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European Court
Of Human Rights

ECHR-LRus0.1
GID/ate

Application no. 18299/03
FINOGENOV and others v. Russia

15 June 2006

Applicants' request for application of Rule 41

The present application has been lodged on behalf of victims to a tragedy that took place during the performance of the Nord-Ost musical in the Dubrovka theater in Moscow from 23 through 26 October 2002.

The applicants believe that there has been a violation of Article 2 (right to life) and other articles of the Convention in their respect.

1. The Nord-Ost case is of enormous public importance both in Russia and abroad. This is one of the model cases infringing on the interests of victims to terror attacks who found themselves unprotected from inadequate and arbitrary acts of the authorities, as the latter pursued a primarily goal of killing terrorists, rescue of hostages being a secondary task.

According to the applicants, excessive secrecy and lack of transparency featuring the investigation into the Nord-Ost case, a failure to provide access to the case-file for the victims, neglect towards lawful appeals of the applicants, as well as passive attitude adopted by the judicial authorities have impeded the establishment of truthful outlook on the tragedy.

The aggregation of these circumstances has resulted in a failure to exclude the possibility of the Nord-Ost mistakes in future both in Russia and abroad. Huge number of victims in Beslan became only possible because no necessary

conclusions had been drawn in the case of Nord-Ost and those accountable for the tragedy had not been tried in public or punished.

2. The applicants believe that the arbitrary, permissive and unpunished character of the Government's application of a poisonous substance during the terror attack in Moscow represents a dangerous precedent for future international practice.

If the international human rights community fails to denounce, in the very near future, the tragic events that the applicants have fallen victims to, another «Nord-Ost» will be possible in other countries as well, if their governments set fight against terrorism as their primary goal, notwithstanding the number of victims. In this regard, a quotation of the Russian Government's priority definition will suffice: the Government stated that the application of gas in respect of civilians had been justified by the danger of a detriment to «*the authority of Russia on the international scene*» (decision to terminate criminal proceedings of 16 October 2003).

Up to the present time, the international community has failed to make a legal assessment of the events in question, as well as of the priorities set out by the Government and the nature of their actions that have caused casualties, the great number of which was in no way justified. **Approximately 125 people died as a result of the storm, their exact number never established.** The applicants feel concerned by the fact that such a failure cannot but serve as a stimulus for both production and application of toxic substances by governments of different countries. The precedent in question is a sort of "permission" to apply chemical weapons against innocent victims – civilians – as a way of solving future conflicts arising in the course of combating "international terrorism".

Thus, a failure to take all measures for saving each and every hostage, elimination of terrorists (possible witnesses and potential accused), as well as application of a deathly chemical, no account taken of its consequences, will be justified, so other governments will also apply a similar plan of hostage-rescue operations.

3. The present case was a subject of examination before the UN Human Rights Committee when it considered the latest periodic report of the Russian Federation in October 2003. So far as the "Nord-Ost" case is concerned, the Committee pointed out to the following in its concluding observations,:

"While acknowledging the serious nature of the hostage-taking situation, the Committee cannot but be concerned at the outcome of the rescue operation in the Dubrovka theatre in Moscow on 26 October 2002. The Committee [...] expresses its concern that there has been no independent and impartial assessment of the circumstances, regarding medical care of the hostages after their liberation and the killing of the hostage-takers.

The State party should ensure that the circumstances of the rescue operation in the Dubrovka theatre are subject to an independent, in depth investigation, the results of which are made public, and, if appropriate, prosecutions are initiated and compensation paid to the victims and their families.”

However, up to the present time, the Russian Federation has not duly addressed the call of the UN Human Rights Committee.

For the above reasons, the applicants ask the European Court to consider whether, in accordance with Rule 41 of the Rules of the Court, priority may be given to the application.

The applicants would report to the Court that three international organizations:

- International Commission of Jurists (headquarters in Geneva);
- Human Rights Watch (headquarters in Washington) and
- Interights (headquarters in London)

have expressed their intention to intervene, at the relevant stage of the proceedings, as a third party into the present case. In the very near future, they are going to submit their expert reports on specific circumstances of the case.

Encl: Additional application form on the case of Mr. Finogenov and other Nord-Ost victims, with attachments.

Signed by Mr. Pavel Finogenov, applicant and representative of other victims on application no. 18299/03;
Ms. Karinna Moskalenko, Lawyer;
Ms. Olga Mikhaylova, Lawyer.