K. to battery and cruel treatment (in the first criminal investigation) and had caused damage of medium severity to his health (in the second criminal investigation).

The Court further found that the abuse had been sufficiently serious to be considered inhuman and degrading within the meaning of Article 3 of the Convention. It bore in mind V.K.'s extremely young age at the time; the use of physical force to administer him with eye drops without his parents' consent or a medical prescription; the type of punishments he had been subjected to over a period of at least several weeks; the fact that those punishments, by teachers who were in a position of authority and control over him, had been aimed at educating him by humiliating and debasing him; and the long-lasting consequences for him in the form of a post-traumatic neurological disorder.

As regards the State's responsibility for the ill-treatment

In Russia public or municipal nursery schools provide a public service and have very strong institutional and economic links with the State. Most importantly, directors of such schools, appointed by State or municipal authorities, are responsible for the health and well-being of the school's pupils. Furthermore, under Russian law what a teacher does or does not do while performing his or her functions engages a public or municipal nursery school's liability, and through it the State's liability.

V.K. had been 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. Indeed, he had been ill-treated during school hours by teachers who had meant to be carrying out that duty of care for him. Such wrongful acts were connected to their role as teachers. Consequently, the State bore direct responsibility for the teachers' abuse of V.K.. The Court therefore considered that the State was responsible for the inhuman and degrading treatment of V.K. by his nursery school teachers, in violation of Article 3.

As regards the authorities' investigation into the ill-treatment

V.K.'s parents complained promptly about their son's ill-treatment. However, it was not until almost a year later that a pre-investigation inquiry was opened and another two years and three months that a criminal investigation was opened.

The most serious consequence of the three-year delay in opening a criminal investigation had been that the prosecution of the teachers under Articles 116 and 156 of the Criminal Code had become time-barred. Even though the authorities had attempted to prosecute the teachers under another applicable provision (Article 112) for which the limitation period had been longer, that investigation had also been remarkably slow, lasting almost six years until November 2014. In any case it also turned out to be futile because no intent to cause damage to health could be proven.

The considerable passage of time between the complaint of ill-treatment and the opening of a criminal investigation had also undermined the reliability of V.K.'s testimony and had resulted in his statements having been discarded as unreliable.

Lastly, V.K.'s parents' limited access to the case file and the repeated failure to inform them of important procedural decisions meant that they could not contest the investigative authorities' actions in court. This further undermined the effectiveness of the investigation.

In conclusion, the Court found that the authorities had failed to carry out an effective criminal investigation into V.K.'s allegations ill-treatment, in further violation of Article 3.

Given the above conclusions under Article 3 of the Convention, the Court considered that there was no need to examine separately the complaint under Article 13 of the Convention.

Just satisfaction (Article 41)

The Court held that Russia was to pay V.K. 3,000 euros (EUR) in respect of pecuniary damage, EUR 25,000 in respect of non-pecuniary damage and EUR 8,000 for costs and expenses.

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

Press contacts

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

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

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

George Stafford (tel: + 33 3 90 21 41 71)

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