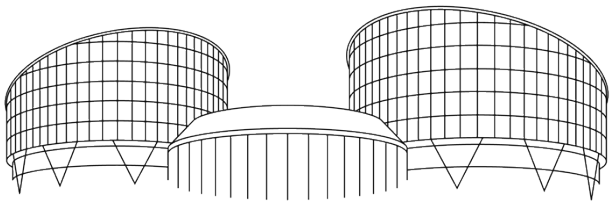

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF FINOGENOV AND OTHERS v. RUSSIA

(Applications nos. 18299/03 and 27311/03)

JUDGMENT

This judgment was rectified on 6 March 2012 under Rule 81 of the Rules of Court

STRASBOURG

20 December 2011

FINAL

04/06/2012

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

In the case of Finogenov and Others v. Russia

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 29 November 2011,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in two applications (nos. 18299/03 and 27311/03) 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"). The first application was lodged by Mr Pavel Alekseyevich Finogenov and six other people, the second application was lodged by Ms Zoya Pavlovna Chernetsova and fifty-six other people ("the applicants") on 26 April 2003 and 18 August 2003 respectively. The names of the applicants are listed in the annex (with minor modifications concerning Mr O. Matyukhin – see paragraph 204 below).

2. The applicants in the first application were represented before the Court by Ms K. Moskalenko and Ms O. Mikhaylova, lawyers practising in Moscow. The applicants in the second application were represented before the Court by Mr Trunov and Ms Ayvar, lawyers practising in Moscow. The respondent Government were represented in both cases by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights, and subsequently by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants in both cases alleged, in particular, that during the hostage crisis in Moscow on 23-26 October 2002 the authorities had applied excessive force, which had resulted in the death of their relatives who were being held hostage by the terrorists in the Dubrovka theatre. Some of the applicants were themselves among the hostages and suffered serious damage to their health and psychological trauma as a result of the

authorities' actions. The applicants further claimed that the authorities had failed to plan and conduct the rescue operation in such a way as to minimise the risks for the hostages. They claimed that the criminal investigation into the authorities' actions had been ineffective, and that the applicants had had no effective remedies to complain about that fact. Finally, the applicants in the case of *Chernetsova and Others* complained of the difficulties they encountered in the civil proceedings concerning compensation for damage suffered by them.

4. Having obtained the parties' observations and written comments from Interights and the International Commission of Jurists (Rules 54 and 44 of the Rules of Court), by a decision of 18 March 2010, the Court declared the applications partly admissible. On the same date the Chamber decided to join the proceedings in the applications (Rule 42 § 1).

5. The applicants and the Government each filed further written observations (Rule 59 § 1) on the merits and replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants in the above two cases, listed in the appendix, are relatives of the victims of the hostage-taking in the "Dubrovka" theatre in October 2002 in Moscow and/or were themselves among the hostages.

7. The facts of the above two cases are disputed between the parties. Their submissions may be summarised as follows.

A. Hostage-taking

8. On the evening of 23 October 2002 a group of terrorists belonging to the Chechen separatist movement (over 40 people), led by Mr B., armed with machine-guns and explosives, took hostages in the "Dubrovka" theatre in Moscow (also known as the "Nord-Ost" theatre, from the name of a musical comedy which was formerly performed there). For three days more than nine hundred people were held at gunpoint in the theatre's auditorium. In addition, the theatre building was booby-trapped and eighteen suicide bombers were positioned in the hall among the hostages. Another group of terrorists occupied the theatre's administrative premises.

9. Over the following days several journalists and public figures were allowed to enter the building and talk to the terrorists. The terrorists demanded the withdrawal of Russian troops from the Chechen Republic and direct negotiations involving the political leadership of the federal authorities and the separatist movement. Following those talks the terrorists

released several hostages and accepted some food and drinking water for the remainder, while continuing to insist on their demands.

10. It appears that some of the hostages managed to maintain occasional contact with the outside world through their mobile telephones. Some even managed to talk to journalists.

11. The Government claimed that hostages who tried to escape or resist were shot by the terrorists. Thus, in the night of 23-24 October 2002 Ms R. asked the terrorists to release the hostages. She was taken out of the auditorium and executed by an unknown terrorist. Mr V.[1], one of the hostages, was wearing a military uniform. He was shot by one of the terrorists on 25 October 2002. On the same day Mr VI.[2] was first beaten by the terrorists in the theatre auditorium and then taken out and executed. Mr G. tried[3] to escape, but the terrorists fired at him[4], and he was then taken out, beaten and executed. While firing at Mr G.[5], the terrorists wounded another hostage, Mr Z., who later died in hospital.

12. The applicants indicated that Mr V.[6] and Ms R. had not been in the building during the show, but entered it some time later at their own initiative. They referred to the statements by several former hostages, in particular Ms Gubareva and Ms Akimova. They also relied on the conclusions of the investigator in the report of 16 October 2003, stating that Ms R. and Mr V. had tried to penetrate[7] the building from the outside. As to Mr G., he was among the hostages from the very beginning, but the investigator had failed to establish where, when and in what circumstances he had been shot.

13. On 25 October 2002 FSB officers apprehended Mr Talkhigov, an alleged accomplice of the terrorists, who had spoken to them by telephone and had given them information about the situation outside the theatre.

14. On the same day the director of the FSB made a public statement on television following a meeting with President Putin. He promised to keep the terrorists alive if they released the hostages.

B. Preliminary plan of the rescue operation

15. At 9.33 p.m. on 23 October 2002 the local branch of the All-Russia Centre for Disaster Medicine received information about the hostage-taking.

16. Shorty afterwards the authorities created a "crisis cell" (*operativniy shtab*, literally "operative headquarters") under the command of Mr P., the

---

[1] Rectified on 6 March 2012: the text was "Mr Vl."
[2] Rectified on 6 March 2012: the text was "Mr V."
[3] Rectified on 6 March 2012: the text was "Mr G., who witnessed this, tried"
[4] Rectified on 6 March 2012: the text was "fired and wounded him"
[5] Rectified on 6 March 2012: the text was "Mr V."
[6] Rectified on 6 March 2012: the text was "Mr V., Mr Vl."
[7] Rectified on 6 March 2012: the text was "Ms R. , Mr Vl. and Mr V. had penetrated"

deputy head of the Federal Security Service ("the FSB"). The crisis cell was located in the premises of War Veterans Hospital no. 1, situated in the vicinity of the theatre building. It included representatives of various State services and organisations.

17. As follows from the materials submitted by the parties, the Federal Rescue Service was responsible for the evacuation of the hostages and for clearing away rubble if the building collapsed. From 24 October 2002[1] several teams of rescue workers were stationed in the vicinity of the theatre building. The Rescue Service placed various heavy machines, such as bulldozers, excavators, cranes, dump trucks, etc., about 400 metres from the theatre building.

18. The Moscow Centre for Urgent Medical Treatment (MCUMT), and the All-Russia Centre of Disaster Medicine (*Zashchita*) at the Ministry of Health of the Russian Federation were in charge of medical assistance to the hostages and their relatives. Mr Sl., the Head of the Public Health Department of the City of Moscow and a member of the crisis cell, coordinated the efforts of the MCUMT, *Zashchita*, ambulance teams, and city hospitals. The MCUMT was functioning in crisis mode, so all of its workers were permanently on duty.

19. From 24 October 2002 five ambulances and one brigade of MCUMT medics with a special medical bus were permanently on duty near the theatre. According to the Government's submissions, "2–3 teams of the Zaschita Centre and 2–4 ambulances were permanently stationed in the vicinity of the theatre building". Another brigade of MCUMT medics and psychologists provided aid to the relatives of the hostages in the building of Professional School no. 194. In total, the psychologists examined 606 cases and ordered eight hospitalisations.

20. The patients of the War Veterans Hospital (the medical facility closest to the theatre) were relocated to other hospitals which were not earmarked to receive individuals from the rescue operation. The staff of the War Veterans Hospital was reinforced with surgeons and emergency physicians from the Sklifosovskiy and Botkin Hospitals. Two additional reanimation units and six theatres for surgery were made available. By 26 October 2002 the admission capacity of the War Veterans Hospital had been increased to 300-350 beds. According to the Government's submissions, "515 persons were relocated from the War Veterans Hospital to other city hospitals".

21. The heads of the city hospitals concerned with the evacuation plan, ambulance stations and other relevant medical services were summoned for a briefing and required to secure reinforcement of staff on duty and an emergency work regime. The authorities designated several hospitals which would admit the hostages. The hospitals were divided into three priority

[1] Rectified on 6 March 2012: the text was "24 October 2004"

groups. The Government did not explain how those three priority groups were defined. Besides War Veterans Hospital no. 1 (the closest), those were City Hospitals nos. 1, 7 and 13 (the next closest hospitals), City Hospitals nos. 15, 23, 33, 53, 64, 68, 79, the Research Institute of Emergency Medical Treatment, the Sklifosovskiy and Botkin Hospitals, and Children's Hospitals nos. 9, 13, and 20. Between 24 and 26 October 2002 Mr Ev., the Chief Anaesthesiologist[1] of Moscow City, visited some of those hospitals and checked whether they were ready to admit rescued hostages. He had been instructed by the crisis cell to check whether the hospitals were ready to accept patients with missile and explosion wounds. The hospital officials were required to free up wards for the hostages, to ensure that the hospital staff were ready to arrive at short notice and that additional equipment, emergency treatment rooms and medical supplies and bandages were prepared. The admission capacity of most of the hospitals was increased. Thus, Hospital no. 13 reported that it was prepared to admit up to 150 patients, including 50 in a critical state. Hospital no. 7 reported that it was prepared to admit up to 200 patients. There is no information about the admission capacity of the other hospitals, but it appears that it too was increased. The MCUMT brigades were informed which hospitals were designated to participate in the rescue operation, and how many places they would have available for the hostages.

C. Storming and the rescue operation

22. In the early morning of 26 October 2002, at about 5-5.30 a.m., the Russian security forces pumped an unknown narcotic gas into the main auditorium through the building's ventilation system. The applicants insisted that both the terrorists and the hostages were capable of smelling and seeing the gas. A few minutes later, when the terrorists controlling the explosive devices and the suicide bombers in the auditorium lost consciousness under the influence of the gas, the special squad stormed the building. Most of the suicide bombers were shot while unconscious; others tried to resist but were killed in the ensuing gunfire.

23. Soon afterwards Mr Ign., a member of the crisis cell with responsibility for public relations, made a statement to the press. He informed journalists that the terrorists had executed two hostages and wounded several more and that, in response, the special squad had stormed the building and killed some terrorists and arrested others. He did not mention the use of the gas.

24. As a result of the operation the majority of the hostages were released (over 730 people). The exact number is unknown since, following their release, not all of the hostages reported to the authorities. However, a

[1] Rectified on 6 March 2012: the text was "Chief Emergency Physician"

large number of hostages were affected by the gas; according to information gathered by the investigative authorities by the end of 2002, 129 hostages died: 102 died on the spot (114 according to the report of 31 December 2002), including three persons who were shot; 21 died in the course of evacuation and transportation to hospital; and six persons died in the emergency rooms of various hospitals. These figures were later adjusted or revised – see paragraph 11 above and paragraph 48 below, see also the conclusions of the official investigation summarised in paragraph 99. Apparently, the discrepancy in figures is mainly due to the fact that different methods for calculating the number of victims were applied by various State authorities and that not all the necessary information (cause of death, time of death, etc.) was recorded in the hospitals and/or morgues. Many of those who survived continue to suffer from serious health problems. For instance, one of the applicants, Ms Gubareva, a former hostage, was taken in an unconscious state to the intensive therapy unit of City Hospital no. 7, where she underwent treatment until 28 October 2002. A week later she was hospitalised again. The applicant Ms Khudovekova, who was also amongst the hostages, lost her hearing. The applicants submitted medical records in respect of several former hostages from hospitals where they underwent medical treatment after release.

25. The applicants alleged that the evacuation of hostages from the theatre building had been chaotic: the semi-naked bodies of unconscious hostages were piled up on the ground outside the building, where, according to a report by the Moscow Meteorological Bureau, the temperature was 1.8ºC. Some of them died simply because they were laid on their backs and subsequently suffocated on their own vomit or because their tongues were blocking their airways. According to the applicants, there were not enough ambulances, so the hostages were transported to hospitals in ordinary city buses without the accompaniment of medical staff and without any assistance from traffic police to facilitate their rapid arrival at the hospitals. The medical staff in the hospitals were not equipped to receive so many victims, had not been informed of the properties of the narcotic gas used by the security forces and did not have appropriate equipment. In the first days after the events no information was provided about the number of victims, their names and the places where they had been taken. The victims' relatives had to call the city morgues to find out where the corpses were being held.

26. The authorities disputed that view. According to the Government, at 5.39 a.m.[1] the crisis cell informed the ambulance stations involved in the operation that 100 reserve ambulance teams should be prepared for the evacuation of the hostages. Between 5.48 and 5.55 a.m.[2] 458 ambulance

[1] Rectified on 6 March 2012: the text was "5.39 p.m."
[2] Rectified on 6 March 2012: the text was "5.55 p.m."

teams received an order to go to the scene. In addition, 21 hearses were dispatched. All medics who were on duty in the vicinity of the theatre were ordered to gather at the main entrance to the theatre. At 6.09-6.14 a.m. ambulances started to arrive, so that the medics who were already there received reinforcement. The coordination of the medics on the spot was carried out by the head of the Moscow branch of the Centre for Disaster Medicine. The victims were divided into several groups, depending on their condition, on the ground near the main entrance to the theatre. Medical assistance to the victims had been adequate: those in a serious condition received "symptomatic therapy" including artificial lung ventilation. The witnesses who showed signs of an emetic reflex were placed face down. Injections of Nalaxone were given by the special squad officers within the building. Information about those who had already received injections was transmitted by the special squad officers to the medics. Those who had not been injected with Nalaxone in the building received it after the evacuation. Nalaxone was on the list of pharmaceuticals recommended for the ambulances and Disaster Medicine teams. The victims were transported in ambulances and city buses accompanied by ambulances; those victims who were in a coma or other serious condition were transported in the ambulances. The evacuation was fully completed one hour and fifteen minutes after the liberation of the hostages. All victims were dispatched to city hospitals nos. 1, 7, 13, 15, 23, 33, 53, 64, 68, 79, Botkin Hospital, Sklifosovskiy Hospital, the War Veterans Hospital, Filatov Paediatric Hospital, Saint Vladimir Paediatric Hospital and hospitals nos. 38 and 84 of the Ministry of Health of the Russian Federation. The majority of the victims were transported to War Veterans Hospital no. 1 and city hospital no. 13, which were the closest medical institutions. In the hospitals' reception areas all of the victims were divided into four groups, depending on the gravity of their condition. The hospitals immediately received reinforcement from the leading medical schools, and the best specialists in toxicology and psychiatry were sent to provide assistance.

27. In the Government's account, the most serious cases were characterised by the following symptoms: "dysfunction of the central nervous system, impairment of consciousness, from torpor to deep coma, inhibition of tendon reflexes, pupillary and corneal reflexes, breathing dysfunction of a central type, with a frequency of 8-10 times per minute, as well as manifestations of mechanical asphyxia and airway aspiration obstruction, [and] glottidospasms. These symptoms were accompanied by cyanosis of the visible parts of the airway mucus and of the skin, which disappeared after the emptying of the airways, reinstatement of their patency and artificial lung ventilation. Low arterial pressure and tachycardia were also noted. In the most serious cases [the medics observed] bradycardia, bradypnoea to the extent of apnoea, non-effective blood circulation and cardiac arrest, as well as clinical death." The medium-

gravity patients were suffering from "impairment of consciousness in the form of torpor and the loss of orientation, fever-like hyperkinesias, miotic pupils. As to the cardio-vascular system, [the doctors] noted tachycardia, nausea, [and] repeated bile vomiting". The Government also described the symptoms of the victims whose state was characterised as relatively satisfactory.

28. As to the medical procedures administered, the Government mentioned "suppressing dysfunctions of the vital organs, liberation of the upper airways, artificial lung ventilation, oxygenotherapy, correction of metabolic dysfunctions caused by hypoxia". In the Government's words, this therapy had quick positive dynamics. The Government further described the effects which the therapy had on the victims, and the results of the laboratory examination of the victims' blood and tissues, which showed that the victims developed a "post-hypoxia condition with manifestations of multiple organ failure of various degrees of gravity". According to the Government, that condition was caused by the effects of a "composite chemical compound of a general narcotic action", which were aggravated by "prolonged psychological stress, hypoxia, dehydration, prolonged immobility, and chronic diseases".

29. According to the Government's submissions, *in toto* rescue services evacuated from the theatre 778 hostages, including 101 dead bodies. 677 persons were dispatched to the hospitals, 21 arrived at the hospital in a pre-agonal or agonal state or were in a state of clinical death and could not have been saved. Out of 656 persons who were hospitalised, seven died, including three persons who died from causes unrelated to the use of gas. Consequently, the death rates in the hospitals amounted to 0.9%.

D. The criminal investigation

30. On 23 October 2002 the Moscow City Prosecutor's Office ("the MCPO") opened a criminal investigation into the events of 23-26 October 2002. The case was attributed no. 229133. The prosecution qualified the facts as "a terrorist act" and "hostage-taking" (Articles 205 and 206 of the Criminal Code).

31. On 24 October 2002 the MCPO formed an investigation team which included officials working in the Prosecutor's Office, the FSB, and the Ministry of the Interior (police). The investigation team was headed by investigator K. from the MCPO. On the same day a judge of the Lefortovo District Court, at the request of the investigator, ordered the wiretapping of a telephone line which had allegedly been used by an accomplice of the terrorists. Also on the same day a judge of the Moscow City Court authorised the wiretapping of a number of other telephone lines allegedly used by the terrorists.

32. On various dates in 2002-2003 the applicants (as well as the relatives of other victims) were given the status of injured parties. In that capacity they obtained access to certain materials of the case file, namely the medical files of the victims to whom they were related. Despite their requests, however, they were not allowed to make copies of those materials from the case file or to disclose their content to third persons, including independent medical experts. Furthermore, the applicants were not allowed to contact the experts who had examined the bodies.

33. On 17 December 2002 investigator K. requested the MCPO to extend the time-limit for the investigation in case no. 229133. The request contained a further action plan for the investigative team; it included measures to obtain further details of the terrorist attack itself, an examination of the explosives and the bodies of the deceased hostages, identification of the terrorists, and so on. The plan did not include consideration of the rescue operation as such.

34. On 29 January 2003 investigator K. proposed a new action plan for the "concluding stage of the investigation". The plan provided for further investigative measures aimed at identification of the dead terrorists and their possible accomplices, examination of explosives and firearms used by them, questioning of the victims and examination of objects found on the scene of the crime. According to the action plan, by that date 60 rescue workers and 60 medical workers had been questioned, 600 medical histories of victims had been obtained, and 129 post-mortem examinations had been carried out. The investigator ordered that an additional expert examination be conducted into the cause of death of 125 victims (those who had not died of bullet wounds). The investigator also ordered that additional witnesses be questioned. However, it appears that the purpose of that questioning had no relation to the rescue operation itself.

35. At the admissibility stage the Government produced some documents from case no. 229133. The documents include witness statements by those who participated in negotiations with the terrorists; witness statements from several former hostages; witness statements from officials from the public health service and rescue service who had been involved in the rescue operation; witness statements from the head doctors of the hospitals which admitted the former hostages; witness statements from the field personnel directly involved in the evacuation of and medical assistance to the hostages (rescue workers, medics from the Moscow Centre MCUMT, ambulance medics, medics in the city hospitals). The questioning was carried out by investigators from the Ministry of the Interior, the MCPO and the FSB. The Government also produced a report on the examination of the explosive devices used by the terrorists, a report by the Public Health Department on the organisation of medical aid to the hostages, a summary of the medical records of the deceased hostages, results of forensic medical examinations of the deceased hostages, copies of

official correspondence and decisions by the investigative bodies, and some other documentary evidence. Following the Court's decision on admissibility of the case the Government submitted further documents from case no. 229133 and several other "parallel" investigations related to the terrorists and their accomplices. The documents produced by the Government, in so far as relevant and readable, are summarised below.

1. Witness statements by the negotiators

36. Mr Asl., a Duma Deputy and an ethnic Chechen, testified that he had spoken with the terrorists in the theatre building. According to Mr Asl.'s testimony, the leader of the terrorists told him that he was prepared to die; he was very nervous and was not open to dialogue.

37. Mr Yastr., another State official, testified that Mr B., the leader of the terrorists, had proposed to the authorities that several hostages be released in exchange for a partial withdrawal of Russian troops from Chechnya. He had also requested that the relatives of the victims organise a public march on Red Square in support of withdrawal of the Russian troops. He had further requested that the federal authorities appoint a representative for talks with the separatists, someone who would be entitled to take political decisions. Among such persons he had named Mr Kz., the former commander of the federal troops in Chechnya.

38. Mr Yav., a Duma Deputy, testified that the terrorists had initially demanded the immediate withdrawal of Russian Federation troops from Chechnya, but they had then put forward other demands with regard to the federal forces, namely that the latter stop using artillery and air raids and cease "clean-up operations", and that direct telephone negotiations be organised between President Putin and Mr Maskhadov, the president of the separatist government. The terrorists had told Mr Yav. that they were prepared to die, and that they knew that they would not leave the city alive. Mr Yav. understood that if the requirements of the terrorists were not met, they would have been prepared to start executing the hostages.

39. Ms Plt., a journalist, testified that "Abu-Bakr" (another leader of the terrorists) put forward the following demands: the withdrawal of federal troops from any district of the Chechen Republic, and a public statement by President Putin that he would stop the hostilities. The terrorists had agreed to accept food and water; some time afterwards food and water had been supplied.

2. Witness statements by former hostages

40. The investigators questioned 737 former hostages about the situation in the main theatre auditorium where they had been held. The materials of the case file contain a memo prepared by the investigator recapitulating their testimonies. In addition, the parties submitted several full-text written

testimonies by the former hostages. These documents, to the extent that they are relevant, can be summarised as follows.

41. Most of the hostages testified that there had been 40-60 terrorists in the theatre building. Initially the terrorists allowed those hostages who had mobile phones to call their relatives and ask them to hold a "peace rally" against the war in Chechnya and require the Government not to storm the building. Later the terrorists confiscated the mobile phones, threatening execution for non-compliance.

42. On 25 October 2002 one of the hostages, a young man, tried to escape from the auditorium and started to run; the terrorists fired at him, then took him outside and executed him.[1] While shooting at the escapee, the terrorists seriously wounded another person. At a certain point one of the leaders of the terrorists ordered the shooting of another person whom he considered to be an agent of the security forces, and who had penetrated the building from the outside.

43. It is clear from the witnesses' statements that most of them took the terrorists' threats seriously. Some of them, however, noted that they feared storming by the security forces more than the terrorists themselves.

44. When the gas penetrated the auditorium Mr B. (the leader of the terrorists) ordered that the windows be smashed for better ventilation. Those terrorists who were in the auditorium started to shoot around; they appeared to be aiming at the windows. The women terrorists sitting among the public did not try to blow up the explosives; they covered their faces with handkerchiefs and lay on the floor with the hostages. Within 10 minutes most of the people in the auditorium were unconscious.

3. Examination of the explosive devices

45. On 19 November 2002 the investigator commissioned an expert report on various technical aspects of the terrorist attack. In particular, the investigator sought to establish the destructive capacity of the explosives planted by the terrorists in the building. The examination was entrusted to FSB experts. The experts established that the terrorists had had about 76 kilos of various explosives (in TNT equivalent); and that the latter's simultaneous detonation would have killed or seriously injured most of the hostages in the auditorium through blasts or shrapnel, but it was unlikely that the detonation would have led to the collapse of the entire building. The position of the stationary explosives and the placement of the "suicide bombers" within the auditorium guaranteed maximum efficiency in the case of detonation and showed the terrorists' technical expertise.

[1] Rectified on 6 March 2012: the text was "the terrorists fired at him, wounding him in the head, then took him outside and executed him."

4. Report of the Public Health Department

46. On 20 November 2002 Mr Sl., the Head of the Public Health Department of the City of Moscow, submitted a report concerning the organisation of the evacuation of and medical assistance to the hostages. The report stated that five ambulances and two MCUMT teams had been dispatched to the scene immediately; in addition, city hospitals took measures to free places in preparation for the eventual arrival of hostages. At about 5.55 a.m. on 26 October 2002 458 medical emergency teams were sent to the site of the events. The hostages were evacuated by rescue workers and the special-squad officers in the "face-up" position. Coordination of the evacuation was ensured by the workers of the *Zashchita* (Protection) Centre of the Ministry of Health of the Russian Federation. The first 20 ambulance teams arrived at the scene at 6.09-6.14 a.m.

47. In view of the victims' symptoms, they were given injections of Nalaxone, an "antagonist of narcotic analgesics". These injections were administered within the theatre building by the special-squad officers. However, Nalaxone was only slightly effective when administered to those who had been in a state of hypoxia for a long time. The rescue workers had been instructed to turn the victims face down if they showed signs of vomiting. There was sufficient Nalaxone available to the doctors, since it was part of the standard first-aid kit of an emergency team. Mr Sl. further testified that the majority of the hostages received an injection of Nalaxone inside the building. The injections had been administered by the special-squad officers; the officers informed the medics which hostages had not received an injection; that group then received an injection from the medical emergency teams. Victims in a coma were transported in the ambulances; the others were transported in city buses, but always accompanied by medics.

48. Most of the victims had been dispatched to War Veterans Hospital (no. 1) and City Hospital no. 13. The evacuation of 770 hostages had taken 1 hour and 15 minutes. Only 6 people died in hospital. 114 people were already dead on arrival at the hospitals. The report concluded that the efforts of the various services participating in the evacuation and medical assistance to the victims had been well-coordinated, and that the evacuation operation had been efficient and adequate.

5. Examination of medical records

49. On 27 November 2002 Ms Usm., one of the investigators, analysed the medical records of the surviving hostages and drew up a report containing information on the timing of the hostages' arrival at various Moscow hospitals. That report did not include statistics on the deceased hostages.

50. According to the report, on 26 October 2002 War Veterans Hospital no. 1 admitted 53 patients in the period between 6.30 and 7 a.m., 20 patients between 7 and 7.30 a.m., 10 patients between 7.30 and 8 a.m., and 6 patients after 8 a.m.

51. City Hospital no. 13 admitted three patients between 7.15 and 8 a.m. (two of them arrived "on their own", one was brought in an ambulance); 213 patients arrived between 8 and 8.30 a.m. (153 arrived "on their own", apparently in buses; 60 – in ambulances); between 8.30 and 9 a.m. the hospital admitted 21 patients (ten arrived in ambulances); between 9 and 9.30 a.m. the hospital admitted 27 patients (nine arrived in ambulances); between 9.30 and 10 a.m. the hospital admitted 20 patients (one arrived in an ambulance); and after 10 a.m. the hospital admitted 45 patients (one arrived in an ambulance).

52. City Hospital no. 7 admitted eight patients between 7 and 8 a.m. (all brought in ambulances); 16 patients between 8 and 8.30 a.m. (six were brought in ambulances); 13 patients arrived between 8.30 and 9 a.m. (five were brought in ambulances), eight arrived between 9 and 9.30 a.m. (two were brought in ambulances); 15 arrived between 9.30 and 10 a.m. (one was brought in an ambulance); and 17 arrived after 10 a.m.

53. City Hospital no. 1 admitted nine patients between 7 and 8 a.m. (all were brought in ambulances), and 19 between 8.30 and 9 a.m. (12 in ambulances).

6. Statements by public health officials and chief doctors

54. Witness Ev., the Chief Anaesthesiologist[1] of Moscow City, testified that he had been responsible from 23 October 2002 for preparing War Veterans Hospital no. 1 to receive hostages. He had checked the staffing situation: the hospital had received support staff from other medical institutions, including surgeons and emergency physicians from the Sklifosovskiy Hospital. He had also verified the necessary equipment. Eight emergency operating tables had been prepared. On 24 and 25 October 2002 he had checked the readiness of City Hospitals nos. 7, 13 and 53. The two hospitals (nos. 7 and 13) had been prepared to admit up to 70 patients in a critical state. However, there was no decision as to the exact number of hostages to be dispatched to each hospital. He had learned about the storming of the building at 6 a.m. from the mass media. At 7.20 a.m. he arrived at the Sklifosovskiy Hospital, where he started to prepare additional emergency teams to be sent to the site of the events. At 10 a.m. he arrived at the War Veterans Hospital. By that time the victims had already been divided into several groups and the doctors had identified the most serious cases. He examined the victims personally; in most cases they were suffering from cardiac and respiratory insufficiency, aggravated by

[1] Rectified on 6 March 2012: the text was "Chief Emergency Physician"

dehydration, "aeleontropic" (*sic*) disorder, high ferments and "myoglobin" levels, and shock. He had learned from the mass media that the security forces had used gas. The victims had received, in the first place, artificial lung ventilation, cardiac support, etc. Two or three hours later he had left for Hospital no. 13, which had admitted a large number of the victims. As to possible treatment, he testified that it had been difficult to prepare any antidote in advance, given the situation of the hostages at the time of the storming of the building. Nalaxone was a specific antidote for opiate drugs and was widely used from the beginning of the operation. The fact that the victims were suffering from opiate poisoning had been evident from their symptoms. However, the use of Nalaxone had not been effective, as it had not produced any tangible positive results.

55. Witness Ks., director of the MCUMT, stated that she received information about the storming of the building on 26 October 2002 at 5.30 a.m. That information was immediately transmitted to several city hospitals. At 5.37 a.m. she received an order to mobilise 100 ambulances from the nearest medical emergency units. At 5.50 a.m. the MCUMT received information about the storming. The third MCUMT brigade (no. 6813) was ordered to move to the area near the theatre. That brigade was supposed to indicate the route for the ambulances. Ks. herself stayed in the hospital. At 7.02 a.m. the third brigade received an order to approach the theatre building and to start the evacuation. The mass evacuation of hostages started at 7-7.05 a.m. in ambulances and city buses. The evacuation ended at 8.15 a.m. As a result of their training the emergency teams were well prepared for such situations, and they had all the necessary drugs, including Nalaxone. On the whole, the evacuation and medical assistance to the victims were well organised. Since there was a risk of explosion, it was impossible to treat the hostages near the building. The lack of information about the formula of the gas was irrelevant in the circumstances, and there had been no need to use military medics.

56. Witness N., another MCUMT official, testified that he had been on duty from 25 October 2002. He had not received any special briefing; however, he had information about the plan to evacuate the hostages. On 26 October 2002 at 2 or 3 a.m. he had participated in the evacuation of two wounded people from the theatre building to the nearest hospital. At 5.45 a.m., after the beginning of the operation, he ordered that 20 ambulances be positioned a few blocks away from the theatre. At 6 a.m. he was informed that the building had been cleared of the terrorists and that the ambulances could start the evacuation. They had arrived on site at 7.05 a.m. Circulation near the building had been hindered by the heavy trucks which had been blocking the road. Witness N. had been responsible for placing the hostages in the city buses and dispatching them to hospitals under the convoy of escort vehicles. The initial examination had shown that the victims were suffering from gas poisoning; immediate assistance had

consisted in removing the hostages from the building, opening their breathing passages, injecting Cardiomin and restoring normal heart and lung functions.

57. Witness Krt., the chief doctor of War Veterans Hospital no. 1 (which was the closest to the theatre) testified, *inter alia*, that on the eve of the storming they had received a machine for artificial lung ventilation. However, they expected that the hostages to have "traumatic injuries". The hospital had had about 300-350 beds available, with a potential of 600 beds. The ground floor of the hospital had been allocated for emergency treatment, operating tables had been arranged and the doctors had prepared "materials for bleeding patients". When the first victims started arriving at the hospital, it was unclear what had happened to them as most were unconscious. However, it was irrelevant whether or not there was information about the kind of gas to which they had been exposed.

58. Witness Skh, the chief emergency physician of City Hospital no. 1, testified that the first patients had been delivered by ambulance to his hospital at 7.15 a.m. At about 8 a.m. a city bus had arrived with 32 victims. All of them showed signs of acute respiratory insufficiency: they were unconscious, their external respiration was deficient and they had yellowish skin (cyanosis). The victims had been escorted by two uniformed men with machineguns, and a man in plain clothes with a video camera. The victims had been sitting or lying on the floor of the bus; bodies were piled on top of each other. Mr Skh. had taken five persons out of the bus himself; then other people had arrived and the people were taken into the hospital. Six out of the thirty-two were already dead. Mr Skh. described them.

59. Witness Ar., the chief doctor of Hospital no. 13, testified that on 26 October 2002 he had arrived at work at about 7.20 a.m. The first ambulance with victims was already there. The main arrival of victims had been at 7.45 a.m., when 47 ambulances, each carrying two or three people, and five buses arrived at the hospital. It was later established that the hospital had admitted 356 former hostages, including 35 who had been in a state of clinical or biological death when they arrived at the hospital. Twenty out of those 35 people had been at a stage where it was too late to carry out any reanimation procedures. In his opinion, it was immaterial whether the medics were informed about the gas used during the operation. He confirmed that there had been some Nalaxone stocks available in the hospitals but it had been insufficient, so on 26 October 2002 they had received a further supply of about 100 doses.

60. Witness Kz., chief emergency doctor of Hospital no. 13, testified that they had been prepared for the arrival of hostages; however, they had not been informed of any eventual diagnosis they might face. The victims who arrived at his hospital had received artificial lung ventilation, oxygen masks, etc. The doctors had no information about the gas used by the

security forces, but realised that the victims had been exposed to a narcotic gas and so decided to use Nalaxone as an antidote.

61. Witness Kn., the head of the emergency treatment unit of Hospital no. 13, testified that two of the hostages admitted to her hospital had been in a state of clinical death. At the same time, she noted that "there were no corpses" (in the buses transporting the victims).

62. Witness Af., the chief doctor at Hospital no. 7, stated that they had had enough staff to treat the hostages. They had not received any additional drugs as the hospital pharmacy had had sufficient stocks. The first ambulances had arrived at the hospital at about 7.15 a.m., and continued to arrive for about 45 minutes. Af. himself had not seen any signs of medical intervention on the victims' bodies. People had been in a very weak state. 14 hostages had died, but it was hard to say whether the deaths had occurred during transportation or after their admission to hospital. 30 minutes after the first ambulance arrived, a doctor on duty at the City Health Department had called him and said that "Nalaxone was on its way to the hospital".

63. Witness Rm., the chief emergency physician at Hospital no. 7, testified that 50-70 minutes after the arrival of the first victims someone from the hospital's administration office had told the medics that they should use Nalaxone. There had been about 40 dozes of the medicine in stock. 14 people died in the hospital within 30 minutes. 40 minutes later the hospital had received more Nalaxone. Nobody had died subsequently, with the exception of one woman, who had died three days later of a heart attack.

64. Witness Ks., the chief paramedic at Hospital no. 7, testified that on 26 October 2002 they had admitted 98 victims. All of the victims had been treated; the medical staff gave injections in their arms.

65. Witness Ksh., head of the toxicology unit at the Sklifosovskiy Hospital, testified that the victims had been transported to the hospital in ambulances. She had learned that the hostages were suffering from gas poisoning. The victims received ordinary treatment: they had not been subjected to any special procedures and the doctors had mainly tried to stop the hypoxia. Witness Ksh. also confirmed that the knowledge of the exact formula of the gas would not have helped the doctors. A statement in similar terms had been given by Mr Vd., an emergency toxicologist at the Sklifosovskiy Hospital.

66. Witness Bgr, deputy Chief Doctor at Main Military Hospital no. 1, testified that she had seen no signs of medical intervention on the victims. Ms Mkhl., head of the emergency treatment unit of the War Veterans Hospital no. 1 testified that there had been no Nalaxone stocks in their hospital.

7. Statements by rescue workers

67. Witness Chz. was the head of the rescue service at the Moscow City Administration. He stated that he had participated in planning the rescue

operation. However, he had not been informed of the possible use of gas; he instructed his staff to intervene in the event of an explosion. He stated that the evacuation of the hostages had been well-organised.

68. Witness Chs., another rescue service official, confirmed that the rescue workers had been expecting an explosion and had been equipped accordingly (bulldozers, cranes, etc.). At 6 a.m. he received an order to start evacuating the hostages. He had participated personally in the evacuation. They had carried victims face down in order to avoid suffocation by the tongue. On the way to the exit the medics gave injections to the victims, and the victims were then loaded into the buses. Mr Chs. also said that he had not known that gas had been used and had not smelled any gas in the building.

69. Witness Pt., a rescue worker, testified that he too had been unaware of the use of gas. He had also seen the medics giving injections to the hostages; he later learned that this was an antidote.

70. Witness Zhb., a rescue worker, also confirmed that he had not smelled gas when he entered the building. He also testified that the work of the special-squad officers, rescue workers and the medics had been well-coordinated and that there had been no problem with the buses' circulation in traffic.

71. The investigators questioned several other rescue workers. They testified that the victims had received injections on the spot, that the doctors' actions had been properly coordinated and that there had been enough vehicles to bring the victims to the hospitals. Some stated that the victims had been transported face down. They all testified that they had not been informed about the use of the gas.

8. Statements by ordinary doctors and paramedics

72. Witness Vlk., an MCUMT doctor, noted that he had not received any information about the situation at the scene, that the ambulances had been used as escort vehicles for the city buses, and that on-the-spot coordination had been organised by MCUMT staff. There had been no appropriate place on the ground to sort the victims, and the circulation of the ambulances had been slow. The rescue workers and doctors had had to take into account the risk of an explosion and the overall complexity of the situation. A lack of information about the gas, and of doctors and paramedics in the city buses transporting victims to the hospitals had played a negative role.

73. Witness Kr., a doctor from the MCUMT, testified that he had participated in evacuation of the hostages. He had arrived at the scene at 7.02 a.m.; clinical examination of the victims had shown that they were suffering from poisoning by opiate drugs. When his team arrived at the theatre building, they saw that the special squad officers, firemen and rescue workers had already started evacuating people from the building. The victims had been placed in buses; each bus had an ambulance as an escort

vehicle. Mr Kr. had dispatched two or three city buses to the hospitals. Those hostages who had been able to sit had been placed in the upright position (about 20 people in each bus); others had been put on the floor (about 10 or 12 people in each bus). The latter group had included several dead people. At a certain point Mr Sl., the Head of the Moscow City Public Health Department, informed him by walkie-talkie that they should use Nalaxone. Mr Kr. noted further that the evacuation of the hostages had been somehow hindered by the "absence of traffic routes for the vehicles". At the same time he concluded that the overall organisation of the hostages' evacuation had been satisfactory.

74. Witness Vl., a doctor from the MCUMT, testified that he had arrived at the theatre with his team at 7.13 a.m. According to Mr Vl., he had not had a predetermined procedure for action, but had organised the evacuation and coordination with other services "on the spot". Not all of the buses which had transported the victims had a sufficient number of medical staff inside to accompany the victims. Some of the buses had only one paramedic. From his testimony it was unclear whether the buses had escort vehicles. Mr Vl. also noted difficulties in the circulation of ambulances and buses near the theatre. The efficiency of the medical assistance had been undermined by the lack of information about the gas used and by the risk of explosion.

75. Witness A. entered the theatre building shortly after all the terrorists had been killed. He testified that he had seen special-squad officers evacuating unconscious hostages from the auditorium to the ground outside the building. There the hostages had been placed on the ground near the entrance, where the doctors inspected their eyes with hand-held torches and provided first aid, namely the administration of injections in the buttocks.

76. Witness Mkh., a doctor in the emergency treatment unit in Hospital no. 13, testified that when he approached the hospital at 7.45 a.m. he had seen the buses at the entrance. He also confirmed that he had not seen any corpses among the victims admitted to the hospital. He described the medical procedures he had used to unblock the victims' airways.

77. Witness Zb., a doctor in Hospital no. 13, testified that she had arrived at work at 8.05-8.10 a.m. on 26 October 2002. By that time the buses with hostages had already arrived. She had examined a number of patients; six were dead. The necessary records had been drawn up in the evening of that day, so the time of death had been indicated approximately, based on the time of the patient's arrival at the hospital.

78. Several other doctors from Hospital no. 13 testified about the admission process for the victims and the treatment they had received (cardiac massage, lung ventilation, injections of Nalaxone and Cardiomin). Most of the doctors from the various city hospitals testified that there had been enough medical personnel to treat the hostages and that premises had been freed up to admit hostages. The investigators showed the medics the

photos of the victims for identification, and put questions about the record-keeping process on the day of the events.

79. Witness Psd., emergency physician at City Clinical Hospital no. 1[1] testified that he had seen no traces of injections or incubatory tubes on the victims. He also testified that he had had no previous experience with gas poisoning. He further testified that the emergency treatment team in the hospital consisted of two doctors and five paramedics.

80. Witness Bgr., a doctor from the War Veterans Hospital, stated that the first hostages had started to arrive at their hospital at about 6.30 a.m., mostly in ambulances. She learned from Ms Mkh., the chief emergency physician, that they were to use Nalaxone, but they had not had any Nalaxone in stock. However, they received supplies from an official of the Emergency Situations Ministry who arrived at the hospital with a plastic bag full of Nalaxone. Ms Bgr. testified that their hospital had had four machines for artificial lung ventilation. She said that if they had known about the use of the gas they would have tried to obtain additional equipment of that sort, and that the knowledge of the nature of the gas would have helped the doctors, although the treatment would probably have been the same.

81. The investigators also questioned the doctors who had worked in the nearest ambulance cells (ambulance stations) or at the scene of the events on 26 October 2002. Witness Pch., senior doctor in an ambulance cell, testified that she had not been at the scene of the events, but, in her opinion, the absence of information about the gas applied in the course of the operation had not adversely affected the efficiency of the medics working there: they had acted on the basis of "the clinical presentation (poisoning by an unknown gas and other acute conditions)". It had been enough to perform "cardio- and lung-resuscitation operations" and apply antidotes, which had been available to the doctors. She testified that there had been no problems with the circulation of the ambulances and buses. The presence of military medics had been unnecessary. A statement in similar terms was given by Ms Kr., another doctor from the ambulance cell.

82. Witness Fd., a doctor in another ambulance, testified that he had accompanied 40 victims in one of the city buses on their way to Hospital no. 13. Somebody from the MCUMT had given him 10 ampoules of Nalaxone and told him that he should give injections.

83. Witness Scht., a doctor in an ambulance, testified that necessary medical assistance had been rendered to the victims in a timely manner. He did not know who had been responsible for the oversight of the work of various ambulance teams on the spot. He also testified that the doctors had been unaware of the content of the gas, so they had been unable to apply any specific methods of treatment to the victims. Among the negative

[1] Rectified on 6 March 2012: the text was "Main Clinical Hospital no. 1"

factors which had affected the efficiency of the rescue operation, Mr Scht. noted the transportation of the victims in the city buses, lack of information about the possible diagnosis and the gas used by the security forces, or at least about the pharmaceutical group it belonged to, and a failure to sort the victims on the basis of their medical condition.

84. Witness Fds., an ambulance doctor, testified that he had been in an ambulance located at the parking area near the building. At 8 a.m. he arrived to the scene and took two people to Hospital no. 7 in his vehicle. They had not been informed about the use of the gas, and had not applied any special methods of treatment or any medicine. They had administered oxygen to the victims. Mr Fds. testified that there had been no problem with the circulation of the vehicles, but that there had been not enough medics to accompany the city buses which transported the hostages. The exact name of the gas had been irrelevant, but it would have been helpful if the doctors had known the content of the gas.

85. Witness Chr., an ambulance doctor, testified that when he had seen the first victims he realised that they were suffering from an overdose of opiates and applied Nalaxone, but had not applied any other special medicine. He stated that he had not known who was overseeing the actions of the medics at the scene. He also said, that, in his opinion, the lack of information about the gas used and possible antidotes played a negative role.

86. Witness Krg., a ambulance doctor, testified that at about 7.20 a.m. they had arrived at the theatre building, where their vehicle had waited for some time in the queue of other ambulances. When it was their turn to take a patient on board, somebody had opened the rear door and had placed two unconscious bodies inside the ambulance. Ms Krg. asked where she should deliver those people, but had received the reply: "Anywhere!" She also asked who was responsible for the rescue operation, but the rescue workers had not known. Both victims had been in a state of grave narcotic intoxication; she had given them oxygen inhalations and lung ventilation.

87. Witness Sfr., an ambulance paramedic, testified that she had not been told where to transport the victims loaded in her ambulance by the rescue workers. She had to take the decision independently. She then decided to take them to Hospital no. 23, since she knew how to get there. She had not been warned about her possible participation in the rescue operation and had not been given any specific instructions about the methods of treatment to be applied to the hostages.

88. Witness Krl., who worked as a car dispatcher in the ambulance cell, testified that on 26 October 2002 he had been responsible for equipping and dispatching ambulances. At 8.15 a.m. he had received an instruction to increase the stock of Nalaxone in the ambulances.

89. Witness Msv., an ambulance doctor, said that there had been nobody at the entrance of the building to coordinate and direct the doctors' work;

there had been nowhere to treat the victims near the building, and the hostages had been transported in the buses without being accompanied by medical staff. He said that the ambulances had been able to circulate freely. Mr Msv. noted that the lack of information about the type of the gas used by the FSB had played a negative role.

90. Witness Nds., an ambulance paramedic, noted that the victims had not been sorted, and dead people had been placed in the buses alongside those still alive. Most of the buses had not been accompanied by doctors. Corpses had been loaded into the ambulances. That testimony was confirmed by Mr Knkh., another ambulance medic. The latter also testified that he had not seen any coordinator on the scene organising the work of the rescue teams and doctors. He also noted that it would have been better if the medics had had some information about the gas. He had not been warned about his possible participation in the rescue operation before he had received the order to go to the theatre. He had received no specific instructions about procedures to follow or about any particular medical treatment to be applied to the hostages.

91. Witness Osp., an ambulance paramedic, testified that the first hostages had been taken out of the building by soldiers, then the rescue workers started to put victims in the city buses and ambulances, without any preliminary sorting. He had not seen anybody coordinating the evacuation of and medical assistance to the hostages, although he had seen people from the Emergency Situations Ministry and the MCUMT. He noted that the name of the gas applied during the operation had been immaterial. He also testified that he had not been warned about his possible participation in the rescue operation in advance, and had received no specific instructions.

92. Witness Blk., an ambulance paramedic, testified that she had been asked by a rescue worker to travel in a city bus with the 22 hostages placed there. She had not been given any medical equipment or drugs. On the way to the hospital the bus had stopped at each red light. She had only been able to give indirect cardiac massage or "mouth-to-mouth" artificial respiration. A journalist from *MK* (a newspaper) had entered the bus with her; she learned from him that gas had been used. At the entrance to the hospital the bus was stopped by the hospital's security guards. One hostage was dead on arrival at the hospital.

93. The applicants referred to testimony by several other medics who had participated in the rescue operation, namely Mr Zkhr., Mr Lrn., Ms Suschn., who all stated that they had not received any prior warning about their possible involvement in the rescue operation or instructions about specific procedures or treatment to be applied. Mr Zkhr. testified, in particular, that he had received only six doses of Nalaxone, whereas the bus he had been in charge of had contained 17 victims, including four who were seemingly dead. Mr Msln., an ambulance paramedic, testified that he would have been better prepared if he had had more syringes with Nalaxone.

Ms Vlv., an ambulance paramedic, testified that when she received a victim for further transportation to the hospital she was not told whether or not that person had already received any medical treatment. Her colleague, Ms Klv., also testified that she had not been told whether the victims had received any medical assistance. Ambulance paramedics and drivers Mr Kzm., Ms Bgtr., Ms Vlv., Mr Ptkh., and Ms Krgl. testified that either they had not had a walkie-talkie in their cars or the system had not been operational. Paramedic Mr Kp. testified that he had not been told where to go. Paramedics Mr Prkh. and Ms Suschn. testified that their vehicles had followed other ambulances (in order to find the way to the hospital).

9. Other evidence; results of the forensic medical examination of the victims

94. The investigators questioned Mr Al., an officer working in the public relations office of the FSB. He told the investigator that he had not participated in the planning of the operation. However, at about 6.30-6.40 a.m. on the morning of 26 October 2002 he had entered the theatre building on the order of his superiors. He had not smelled any gas in the auditorium because he had the flu. He had seen that the hostages were unconscious; their skin had been bluish. Special-squad officers had been taking the hostages out of the auditorium and taking them to the ground floor of the building. On the ground floor medics were taking care of the victims: they had checked their eyes and given injections in the buttocks. The doctors had been wearing blue uniforms. Mr Al. toured the building, since he had had to take photos of the terrorists' corpses. Shortly afterwards, when he returned to the main auditorium, the evacuation of the hostages had already ended. Mr Al. concluded that it had been done very quickly. Mr Al. had made a video recording of the auditorium, but only when the hostages had been removed.

95. In January-February 2003 the Bureau of Forensic Examinations of the City of Moscow Health Department, at the MCPO's request, examined the materials of the case file, namely the medical files of the deceased victims and the witness statements which described the process of evacuating the hostages. Those reports indicate that the exact time of death was not always recorded by the medical staff of the ambulances or hospitals, but was established later as a result of the post-mortem examination. In most cases the post-mortem examination showed that death occurred on 26 October 2002 between 6 a.m. and 8 or 9 a.m. Where the medical file contained an entry with the exact time of the death (not all of the reports contained such information), the results were as follows: four people died before 7.29 a.m., seven people died between 7.30 and 7.59 a.m., twenty-four people died between 8 and 8.29 a.m., thirteen people died between 8.30 and 8.59 a.m., and twelve people died after 9 a.m.

96. The above forensic medical examination reports also contained information about the resuscitation procedures applied to the hostages. However, in 58 cases the reports mentioned that "there was no information about the provision of medical aid [to the victim]" (according to the applicants, this figure varied from 68 to 73). In over 15 cases the doctors discovered traces of intravenous injections in the victims' arms, whereas in other cases the doctors testified that the deceased victims had received assisted lung ventilation, cardiac massage and similar resuscitation procedures. In many cases the reports stated that the patient had been admitted to hospital in a critical state, with almost no breath or pulse. The medical files of 17 people contained an entry that "no chronic diseases were detected".

97. In their general conclusions the doctors of the Bureau of Forensic Examinations of the City of Moscow Health Department established that most of the deceased hostages had suffered from various chronic diseases and pathologies which, together with physical and mental exhaustion and other negative factors related to the three days of captivity, had exacerbated the effects of the gas. The doctors concluded that the gas had had an "indirect effect" at best, and that the victims had died as a result of a coincidence of factors.

E. Intermediate conclusions of the criminal investigation

98. On 16 October 2003 the MCPO decided not to pursue the investigation into the planning and the conduct of the rescue operation. The investigation established that five persons had been killed by the terrorists during the siege. Their number included Ms R., Mr Vl. and Mr V. – who were not among the hostages but had been shot by the terrorists while trying to penetrate the building from the outside. Mr G. was one of the hostages; he was shot while trying to resist. Mr Z. was killed by an accidental shot in the incident involving Mr G.

99. Since there had been a real risk of mass killing of the hostages by the terrorists, the security forces had decided to storm the building. The attack resulted in the death of a further 125 people. Almost all of them died as a result of:

> "... acute respiratory and cardiac deficiency, induced by the fatal combination of negative factors existing ... on 23-26 October 2002, namely severe and prolonged psycho-emotional stress, a low concentration of oxygen in the air of the building (hypoxic hypoxia), prolonged forced immobility, which is often followed by the development of oxygen deprivation of the body (circulatory hypoxia), hypovolemia (water deprivation) caused by the prolonged lack of food and water, prolonged sleep deprivation, which exhausted compensatory mechanisms, and respiratory disorders caused by the effects of an unidentified chemical substance (or substances) applied by the law-enforcement authorities in the course of the special operation to liberate the hostages on 26 October 2002."

The investigator concluded that:

> "... the multi-factor nature of the causes of death excludes a direct causal link ... between the effects of [the gas] and the death [of the hostages]. In this case the link is only indirect, since there are no objective grounds to conclude that, in the absence of the other factors named above, the application of [the gas] would have led to [the] death [of the hostages]."

100. As a result of the attack, forty terrorists were killed – either because they resisted and fired back at the special-squad officers, or because there was a real danger that they would activate the explosive devices which they had planted in the building. According to the MCPO, the decision to storm the building was justified in the emergency circumstances, and necessitated by the need to release the hostages and to prevent an explosion which could have caused the death of 912 hostages and "the erosion of the prestige of Russia on the international arena". As a result, the prosecution refused to initiate a criminal investigation into the actions of the State authorities during the crisis.

101. The exact formula of the gas used in the course of the rescue operation has not been made public. According to a reply from the FSB of 3 November 2003, the security forces used a "special mixture based on derivatives of phentanyl". However, more precise information about this gas and its effects remain undisclosed, even to the investigative authorities, for reasons of national security.

102. As to the investigation into the terrorist attack itself, it was decided to discontinue criminal prosecution of the forty terrorists killed on 26 October 2002. At the same time the investigation continued in respect of other presumed terrorists, in particular Mr Talkhigov, and the time-limits for completing that investigation have been repeatedly extended. On 27 January 2003 the proceedings in respect of Mr Talkhigov were severed from case no. 229133. On 22 April 2003 the case was transmitted to the trial court (case no. 229136). The applicants claimed that they learned of this from the press. The applicants requested the Zamoskvoretskiy District Court of Moscow to allow their participation in the proceedings in the capacity of victims. However, this was refused on the ground that the case had already been transferred to the court. The Moscow City Court upheld that decision. On 20 June 2003 Mr Talkhigov was found guilty of aiding and abetting the terrorist attack by the Moscow City Court. He was sentenced to eight and a half years' imprisonment. On 9 September 2003 the conviction was upheld by the Supreme Court of Russia.

103. The time-limits for the completion of the investigation were extended several times. It appears that the investigation has not yet been formally completed.

F. Materials produced by the applicants concerning the rescue operation

104. In support of their allegations the applicants submitted certain additional materials to the Court. It appears that whereas some of them were part of the case file of the official investigation, others were obtained from other sources. These materials, in so far as relevant, may be summarised as follows.

1. "Amateur" video recording produced by the applicants

105. The first video recording (disc no. 1) shows the central entrance to the theatre building. The recording is made from an upper-floor window of one of the buildings across the street, from a distance of about two hundred metres.

According to the timing information on the video, the recording starts at 9.35 p.m. There is no date, but apparently it is the evening of 25 October 2002. It shows a group of people coming out of the building. The applicants explained that those people were five Azeri hostages released by the terrorists.

At 11.23 p.m. a lone figure enters the building. Again, the applicants explained that this was Mr Vl. entering the building.

At 11.49 p.m. a man in red approaches the building but then returns to the point where the security forces are stationed.

At 2.05 a.m. (the early morning of 26 October 2002) two ambulances approach the building. The medics enter the building and then return carrying a body on a stretcher (2.15 a.m.), then another (2.17 a.m.). At 2.18 a.m. the ambulances leave the car park. According to the applicants, the doctors evacuated Ms St., who had been wounded by an accidental shot during the incident with Mr G., and Mr Z. The ambulances arrived two hours after the terrorists requested them.

At 5.33 a.m. the sound of shooting can be heard from the building. Two minutes afterwards there is an explosion in the foyer of the theatre.

At about 6.22 a.m. heavily armed officers from the special squad, wearing bullet-proof vests, helmets and masks, appear in the foyer of the theatre.

At 6.30 a.m. there are several explosions in the foyer.

At 6.46 a.m. the first three hostages come out of the building; a special squad officer helps one of them to walk. They are conveyed to an off-road vehicle parked on the car-park. No ambulance can be seen at this point.

At 6.51 a.m. a hostage comes out by himself.

At 6.52 a.m. another group of uniformed men enter the building; they are not wearing helmets. At the same time, special-squad officers drag out an unconscious body by the hands and place it on the stairs just outside the main doors (6.51.32). An officer carries a woman in red on his shoulder.

At 6.53 a.m. an officer approaches the man who was earlier left on the stairs of the building and drags him away. It appears that this person's hands are handcuffed or tied behind his back. A woman in uniform with fair hair approaches them. She holds an object in her hand which looks like a handgun or something similar. She points it at the person prostrated on the floor (6.53.27 - 41), then other uniformed men bend over the body and push it closer to the wall.

More hostages come out of the building, and others are carried out by the officers. The first ambulance appears at the scene at 6.57 a.m. Then three rescue-service vehicles appear. People in yellow uniforms come out of the vehicles and enter the building through the main entrance. Within a few seconds more rescue-service vehicles arrive; more rescue workers enter the building, and some of them carry out unconscious bodies. It appears that some of those bodies have already been lying on the floor of the foyer, some of them face up (6.52.37). The recording ends here.

The next recording (no. 2) is made from the same position and starts a few seconds after the end of the first recording. It shows the beginning of the mass evacuation of hostages (7 a.m.). Rescue workers and special squad officers carry unconscious people out of the building. Most of the bodies are carried by their hands and legs, some of them are carried face down, others face up. A person near the entrance seems to be coordinating the actions of the rescue workers and showing them where to take the hostages.

At 7.05 a.m. the camera zooms out over the parking area. From this point the image becomes quite blurred. There are no ambulances on the parking area; then one vehicle arrives. At 7.06 a.m. more ambulances start to arrive from the left, led by the rescue-service vehicles.

By 7.11 a.m. over a dozen bodies have been placed on the stairs outside the entrance. Several rescue workers are examining them and manipulating the bodies, but it is impossible to see what they are doing. It appears that some of the workers are giving heart massage. In the meantime the evacuation continues.

By 7.20 a.m. city buses appear on the parking area. The number of people in front of the building and in the foyer reaches its peak at about 7.30 a.m.

At 7.33 a.m. a person in a rescue worker's uniform appears to give an injection to one of the victims lying on the floor.

Over the following minutes several ambulances and buses leave the scene, while others arrive. The ambulances move slowly, but they do not seem to be completely blocked, or at least not for any length of time.

By 7.55 a.m. there are hundreds of people on the staircase of the building: special-squad officers, rescue workers, police officers, medics, etc.

At 8.03 a.m. a line of city buses waiting for their turn can be seen on the car park. The evacuation of the victims continues, although at a slower rate.

The next episode starts at 8.58 a.m. It appears that by this time the mass evacuation of hostages is over. Nevertheless, several ambulances arrive at the parking area at 9.30 a.m. At 9.35 a.m. the military armoured cars start to leave the scene.

2. The film made by the Moscow City Rescue Service

106. The applicants also produced a copy of the film made by the Moscow City Rescue Service, on three discs. It showed pictures of the evacuation of the hostages, interviews with doctors, public officials and former hostages. On minute 37 of the recording (disc no. 2 of the film) it shows a city bus with unconscious people sitting upright in the seats. It also shows the cordon line, and the passage of the ambulances and city buses through it.

107. The three discs contain extracts from the recording made by the rescue service. It appears that the recording was made from a different angle than the recording described above, and was of a better quality. However, only parts of the recording are available. The most relevant parts are on disc no. 3, starting from the 46th minute of the recording. It appears that this minute corresponds to 6.50 a.m. on the "amateur" video recording described above. It can be seen that more than a dozen unconscious bodies are lying on the ground in front of the theatre entrance in the face-up position (48th minute of the recording and onwards). From the 51st minute the recording shows the inside of the main auditorium. It shows rescue workers and special-squad officers who are evacuating unconscious people. They are not wearing gas masks. The litter on the floor between the rows of chairs includes empty packs of juice.

108. The tape also contains a number of interviews with former hostages, doctors, and officials. One former hostage told the interviewers in the hospital that the terrorists had planned to liberate all foreign citizens at 8 a.m.

3. Reports by Dr Mark Wheelis, PhD, and Dr Martin Furmanski, MD

109. In 2007 one of the applicants commissioned an expert examination of the lethality of the gas used by the Russian security forces. The examination was carried out by Dr Mark Wheelis, PhD, a microbiologist, and a professor at the University of California in Davis, the United States. In his report dated 12 March 2007 Dr Wheelis concluded as follows:

> "... Significant numbers of fatalities among the hostages inside the Dubrovka theatre should have been anticipated. Fatalities were certain to occur from two distinct mechanisms. First, fatalities and permanent injury should have been anticipated from direct toxic effects of the chemical agent. Although the Russian Federation has not identified the agent, they have said it is a member of the phentanyl class of synthetic opioids. Several of these are in medical use as analgesics for severe chronic pain, and as anaesthetics, and it is known that the margin between the effective dose for

unconsciousness and the lethal dose is very small. Death is usually by respiratory depression. Phentanyl is also known as a drug of abuse, and many fatalities have been recorded among recreational users. Since all known phentanyls have similar, and very narrow, safety margins, fatalities from respiratory depression should have been anticipated.

Second, even if the chemical agent itself was safe, fatalities should have been anticipated as a result of asphyxiation from airway obstruction consequent upon sudden collapse from a seated or standing position. Some lethality or permanent injury should also have been anticipated as a result of aspiration of vomit, as vomiting is a common side effect of opioids.

I make no judgment on the wisdom of using an anaesthetic compound under the circumstances faced by the Russian Federation during this tragic event. However the decision to employ the agent should certainly have considered the likelihood of significant numbers of deaths among the hostages as a result, and should have recognized the necessity for immediate medical intervention to minimize them."

110. The same applicant also asked for an evaluation of the autopsy report on his son. The examination of the report was carried out by Dr Martin Furmanski, who is a toxicologist practicing in the United States and a specialist on chemical weapons. On 22 February 2007 Dr Furmanski submitted a report. He agreed that the applicant's son had died as a result of "acute respiratory and cardiac insufficiency ... caused by the action of the unidentified chemical substance" (quote from the autopsy report). At the same time Dr Furmanski considered that there had been no reduced oxygen in the theatre, at least to a biologically significant degree.

111. Further, in his view, many of the "multi-factor" findings that the official report cited could not have contributed to the victim's death, because they are agonal changes seen only after the body had suffered terminal circulatory collapse as a result of a failure to breathe because of the effects of the special substance. In his opinion, pre-existing conditions would not have contributed significantly to the lethal effects of the special substance. Of the findings that existed prior to the introduction of the special substance, none would have significantly affected the victim's chance of survival. Even the most severe of those findings (the erosive gastritis and loss of only 200 cc of blood), would not have been sufficient to compromise his blood pressure or circulation, particularly as he was confined and did not need to exert himself.

112. Dr Furmanski claimed further that some of the alleged pre-existing conditions could not be verified from the available record, and even if present would have been trivial. He compared the forensic histological study of 15 November 2002 and a repeat study report, and concluded that their findings were contradictory. He noted that the "repeat histological study" contained similar findings to the other two autopsy cases which were provided for his examination, namely the finding of chronic encephalitis and chronic meningitis. He said that these were very uncommon diseases,

and it was a rare coincidence that three persons attending the same theatre on the same date suffered from them. Dr Furmanski further challenged the conclusions of the report concerning the fatty changes discovered in the victim's liver: he concluded that the victim's liver had not been compromised by fatty change, and, even assuming so, the function of the liver was unimportant to the effect of Phentanyl and its related compounds on the human body.

113. Dr Furmanski further stated that the effects of the Phentanyl family of drugs are well known. At moderate doses those drugs suppress pain, and at high doses they cause a sleep-like state, and at higher doses they cause a coma. All opiates also suppress the urge to breathe in a dose-dependent way. When the individual is unconscious breathing may slow below the point that is needed to maintain sufficient oxygen in the blood to sustain normal body functioning. Even if breathing continues at a reduced rate, the relaxation caused by opiates can cause the neck and tongue to become limp and result in an occlusion of the airway. This positional asphyxia is a particular risk if the recipient is sitting upright. In addition, when opiates (and particularly Phentanyl-type drugs) are given rapidly, this causes muscular rigidity, which can stop breathing entirely. The spasm of rigidity can result in violent pitching of the trunk. Such a forward pitching might well have caused a blow to the forehead from the theatre seat ahead.

114. Dr Furmanski noted that the clinical picture of no "medical" deaths for three days, and then scores within minutes of the release of the special substance strongly implicated the special substance in the subsequent deaths and disabilities. The report concluded that "the findings of [the victim's] autopsy are fully consistent with a death caused solely by an overdose of an opiate such as Phentanyl or a related derivative, received from an aerosol delivery during the special operation".

4. Press interviews and other submissions

115. The applicants produced copies of press interviews with former hostages, rescue workers, bus drivers, etc. Thus, Ms Pvl., a former hostage, stated in an interview with *Vremya Novostey* that she had managed to get out of the main auditorium of the theatre by herself. She, together with other hostages who had been in relatively good shape, had first been taken to hospital, but the hospital in question refused to admit them. They had returned to the theatre, where they had been put in a bus and taken to another hospital (City Hospital no. 13). The driver of the bus had not known where to go and had had to ask for directions all the time. They had taken ninety minutes to arrive at the hospital.

116. Another participant in the events, Dmitri (who gave only his first name), stated in an interview with *Sobesednik* that he was an ambulance doctor. At about 5.30 a.m. he had received an order to go to the theatre. However, his vehicle had been stopped at the cordon by police because they

had not yet received an order to let the ambulances through. This had delayed them for ten minutes. The traffic near the theatre had also been slow because of the heavy machines parked there. Some of the hostages had already been taken out of the building. An open box with syringes and Nalaxone was lying nearby. Somebody shouted: "Everyone, give injections!" Those hostages who had received injections were not identified by a mark: as a result, some of them had received two or three shots of Nalaxone, which was a fatal dose. There had been no time to carry out artificial respiration because of the risk of explosion. His car had transported eight unconscious people to the War Veterans Hospital, but it had been difficult to get close to the entrance because of the vehicles parked on the street. 500 beds were ready in the hospital, but the medical staff had not been prepared to cope with such a flow of patients. As a result, that hospital had admitted only 120 patients. In the meantime, the special-squad officers had been piling up bodies in the city buses. The bus drivers, mostly from outside Moscow, had not known where to go. When the first ambulance arrived at the Sklifosovskiy Hospital, there had been nobody to meet the ambulance team and dispatch the patients to the appropriate departments. V. Mkh., the head of the *Digger-Spas* group, testified that one person had been mistakenly taken for dead.

117. Mr Sng., in an interview with *Komsomolskaya Pravda*, submitted that he had seen that the bodies in the two buses which arrived at the Sklifosovskiy Hospital were piled up on the floor. In another interview published in the same newspaper, witnesses Mr Shb. and Mr Krb. described the conditions of transportation of the victims. Both were drivers of the buses used to transport the hostages to the hospitals. They stated that, in spite of all the efforts to clear up the area, traffic near the building had been slow, especially because of the ambassadors' cars parked on the streets. Once the bodies were loaded in the bus, policemen had told the drivers to follow the ambulance. When the buses arrived at the Sklifosovskiy Hospital, the hospital did not have enough staff to take the bodies out of the buses immediately. They had first taken care of the people brought in the ambulances, then of those in the buses.

118. One of the former hostages, Ms Gubareva, described the conditions in the main auditorium of the theatre. In particular, she submitted that the female suicide bombers had never left the auditorium. One of them, who had been sitting nearby, always had a detonation device in her hands. She told Ms Gubareva that the biggest explosive device would be sufficient to "blow up three auditoriums like this one". Another former hostage, Ms Akimova, confirmed that the suicide bombers had not let the detonators out of their hands. Witness Mr Zhirov stated that his[1] relatives had been held in the theatre. He[2] testified about the role of Mr Talkhigov, who had

[1] Rectified on 6 March 2012: the text was "Ms Zhirova stated that her"

established contact with the leader of the terrorists. Ms Karpova, who had also had relatives among the hostages, said that the first official account of the operation had been very optimistic; there had been no information about any victims. Both she and Mr Kurbatov, whose daughter died in the theatre, testified how difficult it had been to receive any information about the former hostages. Similar testimony was given by Mr Milovidov.

5. Report by the All-Russia Centre of Disaster Medicine

119. The applicants produced a report prepared by the All-Russia Centre of Disaster Medicine at the Ministry of Public Health (*Zashchita*). The Centre's experts noted that the use of phentanyl had been justified in the circumstances. They described the medical effects of phentanyl and its possible side-effects. The experts also noted that phentanyl could be dangerous for people suffering from asthma, hyper-reaction, arterial and brain hypertension, hypoxia, and respiratory distress. The report noted that the majority of the deceased hostages suffered from different pathologies which led to their death. The report further stated that the various services (rescue workers, medics) involved in the rescue operation had acted in a coordinated manner. Almost all the victims had received injections of Nalaxone; all the victims in a critical state had been transported in ambulances and had received artificial respiration and "syndrome therapy". The report noted, *inter alia*, that the effectiveness of the medical aid had been lowered by the following negative factors: (1) no information on the use of a chemical substance (2) absence of a "specific antidote" for the chemical substance used; (3) problems with simultaneous evacuation of the victims outside the building; (4) impossibility of using stretchers inside the building; (5) problems with the circulation of ambulances near the building. The report also noted the high concentration of the gas, which had led to instantaneous death [in some cases].

G. Criminal-law complaints by the applicants and third parties

1. Criminal-law complaint by Mr Nmt.

120. On an unspecified date Mr Nmt., a Member of Parliament, requested the MCPO to conduct an inquiry into the evacuation process and medical assistance to the hostages. He alleged that the authorities had acted negligently, and that it would have been possible to avoid human losses by providing more adequate first aid to the gas victims on the spot and in the hospitals. Mr Nmt. submitted materials in his possession to the investigation team, namely a report by an expert team set up by the *SPS* political party,

---

[2] Rectified on 6 March 2012: the text was " She"

and several video recordings made at the scene of the events immediately after the building had been cleared of the terrorists (copies of the report and video recordings were submitted to the Court by the applicants).

121. On 2 December 2002 the MCPO refused to entertain the investigation. Investigator I. noted that the documents produced by Mr Nmt. were not properly signed or certified, and that they were tainted with various procedural informalities. As to the video recordings, they had been made from such a distance that it was impossible to reach any decisive conclusions. Nevertheless, based on those videotapes the investigator concluded that "the victims had been transported in different postures, particularly "on their backs", and they had been placed before the entrance of the building pending further medical assistance. [The videotape showed] that the victims received injections or assisted respiration. There was no evidence that there had been any hindrance to the circulation of the transport by which the former hostages had been evacuated".

122. Investigator I. further related the testimony of several witnesses (see below, the outline of the witness testimony collected by the investigative team). The investigator established that neither Ms Ks, the director of the MCUMT, nor Mr Sl., the Head of the Health Department, had been aware of the time and methods of the rescue operation; they had not been informed about the intended use of the gas due to secrecy considerations. However, in the circumstances, and given the information available to them, they had acted in the best possible way. Most of the people (114 persons) had died in the theatre building; only a few had died in hospital. The investigator concluded that the above officials, as well as other State officials responsible for medical assistance to the hostages, were not guilty of negligence.

2. Criminal-law complaint by Mr Finogenov

123. On 29 March 2003 Mr Finogenov, one of the applicants, complained to the General Prosecutor's Office (the GPO) about the conduct of the investigation proceedings. He sought a more thorough examination of the cause of his brother's death.[1]

124. On an unspecified date Mr Finogenov asked the MCPO to disclose the post-mortem medical examination report on his brother's body[2], in order to conduct an alternative medical examination of the causes of his[3] death. By a letter of 8 April 2003 the MCPO refused to give permission for disclosure.

---

[1] Rectified on 6 March 2012: the text was "of his brother's death and the death of his brother's fiancée."

[2] Rectified on 6 March 2012: the text was "reports on the bodies of his brother and his fiancée,"

[3] Rectified on 6 March 2012: the text was "their"

125. On 10 June 2003 Mr Finogenov asked the MCPO to enlarge the scope of the investigation and examine the lawfulness and expediency of the use of gas by the security forces. On 15 June 2003 he repeated his request for disclosure of the post-mortem examination report[1]. On 23 June 2003 the MCPO refused to investigate the conduct of the operation by the security forces and to give permission for disclosure of the medical report[2].

126. On 26 July 2003 Mr Finogenov again complained to the GPO about the inadequacy of the investigation. He maintained, in particular, that the investigator had refused to examine the course of the rescue operation, specifically the use of a potentially lethal gas, and the failure to provide assistance to the hostages after their release. He also complained that he had no access to the materials of the case and that he was unable to participate effectively in the proceedings. The applicant's complaint had been referred by the GPO to the MCPO without an examination on the merits. The applicant challenged before the courts the refusal of the GPO to entertain his complaint, but the court ruled that Mr Finogenov's petition was not a proper criminal-law complaint which would require an inquiry. That judgment was upheld on appeal by the Moscow City Court on 19 January 2004.

127. On 13 October 2003 Mr Finogenov asked the prosecution authorities to allow him to participate in Mr Talkhigov's case as an injured party, but this was refused on 23 October 2003. The investigator noted that the case against Mr Talkhigov (no. 229136) had been severed from the "main" criminal case (no. 229133) in which the applicant had victim status. The investigator further noted that Mr Talkhigov had not caused any harm to the applicant; furthermore, the Moscow City Court was considering whether it was possible to allow the relatives of the deceased hostages to participate in Mr Talkhigov's trial.

128. On 14 October 2003 Mr Finogenov asked the MCPO to obtain information from the FSB, which had coordinated the rescue operation, about the nature and content of the gas used by the authorities. On 28 October 2003 he received a reply in which he was advised that "the information on the concentration and content of the gas ... is not relevant for establishing the cause of death of the hostages".

129. On 6 November 2003 Mr Finogenov lodged a criminal-law complaint with the Zamoskvoretskiy District Court of Moscow concerning the inadequacy of the investigation carried out by the MCPO and the refusal to investigate the conduct of the rescue operation. He also sought to obtain from the MCPO copies of the decisions not to initiate an investigation into the conduct of the rescue operation. However, on 22 and 25 March 2004 the Zamoskvoretskiy District Court decided not to request those documents from the MCPO. On 25 March 2004 the Zamoskvoretskiy District Court

[1] Rectified on 6 March 2012: the text was "reports"
[2] Rectified on 6 March 2012: the text was "medical reports"

dismissed Mr Finogenov's complaint. The applicant appealed. On 17 June 2004 the Moscow City Court quashed the decision of 25 March 2004 and remitted the case to the Zamoskvoretskiy District Court for a fresh examination.

130. Mr Finogenov repeated his request for the disclosure of the materials of criminal investigation no. 229133, and the decisions refusing to open an investigation into the conduct of the rescue operation. In November 2004 the MCPO produced parts of the case file and some of the decisions referred to by the applicant. On 30 March 2005 Mr Finogenov supplemented his claims in view of the materials received from the prosecution.

131. On 30 May 2005 the Zamoskvoretskiy District Court dismissed Mr Finogenov's application. The court established that the investigative actions had been carried out in conformity with the law and that all of the relevant evidence had been collected. The investigator had "fully and objectively" assessed the actions of the security forces and the medical staff during the crisis.

132. On 13 July 2005 the Moscow City Court upheld the judgment of 30 May 2005. The City Court confirmed that the MCPO's decisions, contested by the applicant, "were in conformity with the law of criminal procedure, contained reasons, were taken by an authorised official and were based on evidence collected during the investigation".

3. Criminal-law complaint by Ms Gubareva

133. On 8 May 2003 Ms Gubareva asked the GPO to provide her with copies of medical documents relevant to the death of her relatives. However, the request was refused on the ground that, according to the law, an injured party could obtain access to the materials of a case only after the investigation had been closed.

134. On 23 October 2003 the applicant complained to the GPO about the inadequacy of the investigation carried out by the MCPO. This complaint was forwarded to the MCPO which, by letter of 21 November 2003, informed the applicant that on 17 October 2003 it had been decided not to prosecute the officials who had planned and participated in the rescue operation.

135. On 12 October 2004 the applicant lodged a criminal-law complaint with the Zamoskvoretskiy District Court of Moscow, seeking to obtain a more thorough investigation into the conduct of the rescue operation. In particular, she claimed that the investigation had failed to address the following allegations:

(a) lack of medical assistance to the hostages, and the circumstances of their evacuation from the theatre;

(b) thefts of the personal belongings of several hostages;

(c) poisoning of the hostages by an unknown gas;

(d) unlawful use of that gas by the security forces;

(e) killing of the unconscious terrorists;

(f) inactivity of the MCPO, responsible for the investigation;

(g) inaccurate medical examination carried out by the Forensic Bureau of the Public Health Department of the Moscow City administration.

136. On 5 May 2005 the Zamoskvoretskiy District Court of Moscow dismissed the applicant's complaint. The findings of the Zamoskvoretskiy District Court are similar to those of the Zamoskvoretskiy District Court in Mr Finogenov's case (see paragraph 131 above). On 6 July 2005 the Moscow City Court upheld the judgment of 5 May 2005.

137. In 2007 Ms[1] Gubareva introduced several motions with the investigator in charge of the case. She requested access to certain materials of the case, including written testimonies of some witnesses. Some time later[2] she was given access.

4. Criminal-law complaint by Mr Kurbatov and Ms Kurbatova

138. On 29 May 2003 Mr Kurbatov asked the MCPO to carry out an additional investigation measure aimed at establishing certain facts relevant to the death of his daughter. On 5 June 2003 he was informed that all necessary investigative actions had been carried out and that he would be given access to the materials of the investigation once it had been completed.

139. On 26 June 2003 the applicant repeated his request for information. On 1 July 2003 the investigator in charge of the case informed him that his daughter had died in the theatre building; however, no further information or supporting documents were provided.

140. On 5 February 2004 the applicant asked the prosecution authorities to examine the circumstances of his daughter's death more thoroughly. He claimed that his daughter's death had been caused by the unknown gas employed by the security forces. On 8 April 2004 he received a reply from the MCPO advising him that the expert examination, carried out earlier, had not established a causal link between the effects of the gas and the death of the hostages.

141. On 26 May 2004 the above two applicants lodged a criminal-law complaint with the Zamoskvoretskiy District Court of Moscow, seeking to obtain a more thorough investigation into the conduct of the rescue operation. On 20 September 2004 the Zamoskvoretskiy District Court of Moscow dismissed the applicants' complaint. The applicants appealed, but on 29 November 2004 the Moscow City Court upheld the District Court's judgment.

---

[1] Rectified on 6 March 2012: the text was "Mr"

[2] Rectified on 6 March 2012: the text was "On 18 May 2007"

5. Criminal-law complaint by Mr Burban and Ms Burban-Mishuris

142. On an unspecified date the two applicants lodged a criminal-law complaint with the Zamoskvoretskiy District Court. They complained about the prosecuting authorities' refusal to pursue the examination of the facts of the case in respect of the planning and conduct of the rescue operation. On 8 December 2005 the Zamoskvoretskiy District Court dismissed the applicants' complaint. The court held that the investigation had been thorough, that the investigation team had gathered all possible evidence in accordance with the law, that they had been subjected to unbiased and comprehensive examination and that the investigative team's conclusions were well-founded and lawful. The court further held that it had no power to examine the effectiveness of the investigation and the alleged failure of the prosecuting authorities to inquiry into certain factual aspects of the events, namely to establish the liability of the medical staff and the special-squad officers who had been involved in the rescue operation. On 24 April 2006 that decision was upheld by the Moscow City Court.

H. Compensation payments and subsequent civil proceedings

143. In the aftermath of the events of 23-26 October 2002 the Moscow City Administration paid the victims of the terrorist attack "compassionate compensation": the survivors received 50,000 Russian roubles (RUB) and the relatives of the deceased hostages received RUB 100,000. In addition, the City Administration covered certain funeral expenses and paid a certain amount for the property lost during the rescue operation.

1. Civil proceedings concerning compensation before the Tverskoy District Court

144. On an unspecified date in 2002 some of the applicants who were Russian nationals contacted the Moscow City Administration in order to obtain compensation for non-pecuniary damage (*moralniy vred*) caused by the terrorist attack. They referred to section 17 of the Suppression of Terrorism Act of 25 July 1998, which provided that the damage caused by a terrorist attack should be compensated by the authorities of the federal constituency where the attack took place. However, the authorities refused to indemnify the applicants.

145. In November 2002 a group of the applicants who were Russian nationals brought civil proceedings against the City Administration before the Tverskoy District Court of Moscow. The applicants claimed that the 1998 Act imposed on the city authorities an obligation to compensate damage caused by a terrorist attack. They also maintained that the rescue operation had been inexpedient, that the actions of the authorities had been inept, that the hostages had not been properly evacuated from the building

and had not received the necessary medical aid on the spot and in the hospitals. As a result, the applicants had been injured or lost relatives.

146. In the course of the preliminary hearings the applicants challenged the judge on the ground that the courts in Moscow were funded from the budget of the City Administration, the defendant in their civil case. This practice, they claimed, contradicted federal law and created dependence on the Moscow City authorities by the courts. They asked that the case be transferred to the Moscow City Court.

147. The applicants also requested the judge to summon a number of witnesses, namely the politicians who had participated in the negotiations with the terrorists, and the State officials who had planned and directed the rescue operation. They also requested the judge to obtain certain documentary evidence from the authorities and commission a forensic report in order to elucidate the cause of the death of the deceased hostages. The applicants also requested the court to admit certain evidence, in particular the report on an independent investigation of the events by the *SPS* political party. Finally, the applicants sought the recording of the hearing on audio- and video-tapes.

148. Judge Grb. examined those motions and dismissed almost all of them. Thus, she refused to withdraw from the case; she also refused to call the witnesses suggested by the applicants and to obtain the evidence sought by them; from the record of the hearing it appears that the judge considered it irrelevant. Finally, she prohibited any video- and audio-recording of the trial.

149. The hearings on the merits were held on 22 and 23 January 2003. In the course of the hearing many applicants testified about the circumstances of the rescue operation. The defendants made oral pleadings. The applicants, as plaintiffs, requested the adjournment of the case in order to prepare their arguments in reply to those of the defendants, but the court granted an adjournment of only a few hours. The next day the applicants repeated the request for adjournment, but it was refused.

150. On 23 January 2003 the Tverskoy District Court dismissed the applicants' claims in full. On 28 April 2003 the Moscow City Court upheld that judgment. The courts found that, as a general rule, damage should be compensated by the tortfeaser (Article 151 of the Civil Code). Under Article 1064 of the Civil Code civil liability for tort could be imposed on a third person (not the tortfeaser) if this was directly stipulated by the law. However, the court found that the 1998 Act did not specifically provide for compensation of non-pecuniary damage by the State for an act of terrorism in the absence of fault on the part of the State authorities.

151. The court also refused to award damages for the allegedly inadequate planning and conduct of the rescue operation. It found that the Moscow authorities had defined a list of measures to be implemented in order to prevent terrorist attacks and help their victims, issued the necessary

regulations to that end and created entities dealing with such situations. The court referred to the case-law of the European Court of Human Rights, namely the judgment in *McCann and Others v. the United Kingdom* (27 September 1995, Series A no. 324). It noted that the use of lethal force might be justified under Article 2 of the Convention where it was based on an honest belief which could have been regarded as valid at the time. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others.

152. The court finally noted that the criminal investigation into the events of 23-26 October 2002 was still pending, that the causal link between those events and the death of the applicants' relatives had not yet been established, and the liability of those in charge of the rescue operation had not yet been established by any court decision.

153. As a result, all of the applicants' complaints were dismissed. The court of appeal upheld the findings of the district court as to the merits of the case and did not establish any breach of the procedure by the lower court, without, however, giving any detailed analysis of the procedural complaints of the plaintiffs.

154. In the following months the Tverskoy District Court issued a number of similar judgments in respect of other applicants. Those judgments were upheld by the Moscow City Court on appeal. As appears from the motion lodged by the applicants' lawyer on 10 December 2003, the applicants challenged the Moscow City Court, claiming that it was also partial because of the funding it received from the defendant. However, the Moscow City Court dismissed that argument.

2. Civil proceedings concerning compensation before the Basmanniy District Court

155. Those applicants who were foreign nationals, namely Ms Burban, Ms Burban-Mishuris, Ms Gubareva, and several other victims of the events of 23-26 October 2002, brought a civil action before the Basmanniy District Court against the federal government, claiming damages on the same grounds. The applicants sought to obtain the attendance of certain witnesses and examination of additional evidence, as in the proceedings before the Tverskoy District Court, but this was refused. On 6 August 2003 the court dismissed their claims. The court's reasoning was broadly similar to the reasoning given by the Tverskoy District Court in its judgment of 23 January 2003. On 10 October 2003 that decision was upheld by the Moscow City Court.

II. RELEVANT DOMESTIC LAW

156. The Suppression of Terrorism Act of the Russian Federation (Law no. 130-FZ, hereinafter also called Anti-Terrorism Act) of 1998 (in force until 1 January 2007) establishes basic principles in the area of the fight against terrorism, including those concerning coordination of the efforts of various law-enforcement and other State agencies. Section 2 of the Act establishes, *inter alia*, that:

(a) priority should be given to the interests of people endangered by a terrorist act,

(b) the State should make minimal concessions to terrorists,

(c) the State should keep secret, to the maximum extent possible, the technical methods of anti-terrorist operations and not disclose the identity of those involved in them.

Section 3 of the Act defines terrorism as follows:

> "... violence or the threat of its use against physical persons or organisations, and also destruction of (or damage to) or the threat of destruction of (or damage to) property and other material objects which creates danger to people's lives, causes significant loss of property or entails other socially dangerous consequences, perpetrated with the aim of violating public safety, intimidating the population or exerting pressure on State bodies to take decisions favourable to the terrorists or to satisfy their unlawful pecuniary and/or other interests; an attempt on the life of a State or public figure, committed with the aim of halting his or her State or other political activity or in revenge for such activity; or an attack on a representative of a foreign State or an official of an international organisation who is under international protection, or on the official premises or means of transport of persons under international protection, if this act is committed with the aim of provoking war or of straining international relations."

157. Section 11 of the Act provides that the operative headquarters, the inter-agency body responsible for a given anti-terrorist operation, may use the resources of other branches of the federal government in the anti-terrorist operation, including "weapons and [other] special-purpose hardware and means" (*oruzhiye and spetsialniye sredstva*). Section 13 of the Act defines the legal regime in the zone of an anti-terrorist operation (identity checks, right of security forces to enter premises and search persons, etc.).

158. Section 14 of the Act permits negotiation with terrorists if this can save lives. However, it is prohibited to examine any demands from terrorists concerning the handing over to them of any persons, weapons or other dangerous objects, or any political demands.

159. Section 17 of the Act establishes that the damage caused by a terrorist act should be compensated by the authorities of the federal constituency where the attack took place. The damage caused to foreign nationals by a terrorist act should be compensated from the federal budget.

160. Section 21 establishes exemption from liability for damage caused to the life, health and property of terrorists, as well as to other legally-protected interests, in the course of conducting an anti-terrorist operation, in accordance with and within the limits established by the legislation. The exemption covers servicemen, experts and other persons engaged in the suppression of terrorism.

161. Article 205 of the Criminal Code of the Russian Federation of 1996 establishes liability for terrorism, which is defined as "commission of an explosion, arson or another act terrorising the population and creating risk to human lives [...] aimed at influencing decisions taken by the [public] authorities ...". Article 206 of the Criminal Code establishes liability for a hostage-taking, which is defined as "capturing or retaining a person as a hostage, committed with a view to compelling the State [...] to act [in a particular manner] ...".

III. RELEVANT INTERNATIONAL AND COMPARATIVE LAW

162. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, Cuba, 27 August to 7 September 1990), provide, *inter alia*, that "law-enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law-enforcement officials".

163. The Basic Principles further encourage law-enforcement agencies to develop "a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons". At the same time "the development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled." Whenever the lawful use of force and firearms is unavoidable, law-enforcement officials must, in particular, "ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment", and ensure that arbitrary or abusive use of force and firearms by law-enforcement officials is punished as a criminal offence under their law. The Basic Principles also stipulate that "exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles".

164. On 15 February 2006 the German Constitutional Court declared the Aviation Security Act, insofar as it authorised the armed forces to shoot

down, by the direct use of armed force, aircraft that are intended to be used as weapons in crimes against human lives, unconstitutional.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

165. Under Articles 2 and 3 of the Convention the applicants in both cases complained that their relatives had suffered and died as a result of the storming conducted by the Russian security forces. Those applicants who had been among the hostages also claimed their lives had been put at risk or had been damaged by it. They also complained that the investigation had been ineffective. The Court will examine these complaints under Article 2 of the Convention, which provides:

> "1. Everyone's right to life shall be protected by law ...
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. The applicants' submissions

166. At the outset, the applicants criticised the Government for their failure to address the specific questions put by the Court after the admissibility decision. They also indicated that the documents from the case file submitted by the Government were somehow incomplete; some of the pages were missing, whereas some other pages were hardly readable.

1. Use of lethal force

167. The applicants claimed that the requirements of the terrorists had not been unrealistic and that, contrary to what the authorities had always suggested, those requirements could have been met. The applicants further indicated that no high-level political figures had been involved in the negotiations with the terrorists. The "negotiators" who had participated in the talks with the terrorists were merely well-known politicians and

journalists who had volunteered to transmit the terrorists' message to the authorities. However, the Russian leadership always declared that talks with the terrorists were not permissible under any circumstances. The applicants referred to several public statements to that end by the then President Putin and the then Minister of Defence Ivanov. The authorities' main concern during the whole crisis was to avoid "erosion of the prestige of Russia on the international arena", as it was put in one of the investigator's decisions. The terrorists' "readiness to die" was merely a declaration which should not have been taken seriously. Or, if it was taken seriously, it should have deterred the authorities from the storming, and not prompted it.

168. The alleged "executions of hostages", which the authorities used as a pretext for the storming, concerned those persons who had tried to penetrate the building from the outside and who had thus been perceived by the terrorists as spies. Mr G. had been killed for having resisted the terrorists, so his death had not been an "execution" either. Mr Z. was shot by accident[1] in the evening of 25 October 2002 and carried away in an ambulance at 2 a.m. the following morning, i.e. long before the storming. No other incidents took place before the storming. "Executions" had thus been merely an excuse for the start of the operation. On the contrary, the terrorists had been prepared to continue releasing the hostages: thus, the first (and the biggest) group of children had been released on 23 October 2002, unconditionally and before any talks with the authorities. Two other groups of children had been released on 24 and 25 October 2002. Fourteen foreign nationals had been released before the storming. The hostages had had at their disposal water and juice, which was confirmed by several witnesses and by the video-recording in the main hall of the theatre.

169. As to the assessment of the risks of explosion made by the crisis cell during the siege, the Government's reference to it was unsupported, since, as the Government claimed, all documents from the crisis cell had been destroyed. As to the ex-post-facto expert examination of the explosives, the Government misinterpreted the conclusions of the experts. The theoretical risk of the ceiling's collapse existed only if all of the explosives had been concentrated in the same place in the centre of the hall and had detonated simultaneously. In reality the explosives had been dispersed in the hall, and the risk of their simultaneous detonation by way of a chain reaction was assessed by the experts between 3.7 and 14 %, depending on the direction of the blasts. Some of the explosives were not connected to the activation devices or batteries had been removed from those devices. At the same time the Government failed to mention another explosive device with a system of time-lagged activation.

170. The Government failed to indicate who had taken the decision to use the gas. The Government failed to provide the Court with a list of

[1] Rectified on 6 March 2012: the text was "In any event, he was shot"

members of the crisis cell. It is unclear whether those members were informed about the use of the gas. As follows from the statement by the Head of the Moscow Public Health Department, Mr Sl., he had been informed about the use of the gas a few minutes before the storming. The Government's assertion that the gas was not a "lethal force" is not supported by the materials of the case and contradicted their own submissions: thus, while claiming that the gas was not lethal they, at the same time, maintained that it had been impossible to foresee its possible effects. Furthermore, the Government's own description of the effects of the gas and its relation to the death of the hostages disproved their assertion that the gas was harmless. The applicants describe the effects of the phentanyl (the main components of the unknown gas), its counter-indications, etc. In particular, the sources to which the applicants referred warned against applying phentanyl to weakened patients, to very young and very old people, and especially against applying it without the possibility of providing artificial lung ventilation. The Government failed to indicate whether the gas had ever been tested before 26 October 2002.

171. According to the applicants, the former chief of the KGB military counter-intelligence department, vice-admiral Zh., warned in an interview during the siege that use of the gas might cause human losses, especially amongst asthmatics and children. The Government had at its disposal experts who could have explained to them the consequences of the use of the gas.

172. The applicants then referred to the hostage-taking crisis in Peru in 1997, when the Peruvian authorities requested an opinion from the American authorities on the use of a phentanyl-based narcotic gas during the storming. The American authorities answered in the negative, because the use of such a gas would require a simultaneous deployment of 1000 doctors in order to provide quick medical assistance to 400 hostages. Since it was impossible to organise such massive medical assistance, the Peruvian authorities decided not to use the gas.

173. The gas was visible both to the terrorists and to the hostages. However, the terrorists did not activate the explosive devices. They had actively resisted the storming squad officers, firing back from 13 machineguns and 8 handguns. That showed that, had they wished, they could have killed the hostages, but that was apparently not their intention.

174. Shortly after the storming Mr Ign., the press officer of the crisis cell, informed journalists that "several terrorists" had been arrested. However, that information was not subsequently confirmed. It follows that either the remaining terrorists had been executed after arrest or some of them had fled.

2. Rescue operation

175. The applicants maintained that the doctors were unaware of the use of the gas, of its effects and of the treatment to be applied in such a situation. Some of the rescue workers and doctors had learned about the gas only from the mass media, when the evacuation was already over. The applicants stressed that Nalaxone was in itself a dangerous drug with numerous serious side-effects. In the event of prolonged exposure to a narcotic gas such as the one used in the present case, Nalaxone should have had been applied only in combination with other medical procedures, in particular artificial lung ventilation, intubation and elimination of the lung oedema. Otherwise it was capable of exacerbating the effects of the narcotic gas.

176. The Government's assertion that the victims had been sorted into four groups depending on the gravity of their condition was not supported by any evidence, since the documents of the crisis cell had allegedly been destroyed. The drivers of the city buses and the drivers of the ambulances had not received any specific instructions on where to take the victims. In the applicants' opinion, the evacuation routes of the victims had not been prepared, and many victims did not receive any assistance on the spot at all. About 60 ambulance teams had not taken part in the operation, although their participation had been originally planned.

177. Some ambulance teams had not been equipped with walkie-talkies and had thus been unable to receive information. Neither had they had sufficient medicine: thus, the standard pharmacy kit of an ambulance, to which the Government referred, included one dose of Nalaxone. There had not been a sufficient stock of Nalaxone in the hospitals. As a result, Nalaxone had been transported from a hospital in the town of Zhukovskiy in the Moscow Region. There had not been enough doctors to accompany the city buses in which the victims were transported.

178. Lack of instructions and appropriate material seriously undermined the efficiency of the medical assistance. The applicants argued that those of their number who had been personally amongst the hostages had not received adequate medical treatment. The fact that many people had died because the medics were not informed about the nature of the gas and appropriate methods of treatment had been also confirmed by interviews granted by President Putin to the press. In those interviews Putin acknowledged that many people had been put on their backs and were thus suffocated by their swollen tongues or their own vomit.

179. According to the applicants, some of the rescue workers and the special-squad officers were also poisoned by the gas. In the applicants' opinion, this showed that the gas remained toxic for a considerable time. Most of the hostages had been exposed to the gas for more than two hours – from 5.30 a.m., when the storming began, until at least 7.25 a.m., when the mass evacuation started. The evacuation of the hostages had still been going

on 4 ½ hours after the start of the storming. In the applicants' opinion, the data on the time of the death of the hostages contained in the medical documents was unreliable, since the time had either been recorded approximately, or not recorded at all. The applicants pointed to various inconsistencies between the medical documents and the evidence given by the doctors.

3. Criminal investigation

180. The applicants indicated that the criminal investigation had focused on the hostage taking. The authorities' actions have never been formally investigated within the criminal case. The investigations had in fact been restricted by President Putin's declaration to the mass media that "we [will] not punish anybody..." The investigators did not try to establish the circumstances of death of each hostage, the time of death and other circumstances, although they could easily have done so. The conclusions of post-mortem expert examinations in respect of the time and place of the death were unspecific and contradicted other materials in the case.

181. The investigation was not independent. Thus, 28 FSB officers had been included in the investigative team, although the very same agency had been responsible for the planning and conduct of the rescue operation. At the same time, as followed from the materials submitted by the Government, no FSB officers (except for one, who had been injured by the gas) had been questioned during the investigation.

182. The investigators had failed to question witnesses who had not participated in the rescue operation, such as journalists, passers-by, "diggers" etc. The investigators failed to inquire into the alleged theft of the ill hostages' belongings and money by law-enforcement officials after the liberation.

183. All complaints and motions lodged by the relatives of the deceased hostages were replied to with significant delays. The relatives of the victims were unable to participate effectively in the proceedings. Thus, they were unable (as the case of Mr Finogenov showed) to obtain permission for disclosure of the post-mortem medical reports in order to conduct an alternative medical examination of the causes of the victims' deaths. Further, the applicants had not been given victim status in the proceedings against an accomplice to the terrorists, Mr Talkhigov, whose case had been severed from the main case and heard behind closed doors.

184. The conclusions of the Bureau of Forensic Examinations of the City of Moscow Health Department to the effect that the gas had not caused the victims' deaths could not be trusted, since the Bureau's doctors had never been informed of the characteristics of the gas, let alone its exact formula. The non-disclosure of the formula of the gas was not justified and prevented the public from scrutinising the actions of the authorities during the hostage crisis. The fact that during the three days of the siege none of

the hostages died from the "chronic diseases" from which they allegedly suffered showed that the principal cause of death was the gas. Some of the reports of the Bureau of Forensic Examinations were identical: cf. post-mortem reports of Mr Booker and Ms Letyago, whereas it is highly unlikely that the bodies of a 13-year old child and a 49-year-old man would present exactly the same clinical picture. Moreover, the Bureau's report contradicted the clinical picture confirmed by all of the doctors who provided medical assistance to the victims, who concluded that the victims had been poisoned by the unknown toxic gas and applied the corresponding methods of treatment.

185. All known terrorists were killed during the storming; as a result, they could not be questioned about the circumstances of the siege and the storming. It was now impossible to obtain an answer to the question of why the terrorists had not activated the explosives when the storming started.

B. The Government's submissions

186. The Government recalled that Russia is a party to the International Convention against the Taking of Hostages, Article 3 of which provides:

> "The State Party in the territory of which the hostage is held by the offender shall take all measures it considers appropriate to ease the situation of the hostage, in particular, to secure his release .... "

187. The Government further referred to the CIS Model Law on Combating Terrorism adopted by the Inter-Parliamentary Assembly on 8 December 1998. In particular, under section 7 of the above Model Law, if a counter-terrorist body infringes upon the lawful interests of private persons while protecting other lawful interests, for example, protecting the life and health of other people, public order or State security, such acts cannot be regarded as criminal, provided that the counter-terrorist body has acted lawfully, the damage it prevented was greater than the damage actually caused and there was no possibility of attaining the same results by other means. Deliberate taking of life could not be regarded as criminal where it resulted from self-defence or other extreme necessity.

188. The Government also referred to the European Convention on the Prevention of Terrorism of 27 January 1977, which contains a definition of terrorism, and to the G8 Recommendation on Counter-Terrorism of 13 June 2002. The latter document, the Government stressed, encourages the member States to adjust and modernise their counter-terrorism policies in order to react to the new challenges in this area.

189. The Government further insisted that the activities of the State bodies in the instant case had had a legitimate basis, namely the Suppression of Terrorism Act (Law no. 130-FZ) of 25 July 1998. Section 2 of the Act established the principle of predominance of the interests of the individuals

targeted by a terrorist act over all other considerations. The same provision established the principles of minimal concession to terrorists and minimal transparency of anti-terrorist operations, specifically with regard to the methods and tactics employed by the anti-terrorist bodies.

190. Sections 10 and 11 of the Act provide that a counter-terrorist operation is to be conducted by a crisis cell, formed by the Government of the Russian Federation. The crisis cell may use the human, technical and material resources of other State bodies involved in counter-terrorist activities. The crisis cell operates on the basis of the principle of "one-man command". Under section 12 of the Act State agents attached to the crisis cell are responsible to the head of the cell and to no one else; they cannot receive any orders from other State officials. The head of the crisis cell is appointed by the Federal Security Service or the Ministry of Interior, depending on the character of the situation. He defines the territory covered by the counter-terrorist operation and gives instructions to the personnel involved in it, including civilian personnel.

191. Section 14 of the Act establishes the principle of minimisation of the consequences of a terrorist act. The head of the crisis cell may authorise the commencement of negotiations with the terrorists. He or she appoints the persons responsible for the negotiations. However, it is forbidden to discuss the possible exchange of hostages for other people or the handing over of guns and other dangerous objects to the terrorists, and to enter into political negotiations. The President and the Government of the Russian Federation oversee the implementation of the counter-terrorist measures, whereas the GPO ensures that those measures are lawful.

192. The Government claimed that the actions of the authorities during the hostage crisis in the present case had been in full compliance with the domestic norms and international obligations of the Russian Federation. A crisis cell had been created; it had been gathering information about the situation in the theatre and about the leaders of the terrorists. Negotiations had been started, which led to the liberation of some of the hostages. The authorities had persuaded the terrorists to accept food and water for the hostages and medical assistance for the neediest ones. However, at a certain point the terrorists had interrupted the release of children and foreigners and had refused to accept any more food or water. Moreover, the terrorists had started to kill the hostages. They had shot five people in aggregate in order to demonstrate their determination to move to action. The terrorists had been dangerous criminals; their leader, Mr Sh. B. (who had not been in the theatre himself but who had planned and directed the whole operation) had been responsible for numerous terrorist attacks, including a car bombing a few days earlier. Thus, the decision to storm the building had been taken after lengthy negotiations with the terrorists, as required by Article 14 of the Suppression of Terrorism Act, when all possibilities for further negotiations had been exhausted. The choice of means had been justified by the risks

posed by the possible explosion of the bombs, which would have resulted in the death of all of the hostages. One of the hostages had later testified that suicide bombers had told them that the terrorists had been prepared to die; thus the hostages themselves had not seen any other solution than the storming. The telephone calls from Mr S. (B.), one of the leaders of the terrorists, to Mr Yand., another person in the Chechen separatist movement, had been intercepted. It followed from those conversations that Mr S. (B.) had been prepared to kill the hostages and die himself if the terrorists' requirements were not met. FSB experts in explosive devices had made a preliminary assessment of the situation during the siege and had provided three alternative scenarios, and in each of them the loss of human life had been unavoidable. The *ex post facto* examination of the explosive devices installed by the terrorists in the theatre had confirmed that the cumulative effect of their explosions would in all likelihood have killed most of the hostages in the hall.

193. The Government then gave a detailed account of the position, type and strength of various explosive devices installed by the terrorists in the theatre. The Government concluded that the terrorists had had the necessary skills and knowledge in those matters. First, the design of the explosive devices permitted the terrorists to trigger their simultaneous activation, in particular in the case of storming (by releasing the button of the locking mechanism of the explosive device). Further, the detonation of even one explosive device would in all likelihood have led to the deaths of several other suicide bombers. If detonation occurred, they would pull clips on their own explosive belts, which would then explode and produce a chain reaction of explosions. In such a scenario there was a risk of a partial collapse of the ceiling of the main hall of the building.

194. The gas used by the authorities had not been supposed to kill the terrorists but to send them to sleep, so there would be no need to use firearms during the storming. When considering various options for intervention the authorities had considered possible losses amongst the hostages, but these had been unavoidable in the circumstances. It had also been impossible to calculate the dose of the gas more precisely because of the differences in the physical condition of those in the theatre: young, physically fit terrorists, and the hostages, weakened by the siege, suffering from lack of food, fresh air, chronic diseases, some of them too old or too young to withstand the effects of the gas. As a result, the dose of the gas had been calculated on the basis of the "average person's" resistance to it. Any other approach would have undermined the efficiency of the operation, and removed the "surprise effect" of the storming. The authorities had simultaneously tried to avoid maximum damage, to neutralise the terrorists and to minimise negative consequences. Consequently, the use of the gas had been an "absolutely necessary" measure in the circumstances.

195. The Government further claimed that the deaths of the hostages could not be attributed to improper medical assistance after their release. They referred to various domestic legal acts which regulate medical assistance in mass emergency situations. All of the authorities' actions were in full compliance with those texts. When information about the hostage taking was received, the All-Russia Centre for Disaster Medicine sent medical teams to the scene, designated the medical institutions which would be involved in evacuation of and medical assistance to the hostages, gathered representatives of those institutions and briefed them, ordered an increase in the number of medics on duty in the designated hospitals, and established the procedure for urgent delivery of medicine to the hospitals in case of need.

196. After their release the victims received adequate medical assistance. The medics and rescue workers had had the necessary information, medicine and equipment to provide initial medical aid to the victims. Coordination of their actions on the spot was entrusted to the "coordinating members of the All-Russia Centre for Disaster Medicine". It was appropriate to use Nalaxone as an "antagonistic drug" (not as an antidote). The risk of explosion prevented the deployment of a full-scale "makeshift hospital" near the theatre. The territory near the theatre was thus used only for the preliminary examination of the condition of the victims. The medics applied two procedures recommended in such situations by the World Health Organisation – syndrome-based emergency treatment and rapid hospitalisation. Evacuation of the hostages affected by the gas from the theatre building and their transportation to hospital had been quick and well-organised, the hospitals had been equipped to admit them, and, in general, the rescue operation had been conducted in the most efficient manner possible in the circumstances. Use of the city buses as a reinforcement transport was provided by the applicable protocols for emergency situations of such extent. The two hospitals which received the maximum number of hostages (War Veterans Hospital no. 1 and City Hospital no. 13) were prepared for the admission of a large number of patients; they were the closest hospitals to the theatre and it was crucial to reduce transportation time to provide efficient medical aid to the victims.

197. The Government finally noted that the actions of the rescue services were scrutinised in the course of the investigation, which concluded that those actions had been lawful and justified. For a more detailed account of the rescue operation as submitted by the Government, see paragraph 26 above.

C. The Court's assessment

1. Whether the case falls within the ambit of Article 2 of the Convention

198. Before addressing the substance of the applicants' complaints, the Court has to resolve an essential factual controversy between the parties, which might eventually predetermine the Court's approach to the case. The applicants characterised the gas used by the security forces as a poisonous substance and a "lethal force" within the meaning of the Convention case-law. The authorities on numerous occasions declared that the gas was harmless in that there had been no "direct causal link" between the death of the hostages and the gas. A similar allegation was made by the Government in their observations on the admissibility and merits of the complaint (see § 180 of the admissibility decision of 18 March 2010 and paragraph 194 of the present judgment). If the gas was indeed harmless and the death of the hostages was due to natural causes, there is no case to answer for this Court under Article 2 of the Convention.

199. The Court reiterates in this respect its case-law confirming the standard of proof "beyond reasonable doubt" in its assessment of evidence (see *Avsar v. Turkey*, no. 25657/94, § 282, ECHR 2001). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, Series A no. 25, p. 65, § 161). The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, Series A no. 336, § 32, and *Avsar* cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

200. The Court is confronted with divergent accounts of the events of 23–26 October 2002. More specifically, the Court does not have the exact formula of the gas. Even at the domestic level that formula was not revealed by the security forces to the courts and to the investigative authorities. The Court admits that there may be legitimate reasons for keeping the formula of the gas secret. That being said, the Court has enough material to make conclusive findings about the properties of the gas, at least for the purposes of the examination of the applicants' complaints.

201. The official explanation of the mass death of the hostages on 26 October 2002 was that all the persons who had died were weakened by

the siege or seriously ill. The official experts in their report concluded that there was no "direct causal link" between the death of those 125 people and the use of the gas, and that the gas was just one of many factors which led to such a tragic outcome (see paragraph 99 above). The Court will not call into question the interim conclusions of the domestic experts on the medical condition of each particular victim. However, the Court considers that the general conclusion of the expert report, if applied to all the deceased hostages (except those shot by the terrorists), is difficult to accept. It is unthinkable that 125 people of different ages and physical conditions died almost simultaneously and in the same place because of various pre-existing health problems. Equally, the mass death of hostages cannot be attributed to the conditions in which they had been held for three days, during which none of them had died, despite prolonged food and water deprivation, immobility, psychological stress, etc. Further, the Government themselves admitted that it had been impossible to foresee the effects of the gas, and had considered that some losses had been unavoidable (see paragraph 194 above). This implies that the gas was not "harmless", because "harmless" means that it does not have important adverse effects.

202. The Court accepts that the gas was probably not intended to kill the terrorists or hostages. It was therefore closer to "non-lethal incapacitating weapons" than to firearms (see in this respect the distinction made by the Basic Principles on the Use of Force and Firearms, cited in paragraph 162 above). This is an important characteristic of the gas; the Court will return to it in its further analysis. For the time being, the Court does not need to decide whether the gas was a "lethal force" or a "non-lethal weapon". As transpires from the Government's submissions, and as the events of the case clearly show, the gas was, at best, potentially dangerous for an ordinary person, and potentially fatal for a weakened person. It is possible that some people were affected more than others on account of their physical condition. Moreover, it is even possible that one or two deaths amongst the applicants' relatives were natural accidents and were not related to the gas at all. Nevertheless, it is safe to conclude that the gas remained a primary cause of the death of a large number of the victims.

203. In sum, the present case is about the use of a dangerous substance (no matter how it is described) by the authorities within a rescue operation which resulted in the death of many of those whom the authorities were trying to liberate and in mortal danger for many others (in respect of that latter group of applicants see, *mutatis mutandis*, *Makaratzis v. Greece* [GC], no. 50385/99, §§ 49-55, ECHR 2004-XI). The situation is thus covered by Article 2 of the Convention. The Court has now to examine whether the use of force was compatible with the requirements of this provision.

2. Victim status of several applicants

204. Before commencing its analysis the Court must proceed to clarifying the victim status of several applicants. First, as transpires from the documents in the case of *Chernetsova and Others*, one of the applicants, Oleg Valeryevich Matyukhin, was not personally amongst the hostages and did not lose any close relative following the events of 23-26 October 2002. It appears that his name was added to the list of applicants because his wife, Yekaterina Vladimirovna Matyukhina, who was amongst the hostages, had been affected by the gas but survived. In such circumstances the Court considers that only Ms Matyukhina herself can be considered a "victim" of the alleged violation of Article 2 of the Convention within the meaning of Article 34 thereof. The name of Mr Matyukhin should therefore be removed from the list of applicants in the present case.

205. Second, it appears that several applicants who lost their partners on 26 October 2002 were not officially married to them. In particular, this is the case of Yelena Akimova (lost I. Finogenov), Svetlana Generalova (lost V. Bondarenko) and Svetlana Gubareva (lost S.A. Booker). As follows from the applicants' submissions, the above applicants had *de facto* marital relations with their deceased partners. This fact is not contested by the respondent Government. In the specific context of the present case the Court considers it possible to recognise that those persons have victim status to complain about the death of their partners under Article 2 of the Convention on the equal footing with those applicants whose marriage with the late hostages had been officially registered (see *A.V. v. Bulgaria* (dec.), no. 41488/98, 18 May 1999).

3. General principles

206. Article 2 of the Convention, which safeguards the right to life and sets out the circumstances in which deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. Together with Article 3 of the Convention, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed (see *Salman v. Turkey* [GC], no. 21986/93, § 97, ECHR 2000-VII).

207. As the text of Article 2 itself shows, the use of lethal force by law-enforcement officers may be justified in certain circumstances. Nonetheless, Article 2 does not grant them carte blanche. Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means that, as well as being authorised under national law, policing operations must be sufficiently regulated by it, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force (see, *mutatis mutandis*, *Hilda*

Hafsteinsdóttir v. Iceland, no. 40905/98, § 56, 8 June 2004; see also Human Rights Committee, General Comment no. 6, Article 6, 16th Session (1982), § 3)), and even against avoidable accident.

208. When lethal force is used within a "policing operation" by the authorities it is difficult to separate the State's negative obligations under the Convention from its positive obligations. In such cases the Court will normally examine whether the police operation was planned and controlled by the authorities so as to minimise, to the greatest extent possible, recourse to lethal force and human losses, and whether all feasible precautions in the choice of means and methods of a security operation were taken (see *Ergi v. Turkey,* 28 July 1998, *Reports* 1998-IV, § 79; see also *McCann and Others v. the United Kingdom*, 27 September 1995, Series A no. 324, §§ 146-50, § 194; *Andronicou and Constantinou v. Cyprus*, 9 October 1997, *Reports* 1997-VI, § 171, §§ 181, 186, 192 and 193, and *Hugh Jordan v. the United Kingdom*, no. 24746/95, §§ 102–04, ECHR 2001-III).

209. The authorities' positive obligations under Article 2 of the Convention are not unqualified: not every presumed threat to life obliges the authorities to take specific measures to avoid the risk. A duty to take specific measures arises only if the authorities knew or ought to have known at the time of the existence of a real and immediate risk to life and if the authorities retained a certain degree of control over the situation (see, *mutatis mutandis*, *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports* 1998-VIII; see also the admissibility decision of 18 March 2010 in the present case). The Court would only require a respondent State to take such measures which are "feasible" in the circumstances (see *Ergi*, cited above). The positive obligation in question must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources (see *Makaratzis*, cited above, § 69, with further references; see also *Osman*, cited above, and *Maiorano and Others v. Italy*, no. 28634/06, § 105, 15 December 2009).

4. Standard of scrutiny to be applied

210. As a rule, any use of lethal force must be no more than "absolutely necessary" for the achievement of one or more of the purposes set out in paragraph 2 (a), (b) and (c) of Article 2 of the Convention. This term indicates that a stricter and more compelling test of necessity must be employed by the Court, if compared with that normally applicable when determining whether State action is "necessary in a democratic society" under paragraphs 2 of Articles 8 to 11 of the Convention. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims (see *McCann and Others*, cited above, §§ 148-49; see also *Gül v. Turkey*, no. 22676/93, §§ 77 and 78, 14 December 2000).

211. That being said, the Court may occasionally depart from that rigorous standard of "absolute necessity". As the cases of *Osman, Makaratzis*, and *Maiorano and Others* (all cited above) show, its application may be simply impossible where certain aspects of the situation lie far beyond the Court's expertise and where the authorities had to act under tremendous time pressure and where their control of the situation was minimal.

212. The Court is acutely conscious of the difficulties faced by States in protecting their populations from terrorist violence, and recognises the complexity of this problem (see *Ramirez Sanchez v. France* [GC], no. 59450/00, § 115, ECHR 2006-...). In the more specific Russian context, terrorism by various separatist movements in the North Caucasus has been a major threat to national security and public safety in Russia for more than fifteen years, and fighting terrorism is a legitimate concern of the Russian authorities.

213. Although hostage taking has, sadly, been a widespread phenomenon in recent years, the magnitude of the crisis of 23-26 October 2002 exceeded everything known before and made that situation truly exceptional. The lives of several hundred hostages were at stake, the terrorists were heavily armed, well-trained and devoted to their cause and, with regard to the military aspect of the storming, no specific preliminary measures could have been taken. The hostage-taking came as a surprise for the authorities (see, in contrast, the case of *Isayeva v. Russia*, no. 57950/00, §§ 180 et seq., 24 February 2005), so the military preparations for the storming had to be made very quickly and in full secrecy. It should be noted that the authorities were not in control of the situation inside the building. In such a situation the Court accepts that difficult and agonising decisions had to be made by the domestic authorities. It is prepared to grant them a margin of appreciation, at least in so far as the military and technical aspects of the situation are concerned, even if now, with hindsight, some of the decisions taken by the authorities may appear open to doubt.

214. In contrast, the subsequent phases of the operation may require a closer scrutiny by the Court; this is especially true in respect of such phases where no serious time constraints existed and the authorities were in control of the situation.

215. Such a method of analysis is not new: it has been applied, for instance, in the case of *Isayeva*, cited above, § 180 et seq. In that case the Court held that "given the context of the conflict in Chechnya at the relevant time, the [anti-insurgency] measures could presumably include the deployment of army units equipped with combat weapons, including military aviation and artillery". That finding did not prevent the Court from concluding that the Convention had been breached on account of the indiscriminate use of heavy weapons by the military, their failure to prevent the Chechen insurgents from entering the village, their failure to secure the

safety of the "humanitarian corridor", etc. However, by accepting that the use of the army in such conflicts was justified the Court drew a clear line between the strategic political choices (use of military force in Chechnya), which were not within the Court's realm, and other aspects of the situation, which the Court was able to examine.

216. The Court does not suggest that the present case is similar to *Isayeva*; quite the contrary, there are major differences between these two cases. Thus, in the present case the hostage-taking came as a surprise for the authorities, the hostages themselves were in a more vulnerable position than the civilians in *Isayeva*, and the choice of means (gas) by the authorities was less dangerous than in *Isayeva* (bombs). What the Court intends to do is to adopt the same methodological approach as in *Isayeva* and apply different degrees of scrutiny to different aspects of the situation under examination.

5. The use of force

(a) Decision to storm

217. The Court reiterates that the use of force may only be justified on one of the grounds listed in Article 2 § 2 of the Convention, namely (a) in defence of any person from unlawful violence; (b) to effect a lawful arrest or prevent escape or (c) to quell a riot or insurrection.

218. The applicant claimed that the authorities' real intent had nothing to do with those legitimate aims. They alleged in their observations that the main goal of the authorities had been to kill the terrorists, and not to save the hostages. The Court has taken note of the phrase in the prosecutor's decision stating that the use of force was intended to prevent "the erosion of the prestige of Russia on the international arena". However, in itself this is insufficient to uphold the allegations of bad faith. Everything suggests that one of the authorities' main concerns was to preserve the lives of the hostages. The Court will base its further analysis on the assumption that in this case the authorities were pursuing simultaneously all three legitimate aims specified in Article 2 § 2 of the Convention, and that the "defence of any person from unlawful violence" was the predominant one, as provided by section 2 of the Russian Suppression of Terrorism Act.

219. The question is whether those aims could have been attained by other, less drastic, means. The applicants alleged that it had been possible to resolve the hostage crisis peacefully, and that nobody would have been killed if the authorities had pursued the negotiations. In analysing this complaint, the Court must take into account the information available to the authorities at the time of the events. The Court reiterates that use of force by State agents may be justified where it is based on an honest belief which is perceived for good reasons to be valid at the time but which subsequently turns out to be mistaken (see the *McCann and Others* judgment, cited above, § 200).

220. The Court reiterates that, generally speaking, there is no necessity to use lethal force "where it is known that the person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence" (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 95, ECHR 2005-VII). The Court repeats that the situation in the present case was quite different: the threat posed by the terrorists was real and very serious. The authorities knew that many of the terrorists had earlier participated in armed resistance to the Russian troops in Chechnya; that they were well-trained, well-armed and dedicated to their cause (contrast with the case of *Andronicou and Constantinou v. Cyprus*, 9 October 1997, § 183, *Reports* 1997-VI, where the Court emphasised that the hostage-taker was not a "hardened criminal or terrorist"); that the explosion of the devices installed in the main auditorium would probably have killed all of the hostages; and that the terrorists were prepared to detonate those devices if their demands were not met.

221. It is true that the terrorists did not activate the bombs after the gas was dispersed, although some of them remained awake for some time. However, it is mere speculation to allege that they did not execute their threat out of humanitarian considerations; it is possible that they were simply disoriented or had not received clear orders. In any event, the authorities could not know with certainty whether the terrorists would in fact carry out their threats and detonate the bombs. In sum, the authorities could reasonably have concluded from the circumstances that there existed a real and serious risk for the lives of the hostages, and that the use of lethal force was sooner or later unavoidable.

222. It cannot be excluded that further negotiations would have resulted in the release of several more hostages, such as, for example, foreign citizens, adolescents or elderly people, etc. The applicants strongly relied on this argument, claiming that the risk to the hostages' lives was not imminent. However, there is too much of an assumption in this allegation. It is unknown whether the leaders of the terrorists were prepared to make concessions; their behaviour and declarations testified to the contrary.

223. It is also important to note what was demanded by the terrorists in exchange for release of the hostages. The Court will not speculate on the issue of whether, as a matter of principle, it is always necessary to negotiate with terrorists and "ransom" the lives of hostages by offering terrorists money or meeting their other requirements. The applicants' wide-ranging allegation calls into question all anti-terrorist operations, and refers to matters far beyond the competence of this Court, which is not in a position to indicate to member States the best policy in dealing with a crisis of this kind: whether to negotiate with terrorists and make concessions or to remain firm and require unconditional surrender. Formulating rigid rules in this area may seriously affect the authorities' bargaining power in negotiations with terrorists. What is clear in the circumstances of this specific case is that

most of the terrorists' demands were unrealistic. Thus, among other things, the terrorists demanded the total withdrawal of Russian troops from the territory of Chechnya. Although they later agreed to a partial retreat of the troops (see the testimony by Mr Yav. in paragraph 38 above), in the circumstances this still would have been tantamount to a *de facto* loss of control over part of the Russian territory.

224. In any event, it cannot be said that the authorities did not try to negotiate. Some form of negotiations was conducted. At the least, the terrorists were given an opportunity to formulate their demands, to reflect on the situation and to "cool down". It is true that the negotiations did not involve anybody from the highest level of political leadership. However, there is no evidence that their involvement would have brought the situation to a peaceful solution, given the nature of the demands put forward by the terrorists (compare with the case of *Andronicou and Constantinou*, cited above, § 184).

225. On the basis of the information now available it is impossible to conclude whether the people shot by the terrorists were subjected to "exemplary executions", as the Government seem to suggest, or were killed for having resisted the terrorists, or because the terrorists considered them to be "spies". However, at the time of the events most of those who participated in the negotiations could have reasonably perceived the threat of executions as immediate.

226. In sum, the situation appeared very alarming. Heavily armed separatists dedicated to their cause had taken hostages and put forward unrealistic demands. The first days of negotiations did not bring any visible success; in addition, the humanitarian situation (the hostages' physical and psychological condition) had been worsening and made the hostages even more vulnerable. The Court concludes that there existed a real, serious and immediate risk of mass human losses and that the authorities had every reason to believe that a forced intervention was the "lesser evil" in the circumstances. Therefore, the authorities' decision to end the negotiations and storm the building did not in the circumstances run counter to Article 2 of the Convention.

(b) Decision to use the gas

227. Having accepted that the use of force was justified as a matter of principle, the Court will now move on to the next question, namely whether the means employed by the security forces (the gas) were adequate.

228. The Court reiterates, firstly, that in many previous cases it examined the legal or regulatory framework existing for the use of lethal force (see *McCann and Others*, § 150, and *Makaratzis*, §§ 56-59, both cited above). The same approach is reflected in the UN Basic Principles, cited above (see paragraph 162) which indicate that laws and regulations on the

use of force should be sufficiently detailed and should prescribe, *inter alia*, the types of arms and ammunition permitted.

229. The legislative framework for the use of the gas in the present case remains unclear: although the law, in principle, allows the use of weapons and special-purpose hardware and means against terrorists (as transpires from the wording of section 11 of the Anti-Terrorism Act, see paragraph 157 above), it does not indicate what type of weapons or tools can be used and in what circumstances. Furthermore, the law requires that the specific technical methods of anti-terrorist operations be kept secret (see paragraph 156 above). The exact formula of the gas was not revealed by the authorities; consequently, it is impossible for the Court to establish whether or not the gas was a "conventional weapon", and to identify the rules for its use. In the circumstances the Court is prepared to admit that the gas was an *ad hoc* solution, not described in the regulations and manuals for law-enforcement officials.

230. This factor alone, however, cannot lead to a finding of a violation of Article 2 of the Convention (see, for example, *Isayeva*, cited above, § 199). The general vagueness of the Russian anti-terrorism law does not necessarily mean that in every particular case the authorities failed to respect the applicants' right to life. Even if necessary regulations did exist, they probably would be of limited use in the situation at hand, which was totally unpredictable, exceptional and required a tailor-made response. The unique character and the scale of the Moscow hostage crisis allows the Court to distinguish the present case from other cases where it examined more or less routine police operations and where the laxity of a regulatory framework for the use of lethal weapons was found to violate, as such, the State's positive obligations under Article 2 of the Convention (see the case of *Nachova and Others*, cited above, §§ 99 – 102).

231. The Court will now move to the applicants' main argument. They claimed that the gas had been a lethal weapon which was used indiscriminately against both terrorists and innocent hostages. That claim deserves the most serious consideration, since "the massive use of indiscriminate weapons ... cannot be considered compatible with the standard of care prerequisite to an operation involving use of lethal force by State agents" (see *Isayeva*, cited above, § 191). The Court observes that the German Constitutional Court in a judgment of 15 February 2006 found incompatible with the right to life, as guaranteed by the German Constitution, a law authorising the use of force to shoot down a hijacked aircraft believed to be intended for a terrorist attack (see paragraph 164 above). It found, *inter alia*, that the use of lethal force against the persons on board who were not participants in the crime would be incompatible with their right to life and human dignity, as provided by the German Basic Law and interpreted in the jurisprudence of the Constitutional Court.

232. In the present case, however, the gas used by the Russian security forces, while dangerous, was not supposed to kill, in contrast, for example, to bombs or air missiles. The general principle stated in the *Isayeva* case, condemning the indiscriminate use of heavy weapons in anti-terrorist operations, can be reaffirmed, but it was formulated in a different factual context, where the Russian authorities used airborne bombs to destroy a rebel group which was hiding in a village full of civilians. Although the gas in the present case was used against a group consisting of hostages and hostage-takers, and although the gas was dangerous and even potentially lethal, it was not used "indiscriminately" as it left the hostages a high chance of survival, which depended on the efficiency of the authorities' rescue effort. The hostages in the present case were not in the same desperate situation as all the passengers of a hijacked airplane.

233. The applicants further maintained that the gas had not had the desired effect on the terrorists and, at the same time, had caused many deaths amongst the hostages. In other words, they claimed that the gas had done more harm than good. In addressing this claim the Court must assess whether the use of gas was capable of preventing the explosion.

234. The Government did not comment on the applicants' assertion that the gas did not render all of the terrorists immediately unconscious. The applicants inferred from this fact that the gas had been in any event useless. The evidence shows that the gas had no immediate effect. However, the inference made by the applicants from this fact is too speculative. The facts of the case point to the opposite conclusion: thus, everything shows that the gas did have an effect on the terrorists and rendered most of them unconscious, even if this was not instantaneous, and that no explosion followed. The Court draws the conclusion that the use of the gas was capable of facilitating the liberation of the hostages and reducing the likelihood of explosion, even if it did not remove that risk completely.

235. Another of the applicants' argument was that the concentration of the gas had been grossly miscalculated, and that the risks to the hostages' life and limb associated with its use outweighed the benefits. The Court has already established that the gas was dangerous and even potentially lethal. The Government claimed that the gas dosage had been calculated on the basis of an "average person's reaction". The Court notes that even that dose turned out to be insufficient to send everybody to sleep: after it had been dispersed in the auditorium some of the hostages remained conscious and left the building on their own. In any event, the Court is not in a position to evaluate the issue of the dosage of the gas. It will, however, take it into account when assessing other aspects of the case, such as the length of exposure to it and the adequacy of the ensuing medical assistance.

236. In sum, the Court concludes that the use of gas during the storming was not in the circumstances a disproportionate measure, and, as such, did not breach Article 2 of the Convention.

6. Rescue and evacuation operation

237. The above conclusion does not preclude the Court from examining whether the ensuing rescue operation was planned and implemented in compliance with the authorities' positive obligations under Article 2 of the Convention, namely whether the authorities took all necessary precautions to minimise the effects of the gas on the hostages, to evacuate them quickly and to provide them with necessary medical assistance (see *McCann and Others*, cited above, §§ 146-50 and § 194; *Andronicou and Constantinou*, cited above, §§ 171, 181, 186, 192 and 193; and *Hugh Jordan v. the United Kingdom*, no. 24746/95, §§ 102–04, ECHR 2001-III). Many facts related to this aspect of the case are in dispute between the parties. The Court reiterates in this respect that its fact-finding capacity is limited. As a result, and in line with the principle of subsidiarity, the Court prefers to rely, where possible, on the findings of competent domestic authorities. That being said, the Court does not completely renounce its supervising power. Where the circumstances of a particular case so require, especially where the death of a victim is arguably attributable to the use of lethal force by State agents, the Court may entertain a fresh assessment of evidence (see *Golubeva v. Russia*, no. 1062/03, § 95, 17 December 2009; see also, *mutatis mutandis*, *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006; and *Imakayeva v. Russia*, no. 7615/02, § 113, ECHR 2006-XIII (extracts)). The Court further reiterates that "in the situation where persons are found injured or dead ... in an area within the exclusive control of the authorities of the State and there is *prima facie* evidence that the State may be involved, the burden of proof may also shift to the Government since the events in issue may lie wholly, or in large part, within the exclusive knowledge of the authorities. If they then fail to disclose crucial documents to enable the Court to establish the facts or otherwise provide a satisfactory and convincing explanation, strong inferences may be drawn" (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 etc., § 184, ECHR 2009-...). As follows from this quote, the Court can make adverse inferences if the Government fails to disclose crucial evidence in the proceedings before the Court, as they were required to do under former Article 38 § 1 (a) of the Convention (now Article 38 of the Convention, which provides that States should furnish all necessary facilities to make possible a proper and effective examination of applications - see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV, and *Timurtaş v. Turkey*, no. 23531/94, §§ 66 and 70, ECHR 2000-VI).

238. Further, even where the State discloses all of the evidence in their possession, that evidence may still be insufficient to provide a "satisfactory and convincing" explanation of the victim's death. More generally, the Court's reliance on evidence obtained as a result of the domestic investigation and on the facts established within the domestic proceedings will largely depend on the quality of the domestic investigative process,

its thoroughness, consistency, etc. (see *Golubeva*, cited above, § 96, and *Maslova and Nalbandov v. Russia*, no. 839/02, §§ 101 et seq. ECHR 2008-... (extracts); see also *Betayev and Betayeva v. Russia*, no. 37315/03, § 74, 29 May 2008; *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, §§ 179 et seq., 24 February 2005).

239. That being said, the Court stresses that it is not always in a position to draw adverse inferences from the authorities' failure to conduct an effective investigation - see, for example, the cases of *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, 24 February 2005; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts), and the case of *Zubayrayev v. Russia*, no. 67797/01, § 83, 10 January 2008.

240. Turning to the present case the Court notes, first, that the investigation, insofar as it concerned the authorities' alleged negligence, was discontinued and did not end with a full-scale trial (unlike, for example, in the recent case of *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, 24 March 2011). In such circumstances the Court must examine the conclusions of the investigation into the efficiency of the rescue operation with great caution, without, however, discarding them completely.

241. Second, the Court has taken note of the reports by the Public Health Department, the Centre for Disaster Medicine and witness testimony by several senior-level officials in the public health system and rescue service. Those reports and witness statements describe the rescue operation as generally successful, quick, and well-coordinated (see, for example, paragraphs 46, 55, 67 and 119 above). Those bodies and officials were, indisputably, "competent authorities" whose analysis of the situation is worth attention. At the same time, those structures and officials were directly involved in the planning and coordination of the rescue operation and might not, therefore, be truly neutral in their assessment. Their evidence should be carefully compared to other evidence in the case file, namely the testimony of the rescue workers and medics in the field, expert evidence, documents, etc.

242. Third, the Court has taken note of the Government's response to the Court's questions, addressed to them following its decision on admissibility. The Court requested the respondent Government to answer several very specific questions, concerning, in particular, the planning and conduct of the rescue operation, the chronology of events, the instructions given to the medics and rescue workers, any special equipment they had at their disposal, particular investigative actions taken in the aftermath of the events, etc. However, most of the questions put by the Court remained unanswered. The Government's observations on the merits repeated, to a large extent, their observations on admissibility, were very general and did not touch upon the specific factual issues.

(a) The planning of the medical assistance and evacuation

243. Having regard to the above, and in line with the differential approach described in paragraph 216, the Court considers that the planning and conduct of the rescue operation, in particular the organisation of the medical aid to the victims and their evacuation, can be subjected to a more thorough scrutiny than the "political" and military aspects of the operation. The Court notes, first of all, that the rescue operation was not spontaneous: the authorities had about two days to reflect on the situation and make specific preparations. Second, in this area (evacuation and medical assistance) the authorities should have been in a position to rely on some generally prepared emergency plan, not related to this particular crisis. Third, they had some control of the situation outside the building, where most of the rescue efforts took place (contrary to the situation within the building, which was in the hands of the terrorists). Finally, the more predictable a hazard, the greater the obligation to protect against it: it is clear that the authorities in this case always acted on the assumption that the hostages might have been seriously injured (by an explosion or by the gas), and thus the large number of people in need of medical assistance did not come as a surprise. The Court considers that in such circumstances it may subject the rescue operation, in so far as it concerned the evacuation of and medical assistance to the hostages, to closer scrutiny.

244. The Government did not produce any documents containing a comprehensive description of the plan of the evacuation, either because such a plan never existed or because it had been destroyed. However, even if such a written plan never existed, some preparations were made (see paragraphs 15 et seq.). In particular, (1) rescue workers were deployed around the theatre; (2) the admission capacity of several hospitals was increased; (3) two or three special medical teams were stationed nearby; (4) some additional equipment was installed in the city hospitals, (5) additional medics were mobilised and attached to those hospitals which were supposed to receive the hostages in the first instance; (6) ambulance stations were warned about the possible mass deployment of ambulances, (7) doctors in the field received instructions on sorting the victims on the basis of the gravity of their condition.

245. Those measures were apparently based on the assumption that in the event of an escalation of the situation most victims would be wounded by gunshot or by an explosion (see, for example, paragraphs 67 et seq. above). The Court must examine whether the original plan was in itself sufficiently cautious.

246. It appears that the original plan of the evacuation provided for the deployment of hundreds of doctors, rescue workers and other personnel to assist the hostages, whereas little was done to coordinate the work of those different services.

247. First, the provisions in the original plan for on-the-field interaction between the various services participating in the rescue operation (the MCUMT, Centre for Disaster Medicine, doctors on ordinary ambulance teams, doctors from the city hospitals, the Rescue Service, special squad officers, ordinary policemen, etc.) appear to be insufficient. The Court accepts that each service might have had its own chain of command, means of communication, standard protocols, etc. However, the absence of any centralised coordination on the spot was noted by many witnesses (see, for example, paragraphs 83, 85, 86, and 89 above). The Government did not specify how many coordinators (if any) were deployed, or whether all workers were informed about their presence, their role, insignia, etc. The video of the evacuation creates the impression that everyone involved acted on his or her own initiative, at least at the outset. The contacts between field workers appear to be sporadic; no clear separation of tasks among members of various services and even within the same service can be seen. Only one or two individuals are doing something which can be described as "coordination" at the theatre entrance, but they appear to be military personnel. Further, there is no information about how instructions were passed in real-time mode from the crisis cell to the field coordinators, and from coordinators to field workers, or how situation reports were collected and transmitted back to the crisis cell.

248. Second, the original evacuation plan did not appear to contain any instructions as to how information on the victims and their condition was to be exchanged between members of various rescue services. Several doctors testified during the investigation that they had not known what kind of treatment the victims had already received – they had to take decisions on the basis of what they saw (see, for example, paragraphs 56, 57 and 93 above). Whereas it is clear that many people received no treatment at all, it is not excluded that some of them received injections more than once, which might in itself have been dangerous. It does not appear that the victims who received injections were somehow marked to distinguish them from those who had not received injections.

249. Third, it is unclear what order of priorities was set for the medics. The Government claimed that, as part of the original plan, the medical personnel were supposed to sort the victims into four groups, depending on the gravity of their condition. However, no such sorting could be seen on the video: the bodies were placed on the ground in a seemingly haphazard way, and many witnesses confirmed that in fact there had been no filtering (see, for example, paragraphs 83, 90 and 91 above) or that it was inefficient, since dead bodies had been placed in the same buses as people who were still alive (see paragraphs 90 and 93 above). Further, the purpose of sorting is itself unclear. The Government did not indicate whether, after the sorting, if any, priority was given to the most serious cases or to those victims whose chances of recovery were higher. The purpose of the sorting is not

specified: the Court cannot thus tell whether it was to be carried out to ensure even distribution of the burden amongst the hospitals or to ensure that the most serious cases were sent to the closest (or better prepared) hospitals. Most importantly, the Government did not explain how information on the respective "category" of each victim was communicated to the ambulance doctors, doctors in the city buses and in the hospitals. The Court submitted questions on those points to the Government but received no replies. The materials of the domestic investigation do not elucidate those matters. The Court concludes that this aspect of the rescue operation was not thought through, and that in practice the "sorting" was either non-existent or meaningless.

250. Fourth, although the original plan provided for the mass transportation of victims in the city buses, it did not make provision for medical assistance in those buses. Many witnesses noted a lack of medical personnel and equipment in the buses transporting victims: sometimes there was only one paramedic for a bus containing 22 victims in a critical state; sometimes there were no escorting medics in the buses at all (see paragraphs 82, 84, 90 and 92 above). Although there is no exact information about how much time was needed to transport the victims to the hospitals (some indication can be found in paragraph 115 above), it is clear that the lack of medical personnel in the buses might have been yet another negative factor.

251. Finally, everything suggests that there was no clear plan for the distribution of victims amongst various hospitals. The admission capacity of several hospitals was indeed increased, but the ambulance teams and bus drivers did not know where to take the victims (see, for example, paragraphs 86 and 87 above). As a result, the dispatching of the victims to hospitals was more or less unstructured: thus, four or five buses followed the ambulances and all arrived at the same destination, City Hospital no. 13, almost simultaneously. That hospital received 213 victims of the gas within 30 minutes (see paragraph 51 above), many of them in a critical state. The Court has no exact information on how many doctors and paramedics were available in that hospital, since the Government failed to answer the Court's question on that point. However, bearing in mind the size of the hospital, the composition of the emergency teams and the number of regular patients who remained (see, for example, paragraphs 57 et seq.) it is very likely that medical assistance to the majority of those 213 hostages was seriously delayed. At the same time the hospital closest to the theatre, which was 20 metres from the building, admitted considerably fewer patients than planned (see paragraphs 20 and 50 above).

252. In sum, the original plan of the rescue and evacuation of the hostages was in itself flawed in many respects.

(b) Implementation of the plan

253. The Court has already noted that the original plan was prepared on the assumption that the hostages would be wounded by an explosion or gunshots. Thus, the reinforcement to hospitals consisted mostly of surgeons rather than toxicologists (see paragraph 54 above), whose assistance became critical following the use of the gas. The rescue workers and doctors confirmed that they had not received any specific instructions on how to deal with poisoned individuals, let alone people poisoned by opiate drugs. They had all been preparing to work on the site of an explosion (see paragraphs 67 et seq. above). Some measures, as planned originally, were even detrimental to the efficiency of the rescue operation. For example, several people testified that the heavy trucks and bulldozers stationed nearby had prevented the ambulances from circulating normally (see paragraph 56 above). The Court will now examine how the original rescue plan was implemented in the light of the development of the victim crisis, in particular the use of the gas at the point of storming.

254. The applicants alleged that the lack of information about the use of the gas had been detrimental to the efficiency of the operation. Indeed, most of the medics testified that they had been unaware of the possible use of gas and had discovered what had happened directly on the spot, from their colleagues and from observing the victims' symptoms (see, for example, paragraphs 67 - 70, 72, 74, 80, and 83 - 85 above). It is unclear at what point the FSB informed the rescue workers and medics about the gas. Everything suggests that this was not done until the evacuation was almost over.

255. The first question is whether the absence of information about the gas, its properties and possible treatment to be employed played any negative role. Several senior doctors and officials have claimed that information about the gas and the suggested treatment would have been irrelevant, and that the preliminary measures taken were valid for all circumstances, whether these concerned an explosion or a gas attack (see, for example, paragraph 55 above). However, that opinion is open to doubt, especially in view of the statements by the field doctors who participated in the operation, many of whom expressed the opposite view (see, for example, paragraphs 85 and 89 above). In any event, even if the doctors' training was sufficient to choose the appropriate treatment on the spot, this cannot be said in respect of the rescue workers and the special squad officers. Thus, the video recordings show that some (the majority) of the victims were placed on the floor in the "face-up" position, which increased the likelihood of suffocation by vomiting or from a swollen tongue. This was confirmed by several rescue workers (see paragraph 68 above), contrary to what the public health officials asserted in their reports (see paragraph 46 above). The same is true with regard to the placement of victims in the city buses which transported them to various hospitals (the

position of the victims in the buses is visible on the video recordings). The Court concludes that the lack of information about the gas might have played a negative role and could have raised the mortality rate amongst the hostages (see also paragraph 119 above).

256. The second question is why information about the gas was not disclosed to the competent services earlier. The official investigation is silent on that matter. Given the overall context the Court is prepared to assume that the FSB feared a leak and did not want to undermine the whole operation by letting the doctors know what to expect. In any event, secrecy is the only clear argument for not informing the medics about the use of the gas.

257. The Court acknowledges that the security forces are better placed to assess the risk of a leak, especially when, as in the present case, they are in a "win-or-lose" situation. The Court does not criticise the security forces hierarchy' for not revealing the details of the storming to the medics well in advance, i.e. when the decision was taken or technical preparations were being made. However, it is difficult to see why this information could not have been given to the rescue workers and medics shortly before or at least immediately after the use of the gas. The Court notes in this respect that the mass evacuation of hostages from the main hall of the theatre started at least one hour and twenty minutes after the gas had been dispersed, if not later, since the exact moment when the gas was dispersed is unknown. Thus, the authorities had at least ninety minutes to make additional arrangements, prepare appropriate medicine or give more specific instructions to the medics, or otherwise adjust the plan to the circumstances. However, nothing was done during that period.

258. Another question is why the mass evacuation started so late. The Court notes that most of the unconscious hostages remained exposed to the gas and without medical assistance for more than an hour. As follows from the materials of the case, the effects of the gas depended on the length of exposure to it: the longer the hostages spent in the gas-filled auditorium without medical assistance, the more victims there would be (see paragraph 119 above). The prolonged exposure to the gas was thus a factor likely to increase the mortality rate amongst the hostages. The Court has no explanation for the above delay.

259. A further aspect that must be addressed is the alleged lack of medicine and special equipment for the treatment of victims on the spot and during transportation. Post-mortem reports show that most deaths occurred between 8 and 8.30 a.m. (see paragraphs 48 and 95 above). This means that a relatively large number of victims died shortly after their admission to hospital or shortly before, on the way there. Consequently, they were still alive when taken out of the main hall of the theatre. In this assumption the question of immediate medical assistance on the spot becomes crucial.

260. Again, there is very little information as to what kind of medical assistance the victims received on the spot, and when, where and by whom it was administered. From the scattered evidence the Court has before it, Nalaxone appears to be the main "antidote" for the gas in question – it is mentioned in almost every witness statement. Although the Chief Anaesthesiologist[1] claimed that Nalaxone was not efficient (see paragraph 54 above), most of the other doctors referred to Nalaxone as the main substance capable of restoring breathing and cardiac activity in such circumstances (see, for example, paragraphs 55, 59, 60 and 78 above). Some Nalaxone was administered on the spot. However, a careful examination of the video recordings showing the main entrance to the theatre building reveals only one instance when a doctor (or a rescue worker) gives an injection. The injections were probably administered inside the building, but this assumption is hard to reconcile with the existing evidence: thus, many witnesses testified that there had been a shortage of Nalaxone (see, for example, paragraphs 80, 88 and 93 above). Further, as follows from the post-mortem reports, about 60 people did not have any trace of assistance when they were admitted to hospital (see paragraph 96 above). This figure concerns only the deceased hostages – the Court has no information as to how many surviving hostages received injections of Nalaxone. Whereas some witnesses testified that Nalaxone had been administered "in the buttocks" (see, for example, paragraph 94 above), other documents (especially medical records) refer to an intravenous method of injection.

261. It is possible that another form of life-saving treatment existed in addition to Nalaxone. The video shows rescue workers conducting "assisted respiration" or "heart massage" to the unconscious hostages lying on the floor. However, no special equipment (oxygen masks, etc.) can be seen. It is unclear what other kind of "symptomatic treatment", referred to by the Government, was or could have been employed in the circumstances.

262. The applicants pointed to other alleged flaws in the rescue operation, namely the delays in transportation and unpreparedness of the city hospitals to treat so many serious cases simultaneously. The Court considers, however, that the elements analysed above are sufficient to draw conclusions.

(c) Conclusions

263. It is not possible for the Court to establish an individual story for each deceased hostage: where he or she was sitting when the operation began, how seriously he or she was affected by the gas and "concomitant factors" (stress, dehydration, chronic diseases etc.), what kind of treatment was received on the spot, at what time he or she arrived at a hospital, what kind of treatment he or she received in that hospital, etc.

---

[1] Rectified on 6 March 2012: the text was "Chief Emergency Physician"

264. Further, what is true in respect of the majority of the hostages may not be true in each individual case, taken alone. Thus, the alleged lack of medical aid would be irrelevant in a situation where a person had already died by the time the medics arrived. Equally, the Court cannot exclude that some of the victims were amongst those who were first to receive medical assistance but nevertheless died, because they were very weak or ill and died as a result of "a stroke of misfortune, a rare and unforeseeable occurrence" (see *Giuliani and Gaggio*, cited above, § 192).

265. In other words, many important factual details in this case are missing. That being said, the Court stresses that its role is not to establish the individual liability of those involved in the planning and coordination of the rescue operation (see *Giuliani and Gaggio*, cited above, § 182). The Court is called upon to decide whether the State as a whole complied with its international obligations under the Convention, namely its obligation to "take all feasible precautions in the choice of means and methods of a security operation mounted against an opposing group with a view to avoiding and, in any event, minimising, incidental loss of civilian life" (see *Ergi,* cited above).

266. The Court acknowledges that in such situations some measure of disorder is unavoidable. It also recognises the need to keep certain aspects of security operations secret. However, in the circumstances the rescue operation of 26 October 2002 was not sufficiently prepared, in particular because of the inadequate information exchange between various services, the belated start of the evacuation, limited on-the-field coordination of various services, lack of appropriate medical treatment and equipment on the spot, and inadequate logistics. The Court concludes that the State breached its positive obligations under Article 2 of the Convention.

7. Effectiveness of the investigation

267. The applicants' final complaint under Article 2 of the Convention was that the State had failed to fulfil its positive obligation to investigate the conduct of the authorities during the hostage crisis.

(a) General principles

268. The Court reiterates that Article 2 contains a positive obligation of a procedural character: it requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by the authorities (see, *mutatis mutandis*, *McCann and Others*, cited above, § 161, and *Kaya v. Turkey*, 19 February 1998, *Reports* 1998-I, § 105).

269. The Court points out that not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be

true, to the identification and punishment of those responsible (see *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III; see also *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II).

270. To be "effective", an investigation should meet several basic requirements, formulated in the Court's case-law under Articles 2 and 3 of the Convention: it should be thorough (see *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 103 et seq., *Reports* 1998-VIII; see also, *mutatis mutandis*, *Salman v. Turkey*, cited above, § 106, ECHR 2000-VII; *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 104 et seq., ECHR 1999-IV; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000), expedient (see *Labita v. Italy* [GC], no. 26772/95, §§ 133 et seq., ECHR 2000-IV; *Timurtaş v. Turkey*c cited above, § 89; *Tekin v. Turkey*, 9 June 1998, § 67, *Reports* 1998-IV; and *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001), and independent (see *Öğur v. Turkey*, [GC], no. 21954/93, §§ 91-92, ECHR 1999-III; see also *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 37, 20 July 2004; and *Güleç v. Turkey*, 27 July 1998, §§ 80-82, *Reports* 1998-IV); and the materials and conclusions of the investigation should be sufficiently accessible for the relatives of the victims (see *Oğur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III, and *Khadzhialiyev and Others v. Russia*, no. 3013/04, § 106, 6 November 2008), to the extent it does not seriously undermine its efficiency.

271. More specifically, a requirement of "thorough investigation" means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia,* eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see, among many authorities, *Mikheyev v. Russia*, no. 77617/01, §§ 107 et seq., 26 January 2006, and *Assenov and Others v. Bulgaria*, 28 October 1998, *Reports* 1998-VIII, §§ 102 et seq.).

272. Finally, the investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and the identity of those responsible (see *Kolevi v. Bulgaria*, no. 1108/02, § 201, 5 November 2009). Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (see *Velcea and Mazăre v. Romania*, no. 64301/01, § 105, 1 December 2009).

(b) Application to the present case

i. Whether the official investigation was "effective"

273. The present case clearly falls into the category of cases where the authorities must investigate the circumstances of the victims' deaths. Thus, there existed a nexus between the use of lethal force by the security forces and the victims' death. The gas remained the primary cause of casualties amongst the hostages, and it was legitimate to suspect that some of the victims died as a consequence of an ineffective rescue operation. Although the responsibility for the hostage-taking as such cannot be attributed to the authorities, the rescue operation lay in an area within the exclusive control of the authorities (here the Court draws a parallel with the security operations by the Russian military in Chechnya or Turkish security forces in South-East Turkey - see *Akkum v. Turkey*, no. 21894/93, § 211, ECHR 2005-II (extracts); *Goygova v. Russia*, no. 74240/01, §§ 88-96, 4 October 2007, and *Magomed Musayev and Others v. Russia*, no. 8979/02, §§ 85-86, 23 October 2008). Finally, the events in issue "lay wholly, or in large part, within the exclusive knowledge of the authorities" in the sense that it was virtually impossible for the applicants to obtain any evidence independently of the authorities. In such circumstances the authorities were under an obligation to carry out an effective official investigation in order to provide a "satisfactory and convincing" explanation of the victims' deaths and the degree of the authorities' responsibility for it.

274. The Court stresses that it is not concerned with the investigation into the terrorist act itself. In this part the investigation appeared to be quite ample and successful. Thus, the terrorists and their supporters were identified, the circumstances of the hostage-taking were established, the explosives and firearms used by the terrorists were examined, and at least one person (the terrorists' accomplice outside the building) was brought to trial and convicted. The question is whether the investigation was equally successful in examining the authorities' own actions during the hostage crisis.

275. The Court notes that the investigation was opened and continued under Articles 205 ("Terrorist acts") and 206 ("Hostage-taking") of the Criminal Code. Negligence by the authorities cannot be characterised under either of those two provisions. Therefore, the scope of the investigation was, from the very beginning and throughout it, defined very narrowly. This is also confirmed by the action plans prepared by the investigator (see paragraphs 33 and 34 above), which were mostly concentrated on the terrorist attack itself and not on the behaviour of the authorities during the hostage crisis.

276. Although the investigation is not yet formally completed, the prosecution repeatedly decided that, as regards the authorities' alleged negligence, there was no case to answer. The first decision in that sense was

taken in response to a request by Mr Nmt., an MP, slightly over one month after the events (see paragraph 121 above). Given the magnitude of the case, it was hardly possible to conduct any meaningful investigation into the authorities' alleged negligence within such a short period of time. The question of the authorities' negligence was subsequently brought to the investigator's attention several times (see in particular his decision of 16 October 2003, paragraph 98 above), but the haste with which the first decision was taken is suggestive.

277. The Court acknowledges that the investigator did not remain idle and did address certain questions related to the planning and conduct of the rescue operation. The evidence obtained thereby will be analysed below. That being said, in some other respects the investigation was manifestly incomplete. First and foremost, the formula of the gas has never been revealed by the FSB to the domestic investigative authorities, despite the latter's request to that end (see paragraph 101 above), although the investigative team included FSB officers and most of the experts in the case were also from the FSB, and thus, at least in theory, could have been trusted.

278. For instance, the investigative team made no attempt to question all the members of the crisis cell (with the exception of one or two secondary figures, such as Mr Yastr., or Mr Sl., the Head of the Health Department) and FSB officers involved in the planning of the operation, in particular those who were responsible for the decision to use the gas, calculation of its dose, and installation of the devices. Members of the special squad (those who were directly involved in the storming), officers and their head officers were not questioned either (except for one person who had himself suffered from the gas). Nor were drivers of the city buses, journalists and other "chance" witnesses (such as "diggers" who had allegedly helped the FSB to plant the gas recipients) questioned.

279. The Court is surprised by the fact that, as the Government explained, all of the crisis cell's working papers were destroyed (see paragraph 169 above). In the Court's opinion those papers could have been an essential source of information about the planning and conduct of the rescue operation (especially in a situation where most of the members of the crisis cell were not questioned). The Government did not explain when those papers were destroyed, why, on whose authority and on what legal basis. As a result, nobody knows when the decision to use the gas was taken, how much time the authorities had to evaluate the possible side-effects of the gas, and why other services participating in the rescue operation were informed about the use of the gas with such a delay (for more details on this matter see below). Even assuming that some of them might have contained sensitive information, indiscriminate destruction of all documents, including those containing information about general preparations, distribution of roles amongst members of the crisis cell,

logistics, methods of coordination of various services involved in the operation, etc., was not justified.

280. Amongst other things, the investigators did not try to establish certain facts which, in the Court's opinion, were relevant and even crucial for addressing the question of the authorities' alleged negligence. For instance, the investigative team did not establish how many doctors were on duty on the day of the storming in each hospital which participated in the rescue operation. They did not identify what preliminary instructions had been given to the ambulances and city buses as to where to transport the victims. They did not identify all of the officials who had coordinated the efforts of the doctors, rescue workers and military personnel on the spot, and what sort of instructions they had received. They did not establish why the mass evacuation had started only about two hours after the start of the storming, or how much time it had taken to kill the terrorists and neutralise the bombs.

281. Lastly, the investigative team was not independent: although it was headed by an official from the Moscow City Prosecutor Office's, and supervised by the General Prosecutor's Office, it included representatives of the law-enforcement agencies which had been directly responsible for the planning and conduct of the rescue operation, namely the FSB (see paragraph 31 above). Experts in explosive devices were from the FSB (see paragraph 45 above). The key forensic examinations of the victims' bodies and their medical histories were entrusted to a laboratory that was directly subordinate to the Moscow City Public Health Department (see paragraphs 95 et seq. above). The head of that Department (Mr Sl.) was personally responsible for the organisation of medical aid to the victims and was therefore not disinterested. In sum, the members of the investigative team and the experts whose conclusions were heavily relied on by the lead investigator had conflicts of interests, so manifest that in themselves those conflicts could have undermined the effectiveness of the investigation and the reliability of its conclusions.

282. Other elements of the investigative process are probably also worthy of attention (such as the limited access to the materials of the case by the victims' relatives, and their inability to formulate questions to the officially appointed experts and examine witnesses). However, the Court does not need to examine these aspects of the proceedings separately. It has sufficient evidence to conclude that the investigation into the authorities' alleged negligence in this case was neither thorough nor independent, and, therefore, not "effective". The Court concludes that there was a breach of the State's positive obligation under Article 2 of the Convention on this account.

II. OTHER COMPLAINTS

283. Under Article 6 of the Convention the applicants in the case of *Chernetsova and Others* further complained that they had lost their cases before the domestic court because they had been unable to obtain the necessary documents and information from the authorities and the court had refused to examine certain items of evidence which the applicants had been ready to produce. They also complained of the insufficient time given to them to react to the defendants' oral pleadings. Further, under Article 13 of the Convention the applicants in the case of *Finogenov and Others* complained that they did not have effective remedies enabling them to protect their rights under Article 2 and to receive appropriate compensation.

284. In the Court's opinion, in the circumstances the applicants' inability to obtain compensation within civil proceedings was, in the first place, related to their inability to obtain an effective and thorough criminal investigation into the facts of the case, and only to a lesser extent was it related to the civil court's failure to admit the plaintiffs' evidence, assist them in obtaining that evidence from the defendant or provide them with more time to react to the defendant's arguments. Thus, bearing in mind its findings under the procedural limb of Article 2 of the Convention, the Court considers that it does not need to decide separately on the applicants' complaints under Articles 6 and 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

285. 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

286. The applicants in both cases claimed non-pecuniary damage in the amounts indicated in the attached table. In support of those claims the applicants' representatives provided information about their relation to the immediate victims (in addition to those applicants who were personally amongst the hostages), and, where necessary, particulars of their financial situation, since some of the applicants had lost their breadwinners. The applicants based their calculations on the following criteria: (1) the moral suffering of those who had lost a close relative, (2) the moral and physical suffering of those who had been amongst the hostages (including lasting effects of the gas poisoning), (3) the moral suffering related to the inefficiency of the official investigation and inequity of the civil

proceedings in which they had taken part. In addition, some of the applicants claimed additional compensation for the loss of a breadwinner (or potential breadwinner).

287. The Government claimed that the amounts claimed were excessive. They further indicated that the applicants should not be compensated for the hostage-taking itself since the authorities were not responsible for that fact. As to the loss of close relatives, the Government indicated that many applicants had already received compensation for that factor at national level. As regards the loss of a potential breadwinner, the Government maintained that this claim is very speculative, whereas the Court may only award compensation for actual financial losses.

288. The Court agrees with the Government that the applicants' claims related to the loss of breadwinners are either too speculative or not supported by evidence. Consequently, the Court will not award anything under this head. At the same time the Court agrees with the applicants that they must have suffered physical and moral pain as a result of the loss of their close relatives, and, as regards the applicants who were former hostages, that they also suffered from the consequences of the inadequate rescue and evacuation operation. The applicants' inability to obtain a thorough and independent investigation into the events of 23–26 October 2002 must have created an additional stress for them. This situation calls for an award in respect of non-pecuniary damage under Article 41 of the Convention.

289. The Court found two breaches of Article 2 of the Convention in the present case; however, both concern non-respect of the State's positive obligations. It should also be noted that the authorities used the gas while trying to help the hostages and that the lethal force was, in principle, directed against the terrorists, not the hostages. Furthermore, most of the former hostages[1] and the relatives of the victims received certain compensatory payments at domestic level. The Court takes those facts into account in defining its award under Article 41 of the Convention. Making its assessment on an equitable basis, and in view of all evidence and information available to it, the Court awards the applicant the amounts listed in the annex, plus any tax that may be chargeable on them.

B. Costs and expenses

290. The applicants in the case of *Chernetsova and Others* claimed lawyers' fees in the amount of 115,986 euros (EUR). That amount was calculated on the basis of the maximum rates established in Russia for legal-aid lawyers multiplied by the 1,244 full days of work allegedly spent by Mr Trunov, Ms Ayvar and several other lawyers working in their office.

[1] Rectified on 6 March 2012: the text was "Furthermore, the former hostages"

The lawyers also produced various supporting documents, including letters from a number of applicants in which they asked Mr Trunov and Ms Ayvar to represent them free of charge until the applicants were able to cover legal expenses in the proceedings before the European Court.

291. The applicants in the case of *Finogenov and Others* indicated that they had no means to pay for the legal fees incurred in connection with the proceedings at the domestic level and in the proceedings before the Court. They submitted a calculation of legal fees based on the following rates: EUR 60 per hour for the written procedure before the Court; EUR 100 per day for every court hearing at the domestic level; EUR 60 per hour for the preparation of the motions, pleadings and study of case documents at the domestic level. In sum, they claimed EUR 8,400 for Ms Moskalenko and EUR 9,540 for Ms Mikhaylova. In support of their claim, the applicants produced copies of two "orders" (a document issued by a bar association confirming that a particular lawyer is entitled to represent a client) dated 7 May 2003, in the name of Ms Moskalenko. They also produced letters from the applicants in which those applicants asked Ms Moskalenko and Ms Mikhaylova to represent them free of charge until the applicants were able to cover legal expenses in the proceedings before the European Court.

292. In addition, two applicants in the case of *Finogenov and Others*, Ms Burban-Mishuris and Ms Gubareva, who are foreign citizens and lived abroad, claimed reimbursement of transportation and *per diem* costs, as well as postal and translation expenses (2,713 United States dollars (USD) and USD 12,427 respectively), incurred in connection with their participation in the domestic proceedings in Russia.

293. The Government maintained that the applicants had failed to submit supporting documents to prove the amount of their costs and expenses, and that, consequently, their claims were unsubstantiated.

294. The Court has to establish first whether the costs and expenses indicated by the applicants' representatives were actually incurred and, second, whether they were necessary and reasonable as to the quantum (see *McCann and Others*, cited above, § 220; *Musci v. Italy* [GC], no. 64699/01, § 150, ECHR 2006-V (extracts)). Insofar as the legal costs are concerned, the Court observes that the two legal teams (Mr Trunov and Ms Ayvar for the applicants in the case of *Chernetsova and Others*, and Ms Moskalenko and Ms Mikhaylova in the case of *Finogenov and Others*) had represented the applicants both at the domestic level and before the European Court of Human Rights. That fact is not contested by the Government. It is clear from the length and detail of the pleadings submitted by the applicants that a great deal of legal work was carried out on their behalf.

295. At the same time, the amount claimed by Mr Trunov and Ms Ayvar appears to be excessive, especially given that the factual situation and legal arguments of the applicants they represent are almost identical. The

calculation produced by Ms Moskalenko and Ms Mikhaylova is more reasonable (see *Akulinin and Babich v. Russia*, no. 5742/02, § 73, 2 October 2008; see also *Abdurashidova v. Russia*, no. 32968/05, § 122, 8 April 2010). However, the Court considers that a reduction should be applied to the amount claimed in respect of legal fees on account of the fact that some of the applicants' complaints were declared inadmissible or where no violation was found; this is true with regard to both groups of applicants.

296. Having regard to all materials and information in its possession, the Court makes to the applicants (jointly) the following awards in respect of costs and expenses incurred before the Court, plus any tax that may be chargeable to them: EUR 8,000 to cover Ms Mikhaylova's fees, EUR 7,000 to cover Ms Moskalenko's fees, EUR 7,500 to cover Mr Trunov's fees and EUR 7,500 to cover Ms Ayvar's fees. The overall amount of legal fees awarded is therefore EUR 30,000.

297. As to the transportation, postal and translation expenses incurred by Ms Burban-Mishuris and Ms Gubareva, the Court, having examined the supporting documents submitted by them, concludes that those expenses were actually incurred. The Court, however, considers that the present case did not require their prolonged personal presence in Russia or many trips, given that both applicants had lawyers who represented them before the domestic courts and other competent authorities. In view of the above the Court considers it appropriate to reimburse each applicant the expenses related to one long-term stay in Russia, as well as their postal and translation expenses. Having regard to the documents submitted by the applicants the Court awards EUR 2,000 to Ms Burban-Mishuris and EUR 2,000 to Ms Gubareva in reimbursement of their travel expenses, plus any tax that may be chargeable to the applicants on those amounts.

C. Default interest

298. The Court considers it appropriate that the default interest 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. *Holds* that Mr O. Matyukhin has no standing to continue the present proceedings in the stead of his wife;

2. *Holds* that Ms Y. Akimova, Ms S. Generalova, and Ms S. Gubareva may claim to be "victims" for the purposes of Article 34 of the Convention in

relation to the deaths of their partners (Mr I. Finogenov, Mr V. Bondarenko, and Mr S.A. Booker respectively);

3. *Holds* that there has been no violation of Article 2 of the Convention on account of the decision by the authorities to resolve the hostage crisis by force and to use the gas;

4. *Holds* that there has been a violation of Article 2 of the Convention on account of the inadequate planning and conduct of the rescue operation;

5. *Holds* that there has been a violation of Article 2 of the Convention on account of the authorities' failure to conduct an effective investigation into the rescue operation;

6. *Holds* that there is no need to decide separately on other complaints by the applicants;

7. *Holds*

(a) that the respondent State is to pay the applicants, 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 Russian Roubles at the rate applicable at the date of settlement (the amounts to the applicants who are foreign nationals must be paid in euros):

(i) The amounts indicated in the annex, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,000 to Ms Burban-Mishuris and EUR 2,000 to Ms Gubareva in reimbursement of their travel expenses, plus any tax that may be chargeable to the applicants on those amounts.

(iii) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable to the applicants jointly, in respect of legal costs and expenses (to be distributed amongst the applicants' lawyers as indicated in paragraph 296 above);

(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;

8. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 December 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President

ANNEX

N	Name of Applicant	Name of the immediate victim	Year of birth	Non-pecuniary damage claimed (EUR)	Non-pecuniary damage awarded (EUR)	Nat.
1	Aistova Yevgeniya Lvovna	Lost her son, Rodionov D.I.,	1960	240,000	26,400	RUS
2	Akimova Yelena Gennadyevna	Lost her partner, Finogenov I.A. Was a hostage herself	1974	480,000	28,600	RUS
3	Alyakina Olga Aleksandrovna	Lost her father, Alyakin A.F.	1983	200,000	13,200	RUS
4	Alyakina Alla Kuzminichna	Lost her husband, Alyakin A.F.	1950	200,000	13,200	RUS
5	Apshev Timur Khasenovich	Lost his sister Apsheva S.Kh. Cares for a minor daughter of his late sister	1967	240,000	26,400	RUS
6	Bessonova Anna Andreyevna	Lost her husband, Mitrofanov A.A.	1973	240,000	26,400	RUS
7	Bochkov Sergey Leonidovich	Lost his son, Bochkov A.S.	1950	240,000	26,400	RUS
8	Bondarenko Nora Petrovna	Lost her son, Bondarenko V.V.	1940	360,000	13,200	RUS
9	Bondarenko Viktor Grigoryevich	Lost his son, Bondarenko V.V.	1938	360,000	13,200	RUS
10	Burban (Lobazova) Yelena Leonidovna	Lost her husband, Burban G.M. Was a hostage herself	1979	480,000	28,600	UKR
11	Burban-Mishuris Lyubov Grigoryevna	Lost her son, Burban G.M.	1939	360,000	8,800	USA
12	Burban Mark Naumovich	Lost his son, Burban G.M.	1939	240,000	8,800	USA
13	Chernetsova Zoya Pavlovna	Lost her son, Chernetsov D.A.	1954	360,000	26,400	RUS
14	Finogenov Pavel Alekseevich	Lost his brother, Finogenov I.A.	1974	180,000	8,800	RUS
15	Frolova Larisa Nikolayevna	Lost a son and a daughter-in-law, Frolov E.V. and Frolova V.V.	1945	480,000	52,800	RUS

16	Generalova Svetlana Nikolayevna	Lost her partner, Bondarenko V.V. Was a hostage herself	1967	480,000	39,600	RUS
17	Gorokholinskiy Sergey Aleksandrovich	Lost his wife, Gorokholinskaya Yu.Ye. Was a hostage himself	1968	480,000	39,600	RUS
18	Grinberg Yekaterina Vyacheslavovna	Lost her mother, Yakubenko Ye. A.	1975	240,000	26,400	RUS
19	Gromovich Sergey Vladimirovich	Did not lose relatives Was a hostage himself	1977	360,000	13,200	RUS
20	Gubareva Svetlana Nikolayevna	Lost her partner , Booker S.A., and her daughter, Letyago A. Was a hostage herself	1957	840,000	66,000	KAZ
21	Gunyasheva Olga Vladimirovna	Did not lose relatives Was a hostage herself	1971	360,000	13,200	RUS
22	Karpov Ivan Sergeyevich	Lost his brother, Karpov A.S.	1982	180,000	8,800	RUS
23	Karpov Sergey Nikolayevich	Lost his son, Karpov A. S.	1954	240,000	8,800	RUS
24	Karpova Tatyana Ivanovna	Lost her son, Karpov A.S.	1946	240,000	8,800	RUS
25	Khaziyev Tukay Valeyevich	Lost his son, Khaziyev T.T.	1947	360,000	26,400	RUS
26	Khomontovskiy Mikhail Yuryevich	Did not lose relatives Was a hostage himself	1971	360,000	13,200	RUS
27	Khramtsov Aleksandr Fedorovich	Lost his father, Khramstov F.I.	1975	180,000	8,800	RUS
28	Khramtsova Irina Fedorovna	Lost her father, Khramstov F.I.	1982	180,000	8,800	RUS
29	Khramtsova Valentina Ivanovna	Lost her husband, Khramstov F.I.	1955	120,000	8,800	RUS
30	Khudovekova Eleonora Vasilyevna	Did not lose relatives Was a hostage herself	1962	360,000	13,200	RUS
31	Kiseleva Lyudmila Aleksandrovna	Lost her husband, Kiselev A.V. Was a hostage herself	1945	480,000	39,600	RUS
32	Koletskova (Udovitskaya) Anna Aleksandrovna	Did not lose relatives Was a hostage herself	1983	360,000	13,200	RUS
33	Konyakhin Aleksey Yuryevich	Did not lose relatives Was a hostage himself	1971	360,000	13,200	RUS

34	Kovrizhkin Anatoliy Ivanovich	Lost his daughter, Kunova S.A.; is the guardian of a minor son of his late daughter	1938	540,000	26,400	RUS
35	Kutukova Nina Fedorovna	Lost her son, Finogenov I.A.	1937	360,000	8,800	RUS
36	Kurbatov Vladimir Vasiliyevich	Lost his minor daughter, Kurbatova K.V.	1959	240,000	13,200	RUS
37	Kurbatova Natalia Nikolayevna	Lost her minor daughter, Kurbatova K.V.	1960	240,000	13,200	RUS
38	Lyubimov Nikolay Alekseyevich	Did not lose relatives Was a hostage himself	1931	360,000	13,200	RUS
39	Malenko Viktor Ivanovich	Lost his daughter, Malenko N.V.	1951	240,000	26,400	RUS
40	Matyukhina Yekaterina Vladimirovna	Did not lose relatives Was a hostage herself	1978	360,000	13,200	RUS
41	Milovidov Dmitriy Eduardovich	Lost a minor daughter, Milovidova N.D.	1963	420,000	13,200	RUS
42	Milovodova Olga Vladimirovna	Lost a minor daughter, Milovidova N.D.	1966	240,000	13,200	RUS
43	Panteleyeva (Schetko) Viktoriya Yevgenyevna	Lost her husband, Panteleyev D.V.	1979	200,000	26,400	RUS
44	Paramzin Vitaliy Sergeyevich	Did not lose relatives Was a hostage himself	1982	360,000	13,200	RUS
45	Ponomarenko Eduard Nikolayevich	Did not lose relatives Was a hostage himself	1969	360,000	13,200	RUS
46	Ryabtseva Aleksandra Aleksandrovna	Did not lose relatives Was a hostage herself	1983	360,000	13,200	RUS
47	Rybachok Lyudmila Vladimirovna	Lost her son, Sinelnikov P.S.	1947	240,000	26,400	RUS
48	Senchenko Vyacheslav Nikolayevich	Lost his brother, Senchenko S.N.	1975	120,000	26,400	RUS
49	Shalnov Aleksey (a minor, represented by Shalnov A.B.)	Did not lose relatives Was a hostage himself	1957	360,000	13,200	RUS
50	Shalnova Olga Aleksandrovna	Did not lose relatives Was a hostage herself	1957	180,000	13,200	RUS

51	Sidorenkov Petr Ilyich	Lost his son, Sidorenkov Yu. P.	1929	360,000	26,400	RUS
52	Simonov Dmitriy Vladimirovich	Lost his son, Simonov D.D.	1960	240,000	26,400	RUS
53	Solodova Olga Yevgenyevna	Lost her husband, Solodov G.L.	1973	200,000	26,400	RUS
54	Tolmacheva Galina Aleksandrovna	Lost her son, Tolmachev A.A.	1938	360,000	26,400	RUS
55	Troitskiy Sergey Stanislavovich	Did not lose relatives Was a hostage himself	1964	360,000	13,200	RUS
56	Volkov Nikolay Aleksandrovich	Lost his daughter Volkova Ye.N.	1955	240,000	26,400	RUS
57	Yakubenko Alexandr Vyacheslavovich	Lost his mother, Yakubenko Ye.A.	1978	120,000	26,400	RUS
58	Yegorova Svetlana Igorevna	Did not lose relatives Was a hostage herself	1982	360,000	13,200	RUS
59	Yemakova Yuliya Vladimirovna	Did not lose relatives Was a hostage herself	1977	360,000	13,200	RUS
60	Yuftyayev Yevgeniy Aleksandrovich	Lost his wife, Yuftyaeva N.A.	1962	120,000	13,200	RUS
61	Yuftyayeva Yekaterina Yevgenyevna	Lost her mother, Yuftyaeva N.A.	1984	200,000	13,200	RUS
62	Zabaluyev Mikhail Petrovich	Lost his son, Zabaluyev A.M.	1959	240,000	26,400	RUS
63	Zhirov Oleg Aleksandrovich	Lost his wife, Zhirova N.V.	1964	120,000	26,400	NLD