



Convention on the Rights of the Child

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Committee on the Rights of the Child

Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 84/2019*, **

<i>Communication submitted by:</i>	N.B. (represented by counsel Anna Arganashvili and Ana Tavkhelidze, Partnership for Human Rights)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Georgia
<i>Date of communication:</i>	19 November 2018
<i>Date of adoption of Views:</i>	1 June 2022
<i>Subject matter:</i>	Protection of the child from physical or mental violence, injury or abuse; discrimination
<i>Procedural issues:</i>	Failure to exhaust domestic remedies; insufficient substantiation of claims
<i>Articles of the Convention:</i>	2, 12 and 19
<i>Article of the Optional Protocol:</i>	7 (d) and (f)

* Adopted by the Committee at its ninetieth session (3 May–3 June 2022).

** The following members of the Committee participated in the examination of the communication: Suzanne Aho, Aïssatou Alassane Moulaye Sidikou, Hynd Ayoubi Idrissi, Rinchen Chopel, Bragi Gudbrandsson, Philip Jaffé, Gehad Madi, Faith Marshall-Harris, Benyam Dawit Mezmur, Clarence Nelson, Luis Ernesto Pedernera Reyna, José Angel Rodríguez Reyes, Ann Skelton, Velina Todorova, Benoit Van Keirsbilck and Ratou Zara.

Pursuant to rule 8 (1) (a) of the Committee's rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Sopio Kiladze did not participate in the examination of the communication.



1. The author of the communication is N.B., a national of Georgia born on 21 July 2013. The author claims that the State party has violated his rights under articles 2, 12 and 19 of the Convention. The author is represented by counsel. The Optional Protocol entered into force for the State party on 19 December 2016.

Facts as submitted by the author

2.1 The author was subjected to corporal punishment at his public kindergarten by a teacher on 24 January 2017. His mother brought him to the kindergarten in the morning, without any signs of injury, but when she picked him up in the evening she noticed that he had red spots and scratches on his face and swelling and blue spots on both ears. Unlike other days, the child was accompanied by his teacher, who asked the mother if he had any allergies or had been a victim of domestic violence from his father¹ that could have caused the redness. The author's mother responded that he did not have any allergies or recent contact with his father. She then asked her son what had happened with his face, and the child, discreetly, pointed at the teacher and said that she had slapped him in the face and pulled at both his ears. The teacher started to laugh and denied having done so.

2.2 When the mother arrived home with her son, she asked him again what had happened. He replied that the teacher had slapped him on his left cheek and pulled and squeezed both his ears because he had not been able to properly draw a house – a task assigned at the kindergarten that day. His mother called the police and reported the incident. The police arrived at their house and took the author and his mother to the police station for questioning and evidence collection, after which a criminal investigation was launched. The police also called the medical emergency service to take the child to the Iashvili children's hospital for a medical examination.

2.3 On 25 January 2017, the mother informed media outlets of the incident and three media channels reported on it. The management of the kindergarten and the social services agency learned about the incident from the media broadcasts; they had not been informed by the teacher or the administration of the kindergarten, as requested by the law.²

2.4 On 25 January 2017, a social worker visited the author and his mother. The author notes that the visit lasted only 15 minutes and was of a superficial character. The author also notes that this was the only visit by social services, without any follow-up. In May and June 2018, the author's mother requested the social service agency for the results of its evaluation of the incident and for information on the actions it had taken. The only report provided by the social service agency was a one-and-a-half-page document, drafted on 6 June 2018, which simply described the incident.³ In the absence of any evaluation of the incident or an assessment of the interviews with the author and the teacher, the mother complained to the personal-data-protection inspector, alleging a violation of the author's access to personal information. By a decision of 8 October 2018, the inspector ruled that the social service agency had violated the author's right to access to personal information.

2.5 On 6 March 2017, the teacher was dismissed by a decision of the director of the kindergarten. The official reason for dismissal was "gross breach of duty", without any reference to the incident with the author. The teacher contested her dismissal. On 25 September 2017, the Tbilisi city court ordered her reinstatement in the absence of reasonable grounds for her dismissal, as no reason had been specified or substantiated either in the dismissal decision of the director or during the proceedings at the city court. As the court was not informed of the grounds for dismissal, the author was not invited as a third party to the proceedings. The decision of the court was not appealed by the kindergarten. At an unknown date, the teacher was reinstated to her position at the kindergarten and paid financial compensation for lost salary.

¹ The child's mother and father were separated at that time.

² Article 20 of Government Ordinance No. 437 on child referral procedures on child protection, 12 September 2016.

³ The report mentions that the social worker visited the author's house twice and interviewed his mother. The report also states that the author "has a favourable attitude towards the teacher and does not even remember that he was physically abused".

2.6 Between April and August 2018, while the investigation was ongoing, the author's lawyer asked the police and the prosecutor to take legal action five times. On 8 June 2018, the lawyer requested the office of the prosecutor of the Gldani-Nadzaladevi district of Tbilisi to grant victim status to the author. On 11 June 2018, the prosecutor denied that request in the absence of sufficient grounds for the charge that the child had sustained injuries specifically as a result of the alleged unlawful action against him.⁴ The lawyer contested this reasoning before the chief prosecutor of the Gldani-Nadzaladevi district, insisting that, in the presence of obvious signs of injury, the criminal investigation should have clarified whether the injury was caused while the child was under the supervision of the kindergarten staff. However, the appeal was dismissed on 21 June 2018 by the chief prosecutor.⁵

2.7 On 15 June 2018, the mother requested further clarification from the kindergarten as to the moment when the injuries were first discovered. In its letter of 11 July 2018, the kindergarten administration did not give a specific reply, although it acknowledged that at least two staff members had noticed the injuries on the child's face – without confirming that they were inflicted by the author's teacher – but they had not notified the administration.⁶ In addition, the administration had not reported the lack of notification by its staff to the local authorities, which could have triggered administrative sanctions.⁷

2.8 On 15 June 2018, the author's mother also asked the kindergarten management agency of the city of Tbilisi about the actions taken to investigate the incident. In its reply of 11 July 2018, the agency confirmed that it had interviewed the kindergarten personnel, including the author's teacher, and had met with the parents of other children in the kindergarten, none of whom had confirmed any act of physical violence against the author. However, the grandmother of an autistic child in the same class as the author alleged that she had often witnessed how the teacher shouted at children and claimed that her grandson had also come home with bruises on his ears. The agency reported, however, that it had not interviewed either the author or the children who had witnessed the incident. In the absence of comprehensive information about the incident, the mother complained again to the personal-data-protection inspector about the violation of the child's access to personal information. By a decision of 10 October 2018, the inspector declared that the kindergarten management agency had violated the author's right to access to personal information.

2.9 On 26 June 2018, the Applied Psychology and Research Centre, which is specialized in examining cases of violence against children, issued a psychological assessment report in which it noted that the author was able to describe the incident of physical violence by the teacher and that his psychoemotional state was good.

2.10 On 22 August 2018, the author's lawyer was allowed to consult the case file at the office of the Ministry of Internal Affairs, which revealed multiple flaws in the investigation process. An examination of the file revealed that although there were allegations by other parents about corporal punishment inflicted on their children by the same teacher, there was no information as to whether those parents had been questioned, nor were any children who might have witnessed the incident questioned. The author also notes that the law enforcement agencies had not initiated any administrative proceedings to investigate the fact that the incident had not been reported by the kindergarten staff and had not notified the social services agency about the launch of the criminal investigation.

Complaint

3.1 The author invokes a violation of articles 2, 12 and 19 of the Convention. As to the exhaustion of domestic remedies, he explains that under the Code of Criminal Procedure, his case can only be brought before the court by the prosecutor. The alleged victim cannot

⁴ While the results of the forensic medical examination concluded that the injuries were inflicted by the impact of a blunt object on the child's face, this was not shared by the prosecution with the author's lawyer, who was only able to view the results on 22 August 2018.

⁵ Decisions of the chief prosecutor are final and cannot be appealed except in cases dealing with felonies (serious crimes).

⁶ The administration also mentions that the author's teacher was dismissed from her job because she failed to inform the administration about the red markings on the author's face.

⁷ See article 172 of the Administrative Offences Code of Georgia.

influence the status of the investigation and/or proceedings. In his case, the prosecutor failed to advance the investigation and to bring it before the court. Thus the author had no legal possibility to complain about the delay of the criminal investigation by the prosecutor for 22 months.

3.2 The author claims a violation of his rights under article 19 of the Convention. He claims that the State party has not adopted appropriate legislative measures to ban all forms of violence against children, including corporal punishment, as recommended by the Committee following its consideration of the State party's fourth periodic report.⁸ He notes that there is no explicit prohibition of corporal punishment in formal early childhood care settings or in formal day care for older children. He claims that children in Georgia experience high rates of physical and emotional violence in educational and preschool settings. He notes that cases of physiological violence were identified by the Public Defender in 70 per cent of 61 inspected preschool institutions, while in 40 per cent of inspections the use of corporal punishment was identified. He also notes that children in the State party are affected by social attitudes that accept violence as a form of child discipline. He claims that, in his specific case, the authorities of the State party did not ensure accountability and did not provide him with effective measures of protection. The kindergarten failed to identify, report and refer the incident to the proper authorities. Police and the prosecutorial authorities failed to effectively investigate the incident within a reasonable time frame and did not carry out a number of investigative actions. Additionally, the social service agency failed to adequately respond to and investigate the incident.

3.3 The author claims a violation of his rights under article 2 of the Convention as, at the time of submission of the present communication, the State party had failed to criminalize corporal punishment, which is a discriminatory approach to children based on their age. He argues that article 126 of the Criminal Code identifies battery as a crime, but that its wording and application do not treat corporal punishment of children as a crime, and therefore does not provide for sanctions. Article 126 falls within the chapter on crimes against health, whereas, under international law, the prohibition of corporal punishment of children primarily focuses on the violation of the dignity of children and ensures their physical and moral integrity. Therefore, the object of protection is not only health, but the child's dignity and moral integrity, which do not necessarily involve damage to health.

3.4 The author further notes the requirement that there be an intention to inflict pain in order for an act to qualify as battery. Therefore, when corporal punishment of children is employed as a child-rearing method and used to enforce discipline, it is unrealistic to apply article 126 with regard to the corporal punishment of children. Moreover, that article defines battery as "several blows", which means that a single blow is not considered to constitute battery.

3.5 Finally, the author claims a violation of his rights under article 12 of the Convention as he was not given the chance to participate in the investigation of the incident. He notes that the management of the kindergarten did not involve either him or his mother in its inquiry into the incident. He also claims that the social services agency did not include his view or his mother's in the official documentation it produced and that the court of first instance did not involve him or his mother in the oral hearings.

State party's observations on admissibility and the merits

4.1 In its observations dated 15 November 2019, the State party recounts the facts of the case as follows: on the day of the event, 24 January 2017, the police initiated an investigation into the complaint by the author's mother. On 25 January 2017, the mother, the deputy principal of the kindergarten and the accused teacher⁹ were questioned by the authorities. On the same day, an investigator specialized in juvenile justice carried out an interview with the child, in the presence of his father and a psychologist. The child stated that his teacher had hurt his cheeks and ears by hitting him. The authorities also ordered a forensic medical

⁸ [CRC/C/GEO/CO/4](#), paras. 21–22; the State party provided a legislative update (see para. 4.13 below).

⁹ The teacher declared that it was a fellow employee who told her that the author had redness on his cheek and that she thought the child had an allergy.

examination. According to the forensic medical report of 27 January 2017,¹⁰ the author had purple bruises on his left and right ear lobes. The same kind of bruises were identified on his right cheek and left lower jawbone. According to the report, the bruises were the result of an action by a dense, blunt object and were considered to be mild injuries, without impairment to health.¹¹

4.2 Between 26 and 28 January 2017, the authorities questioned four staff members of the kindergarten, who denied having witnessed the incident or knowing about any other complaints by parents against the accused teacher. On 3 March 2017, the authorities accepted the testimony of the grandmother of another child, who declared that the teacher was an aggressive person who had frequently employed corporal punishment against her grandson and that other parents had similar accusations. On 28 March 2017, the Tbilisi kindergarten management agency informed the investigative authorities about the dismissal of the teacher for failure to discharge the obligations of her profession, including ensuring the well-being and security of the child. According to the account of the internal inquiry carried out by the agency, two employees of the kindergarten wrote a letter to the deputy principal complaining that it was unbearable to work alongside that teacher and that, should she be allowed to return, they would be compelled to leave their positions. However, on 2 May 2018, when the two employees were questioned by the authorities, they declared that they had no complaints against the teacher, who allegedly had a good personality. One of the employees declared that as she had been with the teacher throughout the day of 24 January 2017, she would have noticed any signs of physical violence against the child.¹²

4.3 Between 29 April 2018 and 19 June 2018, the authorities contacted three persons who had children at the same kindergarten and might have had knowledge of the incident; those persons refused to testify. However, in November 2019, two of the three individuals declared that they had no complaints or knowledge of abuse with respect to the accused teacher. The investigation into the events of 24 January 2017 is still pending before the prosecutor.

4.4 As to the admissibility of the communication, the State party considers that it should be declared inadmissible for non-exhaustion of both civil and criminal proceedings.

4.5 The State party submits that the author failed to exhaust the civil law remedy available under articles 207 to 209 of the General Administrative Code of Georgia, in conjunction with article 1005 of the Civil Code, which would have allowed him to bring civil action for damages against a State entity. In order to demonstrate the effectiveness of this remedy, the State party refers to domestic judicial practice and to the case law of the European Court of Human Rights.¹³ The State party submits that the author failed to lodge proceedings and to claim redress against the kindergarten, on the one hand, and against the investigative bodies, on the other, to complain about the length of the criminal investigation.

4.6 The State party considers that the author should have waited for the conclusion of the ongoing criminal investigation because the authorities have carried out effective and prompt investigative measures. The fact that no charges have been brought against the teacher, who was accused of physical violence only by the author and his mother, cannot be considered as an arbitrary decision, failure or any lack of due diligence on the part of the authorities. The State party contests the existence of substantial delays in the investigation, given the complex¹⁴ and child-sensitive nature of the case, which involves a 3-year-old child. It recalls that the author was interviewed the day after the incident by an investigator specialized in juvenile justice, in the presence of his father and a psychologist; that his lawyer was allowed

¹⁰ Issued by the Levan Samkharauli National Forensic Bureau.

¹¹ The English translation of the present report, provided by the State party, also contains the following sentence: "According to the examiner, the kindergarten teacher, T., inflicted injuries".

¹² The employees explained that their reluctance to continue working with the accused teacher was caused by the unwanted media attention.

¹³ See European Court of Human Rights, *Shavishvili v. Georgia*, Application No. 21519/05, Judgment, 9 November 2010; and *Saghinadze and others v. Georgia*, Application No. 18768/05, Judgment, 27 May 2010, paras. 95–96.

¹⁴ Lack of eyewitnesses or any direct evidence and contradictory statements by the witnesses. The State party also mentions that the absence of surveillance cameras in the room makes it difficult to know what happened.

to consult the case materials; and that the authorities contacted all of the parents mentioned by the author in order to question them and that, despite their unwillingness to cooperate, two out of three were interviewed. Therefore, the author has not indicated any serious shortcoming in the investigation that would have undermined its overall effectiveness.

4.7 As to the author's allegation that he should have been given victim status, the State party clarifies that, according to article 3 (22) of the Code of Criminal Procedure, a "victim" is defined as "a natural or legal person that has incurred moral, physical or material damage directly as a result of a crime". Due to the contradictory information obtained from different sources in the course of the investigation, as well as the lack of any direct evidence confirming that the accused teacher or any other person may have committed the crime against the author, the legal standard for granting him victim status was clearly not met.

4.8 The State party reports that, on 14 December 2018, the Constitutional Court of Georgia delivered a judgment based on which individuals are allowed to appeal, before domestic courts, the refusal of prosecution authorities to grant victim status regardless of the category of the crime in question. Therefore, as of the date of that judgment, the author has been able to lodge an appeal before the domestic courts against the prosecutor's refusal to grant him victim status. He has failed, however, to use that remedy.

4.9 Concerning the author's allegation of discriminatory treatment based on age for the failure to criminalize corporal punishment against children, the State party contends that the author has failed to exhaust available remedies because, under the law of Georgia on the elimination of all forms of discrimination, an independent oversight mechanism has been established within the Public Defender's Office. Under article 10 of that law, the alleged victim is entitled to lodge court proceedings in accordance with the provisions of the Code of Civil Procedure. Moreover, the author may seek moral and/or material damages before the courts. Therefore, the author's claim is also inadmissible for non-exhaustion.

4.10 On the merits, the State party submits that it has complied with its obligations stemming from articles 2, 12 and 19 of the Convention.

4.11 With regard to the right of the child to be heard, the State party considers that the author was engaged into the investigation at a level sufficient to meet the requirements of article 12 of the Convention.

4.12 The State party mentions that article 126 (para. 1)¹⁵ of the Criminal Code criminalizes a beating or any other violence knowingly committed against a minor and applies to all cases where a minor is subjected to physical or mental violence. Statistical data concerning application of article 126 in cases of psychological or physical violence against a minor show that criminal prosecution was initiated: in 2017, in 20 cases; in 2018, in 85 cases, including 2 for physical violence at a kindergarten; and in the first 10 months of 2019, in 93 cases, including 1 case of physical abuse at a kindergarten. The author's alleged discriminatory nature of article 126 is therefore unfounded.

4.13 Finally, the State party mentions the measures it has taken to combat violence against children and to ensure effective protection of the rights of the child, including the national strategies and action plans, training programmes and awareness-raising campaigns. In particular, the Code on the Rights of the Child, adopted on 20 September 2019, will gradually come into force by January 2022. The purpose of the Code is to create a general legal basis for the implementation of the rights provided by the Convention, including protection from all forms of violence and access to justice. In addition, domestic social workers have been trained in matters of domestic violence, violence against children and respect of child protection referral procedures. Regular training programmes are held in schools on issues related to violence against children. The subject of domestic violence is also integrated into the training programmes of the High School of Justice of Georgia, as well as into preparation programmes for judges, the police, investigators and prosecutors.

¹⁵ Article 126 of the Criminal Code concerns violence.

Author's comments on the State party's observations on admissibility and the merits

5.1 In his comments dated 5 April 2020, the author argued that the civil law remedies are not only unlikely to bring effective relief but would also be unreasonably prolonged. Since the fact of the corporal punishment was not established, there were no grounds for a civil action. The kindergarten, the Tbilisi kindergarten management agency and the police refused to acknowledge the illegal action against the author. Furthermore, the author was also at risk of recurring corporal punishment because the accused teacher was reinstated at the kindergarten.

5.2 As to the State party's allegation that he has not waited for the termination of the pending criminal investigation, the author notes that, even if the investigation was launched on 24 January 2017, the testimonies of the employees were taken only in February 2018 and those of other parents in April 2019. These actions have been so delayed that they could not be regarded as effective. In the more than three years since the incident, the investigations have not delivered any tangible results. The teacher was reinstated by the court and the responsibility of the kindergarten has not been called to account. Given that the author was not granted victim status, he has no chance to claim damages. Therefore, the criminal law remedies proposed by the States parties are unrealistic and unforeseeable.

5.3 The author considers that application to the Office of the Public Defender under the law on the elimination of all forms of discrimination is not an effective remedy because its decisions are recommendatory in nature. According to the 2017 special report of the Public Defender on the fight against discrimination, its prevention, and the situation of equality, of the 19 recommendations and general proposals addressed to public agencies since the creation of the Department of Equality until end of August 2017, public agencies have complied with only four of them,¹⁶ and even the 2019 report notes a low rate of implementation.¹⁷

5.4 As to the State party's statement that 22 months was an appropriate duration for investigation, the author notes that because he was under threat of repeated violence the authorities should have showed greater diligence. The authorities have never presented any explanation for the delays in the investigation, in particular they have failed to justify why they contacted the witnesses only 15 months after the incident, and have not informed the author and his mother about the different stages of the investigation. Moreover, according to article 71 (para. 1) of the Criminal Code, a person shall be released from criminal liability if two years have passed after committing a crime for which the maximum sentence does not exceed a two-year term of imprisonment, which is the situation in the present case.

5.5 Regarding the author's hearing on the second day of the incident, he recalls that a child's views should be taken seriously.¹⁸ Even though the author provided a detailed report about the incident, which was supported by material evidence – damage on his face and ears – the authorities did not take his testimony seriously.

5.6 With respect of the State party's submission that following a judgment by the Constitutional Court of 14 December 2018, it was possible for the author to lodge a complaint against the refusal of the prosecutor to grant victim status, the author recalls that he submitted his communication before the Committee in November 2018, which means that he had no possibility to use that mechanism.

5.7 In conclusion, while there is clear evidence that injuries were inflicted on the author while he was in the care of the kindergarten, the State party has not offered any reasonable explanation for these injuries. The State party has not prevented, investigated or protected the author from violence in the form of corporal punishment. The author has not secured any compensation or rehabilitation.

¹⁶ See <https://ombudsman.ge/res/docs/2019040212241164882.pdf>.

¹⁷ See <https://ombudsman.ge/res/docs/2020031712325453928.pdf>.

¹⁸ Committee on the Rights of the Child, general comment No. 13 (2011), para. 3(e).

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of its rules of procedure under the Optional Protocol, whether the communication is admissible.

6.2 The Committee notes the State party's argument that the communication is inadmissible for failure to exhaust domestic remedies given that: (a) the author failed to bring civil proceedings for damages, both against the kindergarten and against the investigative bodies to complain about the length of the criminal investigation; (b) the author has not waited for the conclusion of the ongoing criminal investigation; (c) following a judgment delivered by the Constitutional Court on 14 December 2018, the author has not contested before the court the chief prosecutor's refusal to grant him victim status; and (d) the author has not complained about discriminatory treatment based on age before the oversight mechanism within the Office of the Public Defender and has not used the opportunity offered by article 10 of the law on the elimination of all forms of discrimination to bring his claim before the courts.

6.3 As to the State party's plea of non-exhaustion based on the author's omission to bring civil proceedings for damages, the Committee notes the author's argument that, in the absence of recognition of the act of corporal punishment, the civil action is groundless. The Committee further considers that civil proceedings aimed at seeking compensation for damages do not substitute for the obligation of State authorities to effectively investigate and bring charges against the alleged perpetrators for the alleged offences.¹⁹

6.4 With regard to the State party's non-exhaustion argument based on the ongoing criminal investigation, the Committee notes the author's argument that there were important delays in the investigation that rendered it ineffective. The Committee considers that this claim relates to the effectiveness of the criminal investigation, which is closely linked to the merits of the author's complaints under article 19 of the Convention, and therefore decides to examine this claim on the merits.

6.5 Regarding the State party's argument that the author failed to challenge the prosecutor's decision that denied him victim status, the Committee notes the author's allegations that he submitted his communication to the Committee before the judgment of the Constitutional Court of 14 December 2018, and thus he had no possibility to use that mechanism.

6.6 Finally, regarding the possibility of submitting a complaint for discriminatory treatment based on age before the oversight mechanism within the Office of the Public Defender, the Committee notes that the author argues that the Public Defender's Office is not an effective remedy because its decisions are recommendatory in nature and suffer from a low rate of implementation. The Committee considers that it is generally not necessary to exhaust avenues before non-judicial bodies that cannot provide redress in order to fulfil the requirements of article 7 (e) of the Optional Protocol.²⁰

6.7 However, the Committee notes that the author did not contest the State party's argument that article 10 of the law on the elimination of all forms of discrimination offers the possibility to bring a complaint of discrimination before the courts. The Committee therefore considers that the author has failed to exhaust all available domestic remedies in respect of his claim of discrimination under article 2 of the Convention, and declares this part of the communication inadmissible under article 7 (e) of the Optional Protocol.

6.8 Finally, the Committee notes the author's complaints under article 12 of the Convention, that the management of the kindergarten did not interview him or his mother, that the social service agency did not include his view nor his mother's in the official

¹⁹ See, for example, Human Rights Committee, *Maharjan v. Nepal* (CCPR/C/105/D/1863/2009), para. 7.6; and *Benaziza v. Algeria* (CCPR/C/99/D/1588/2007), para. 8.3.

²⁰ See, in this sense, Human Rights Committee, *Katwal v. Nepal* (CCPR/C/113/D/2000/2010), para. 6.3; and *Giri v. Nepal* (CCPR/C/101/D/1761/2008 and CCPR/C/101/D/1761/2008/Corr.1), para. 6.3.

documentation and that the court that ruled on the teacher's dismissal did not hear the author or his mother. The Committee notes, however, that the author was heard in the context of the criminal investigation and that he was interviewed by a representative of the Applied Psychology and Research Centre. Accordingly, the Committee concludes that the author has failed to sufficiently substantiate his claim under article 12 of the Convention and declares it inadmissible under article 7 (f) of the Optional Protocol.

6.9 The Committee notes, however, that the author has exhausted domestic remedies regarding his claims related to the corporal punishment that he suffered owing to deficiencies in the criminal investigations that followed the event. It considers that these claims have been sufficiently substantiated for the purposes of admissibility and that they raise issues under article 19 of the Convention. Accordingly, the Committee declares them admissible and proceeds with their consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, in accordance with article 10 (1) of the Optional Protocol.

7.2 The Committee recalls its general comment No. 8, in which it clarified that the wording of article 19 of the Convention builds upon article 4 and makes clear that legislative as well as other measures are required to fulfil the obligation of States to protect children from all forms of violence, including corporal punishment.²¹ It also recalls that, during consideration of the State party's fourth periodic report, it expressed strong concern about the prevalence of corporal punishment in schools and institutions; the lack of legislation criminalizing corporal punishment and of awareness-raising activities to combat that practice; and the limited implementation of the child-protection referral mechanism with regard to kindergartens.²²

7.3 In the present case, the Committee must determine whether the alleged corporal punishment suffered by the author on 24 January 2017 at the hands of his teacher and the alleged lack of an effective investigation of such treatment represents a violation by the State party of its obligations under article 19 of the Convention. In this connection, the Committee notes that article 19 is phrased in both substantive and procedural terms.

7.4 Concerning the substantive element of article 19 (para. 1), the Committee notes that the author was taken to the kindergarten on the morning of 24 January 2017 with no signs of injury on his face. Nevertheless, when his mother came to take him home that day, he had purple bruises on his left and right ear lobes and on his right cheek and left lower jawbone. As attested by a forensic medical report, and the author's own account, the injuries were the result of having been hit and pulled by the ears by his teacher at the kindergarten. The Committee recalls that it has defined "corporal" or "physical" punishment as any punishment in which physical force is used and is intended to cause some degree of pain or discomfort, however light. Most involves hitting ("smacking", "slapping", "spanking") children, with the hand or with an implement – a whip, stick, belt, shoe or a wooden spoon.²³ The Committee further recalls that the burden of proof cannot rest solely on the author of the communication, especially considering that the author and the State party do not always have equal access to evidence and that frequently the State party alone has access to the relevant information.²⁴

7.5 In the case at hand, the Committee notes that the author was taken into the care of the public kindergarten without any pre-existing injuries on his face. No plausible explanation has been provided for the injuries to his ears and face allegedly caused by the punishment inflicted by the teacher of a public kindergarten on kindergarten grounds and during the time that the author was placed under the care of a State institution. The Committee considers that the author's description of the treatment to which he had allegedly been subjected at the hands

²¹ Committee on the Rights of the Child, general comment No. 8 (2006) (inter alia, arts. 19; 28, para. 2; and 37), para. 30.

²² CRC/C/GEO/CO/4, para. 21.

²³ Committee on the Rights of the Child, general comment No. 8 (2006), para. 11.

²⁴ See, inter alia, *D.D. v. Spain* (CRC/C/80/R/4/2016), para. 13.3.

of the staff of the kindergarten is detailed and consistent. It is supported in part by the eyewitness testimony of the grandmother of another child who confirmed that the teacher had frequently employed corporal punishment against her grandson. The declaration of the author's teacher that the child may have suffered from allergies is not supported by any evidence. The forensic medical report of 27 January 2017 mentions that the injuries were caused by a blunt object, with no reference to the possibility of their being the effect of an allergy. On the basis of all the material placed before it, and in the light of the failure of the authorities of the State party to provide an alternative explanation, the Committee considers that the treatment suffered by the author was a form of violence against the child as defined by article 19 of the Convention. Taking into account the author's particular vulnerability as a three-and-a-half-year-old child, the teacher's position of authority and control over the author and the role of the kindergarten to provide the basic public service of general interest of caring for and educating children, the Committee finds that the State party has not accounted for the injuries suffered by him while he was in the care of the public kindergarten and that State party's responsibility for his injuries is therefore engaged under article 19 (para. 1) of the Convention.²⁵

7.6 As to the procedural element contained in article 19 (para. 2) of the Convention, the Committee notes the author's argument regarding the alleged lack of an effective criminal investigation into the author's claims of corporal punishment. The Committee recalls that the investigation of instances of violence, whether reported by the child, a representative or an external party, must be undertaken by qualified professionals who have received role-specific and comprehensive training and require a child rights-based and child-sensitive approach. Rigorous but child-sensitive investigation procedures help to ensure that violence is correctly identified and to provide evidence for administrative, civil, child-protection and criminal proceedings. The Committee notes that investigation into this instance of child maltreatment should be effective, in the sense that it should be capable of leading to a determination as to whether the author suffered corporal punishment at kindergarten and to the identification of those responsible. The Committee recalls that this is not an obligation of result, but of means. The authorities must take the reasonable steps available to them to secure the evidence concerning the incident. Furthermore, the investigation should also be conducted with promptness and reasonable expedition.²⁶

7.7 The Committee notes that, in the present case, while the author was interviewed by a specialized investigator, in the presence of his father and a psychologist, the State party does not mention whether this interview was video recorded in order to safeguard the child's testimony for its possible use in subsequent court proceedings or if the child was instructed of the importance of telling the truth.²⁷ The Committee further notes that, while the police began the criminal investigation without delay, it took almost 10 months for the investigative authorities to hear two employees who complained about the accused teacher and 15 months to contact parents whose children were under the supervision of the same teacher. The State party has not explained those delays. The Committee also notes that it was only on 22 August 2018, that is, 19 months after the reported incident, that the author's counsel was allowed to consult the case file. Finally, the Committee notes that, more than five years after the incident, the investigation is still pending, without any significant developments. Regardless of the eventual final outcome of the investigation, and without entering into consideration as to whether or not the information and evidence in the file was sufficient to justify initiating criminal proceedings, the Committee considers that the investigation failed to comply with standards of promptness and effectiveness.

7.8 In the light of the foregoing, the Committee concludes that the national authorities have not shown due diligence and have failed to investigate the alleged corporal punishment promptly and effectively, in violation of the State party's obligations under article 19 of the Convention.

²⁵ See in this regard, European Court of Human Rights, *V.K. v. Russia*, Application No. 68059/13, Judgment, 7 March 2017, paras. 168–184.

²⁶ *Ibid.*, para. 185.

²⁷ European Court of Human Rights, *R.B. v. Estonia*, Application No. 22597/16, Judgment, 22 June 2021, paras. 91–92.

8. The Committee on the Rights of the Child, acting under article 10 (5) of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, is of the view that the facts before it disclose a violation of article 19 of the Convention.

9. The State party is under an obligation to provide an effective reparation to the author. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, in particular by ensuring that cases of corporal punishment are promptly and effectively investigated.

10. In accordance with article 11 of the Optional Protocol, the Committee wishes to receive from the State party, as soon as possible and within 180 days, information about the measures it has taken to give effect to the Committee's Views. The State party is requested to include information about any such measures in its reports to the Committee under article 44 of the Convention. The State party is also requested to publish the present Views and to disseminate them widely in the official languages of the State party.
