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Summary of the Nord-Ost case

1. Brief chronology of the events.

The present case is connected with one of the most tragic events in the history of contemporary Russia. The event in question tackled once again most pressing legal issues where the attitude adopted by the Russian authorities towards human rights values is concerned. This worldwide notorious event is the death of more than one hundred people taken hostages during the performance of the Nord Ost musical that took place at the Dubrovka theater center in Moscow. The hostages were kept there 23 - 26 October 2002.

1.1. Non-prevention of the damage.

First of all, the authorities failed to prevent a numerous group of heavily armed hostage-takers from reaching the center of Moscow. For example, the terrorists were carrying different types of explosive assemblies, submachine guns and guns, as well as grenades. The authorities also failed to prevent the seizure of the edifice - a place where mass shows were carried out.

1.2. Refusal to minimize the damage.

From the onset, the authorities took a hard-edged stand, which excluded any possibility of effective negotiations with the hostage-takers. They principally demanded to withdraw the Russian troops from the territory of the Chechen Republic, but the authorities did not care to make any least semblance of satisfying the hostage-takers' demands.

The authorities did not provide for any officially delegated negotiators to conduct talks with the hostage-takers, although it was one of their key conditions.

Besides, the authorities knew that, upon an agreement with foreign embassies in Moscow, the hostage-takers were going to release a number of foreign hostages early 26 October, as had already been the case the previous days. However, the authorities did not wait for their release and stormed the building.

1.3. The storm.

Early 26 October 2002 the authorities undertook a storm of the building that had not been provoked by the hostage-takers. The authorities applied a highly toxic substance derived from an opiate fentanyl that exerted not only an incapacitating, but also a poisoning effect. As a result, a substantial number of hostages (125 people, according to the investigation, and more according to other sources) died. However, right after the storm the authorities announced a "brilliant performance" of the storming operation that allegedly caused "no casualties" at all.

1.3.1. Failure to avert the threat of an explosion and its provocation.

The toxic applied did not avert the threat of an explosion. It failed to immediately incapacitate the hostage-takers that put up a forceful resistance to the storming forces throughout at least one hour.

Moreover, the gas was visible and had a distinct smell. The hostage-takers became aware of it at once, hence, they had enough time to detonate the explosives and grenades, as well as to shoot down the hostages, which was their promised reaction to the commencement of a storm. Therefore, application of the gas did not only fail to prevent, but could also provoke the annihilation of the hostages. The investigation has not established the reason why the hostage-takers did not fulfill their destructive scheme.

1.3.2. Absence of the absolute necessity of the storm.

The authorities stated that the application of the toxic was due to the absolute necessity, i.e. a danger threatening the lives of the hostages that could not be eliminated in any other way.

However, as stated above, the application of the substance did not prevent the danger. More than that, according to the evidence of the persons who were among the hostages, the conduct of the hostage-takers did not suggest that they were going to accomplish their threats early 26 October. Therefore, the applicants argue that the application of the toxic was not called forth by absolute necessity.

1.4. Application of the opiate gas, evacuation of the hostages and their medical treatment.

According to some sources, the substance used during the storm was an aerosolised fentanyl derivative, most likely carfentanyl, or an anaesthetic gas halothane. As to the investigation, it has not identified the substance applied.

The seized building, where the chemical agent was applied, had a huge total area. The hostages were people of different age and health condition, stressed and weakened after 56 hours of being held hostages. Under given circumstances, it was impossible to control the dosage of the chemical and the duration of its effect individually.

It was also impossible to render first medical treatment right after the gas was pumped. The evacuation of the hostages from the gassed building did not start until 1,5-2 hours after it. But even then, according to the applicants who support this statement with material evidence, medical treatment has not been given to every hostage.

The authorities did not tell doctors and paramedics that the hostages were gassed. They also failed to name any antidote. Therefore, the nature of the medical treatment to be rendered was only established symptomatically.

Unconscious hostages were delivered to the hospitals in unequipped regular buses, without due medical escort, piled on the floor.

The consequences were lethal for a considerable number of them.

2. Ineffective investigation.

The investigation failed to establish:

- 2.1. The reasons why the hostage-takers were not prevented from reaching the centre of the city.
- 2.2. The reasons why the security of a mass performance was not ensured.
- 2.3. The public officials who took decision to perform the storm and to apply the chemical.
- 2.3. The exact time when the storm began.

- 2.5. The reasons why the hostage-takers did not detonate the explosives.
- 2.6. The reasons why all the hostage-takers were annihilated.
- 2.7. Exact number of the hostages at the time of the storm.
- 2.8. The chemical applied during the storm.
- 2.9. The fact whether there existed an antidote to the chemical applied.
- 2.10. The time when the ambulances were sent for.
- 2.11. The time when the evacuation of the hostages began.
- 2.12. The genuine reasons for the hostages' death.
- 2.13. The time and the place, as well as other circumstances of some hostages' death.
- 2.14. The fact whether, in individual cases, first medical treatment was rendered or not.
- 2.15. The reasons why, in individual cases, the medical treatment rendered was ineffective.

3. Violations of the Convention.

3.1. **Article 2, negative aspect:** application of a toxic that

- was not called forth by absolute necessity,
- did not prevent the threat of an explosion,
- could provoke the explosion,
- posed a real danger of poisoning all the hostages,
- resulted in a lethal end for a significant number of hostages.

3.2. **Article 2 positive aspect:**

- failure to prevent the harm and refusal to minimise it,
- failure to provide for due medical treatment.

3.3. **Article 2, procedural aspect:**

- failure to perform an effective investigation into the circumstances of the hostages' deaths,
- failure to address the question of the authorities' potential responsibility for the lethal outcome of the storm, i.e. failure to ensure full responsibility of the officials and the authorities for their role in the harm that took place.

3.4. **Article 6.1.** Due to the lack of information that is concealed from the applicants, they cannot have access to fair civil proceedings.

3.5. **Article 8.** Most severe sufferings of the applicants were due to:

- the lack of information about the circumstances and reasons of their relatives' deaths,
- actual refusal of the authorities to protect their citizens from real criminals guilty of the death of their relatives.

3.6. **Article 10.** The investigation several times denied the applicants:

- examination of the investigation documents,
- examination of the medical documents relating to the death of their relatives.

3.7. **Article 13.** The applicants' appeals were dismissed both in the first instance and the second instance courts. Thus, they did not have effective domestic remedies at their disposal.

From the very beginning, the applicants intended to lodge their complaint with the European Court of Human Rights within 6 months from the date when the violation of their rights took place, as they could already anticipate that there were no effective domestic remedies. Notwithstanding this fact, they considered it necessary to exhaust all domestic remedies, as the case concerns the death of their loved ones.