

RESOLUTION  
OF THE PRESIDIUM OF THE RSFSR SUPREME COURT

Moscow

August 29, 1990

The Presidium of the RSFSR Supreme Court comprising of  
Chairman – Lebedev, V.M.

Presidium Members – Verin, V.P., Vyacheslavov V.K., Lukanov P.P.

Lukashov Yu.A., Merkushev A.E., Radchenko V.I.

Sviridov Yu.A.

reviewed the case regarding the protest by first deputy Chairman of the RSFSR Supreme Court Radchenko V. I. to the verdict of the Moscow City Court of May 18, 1978, according to which

ORLOV Yuri Fedorovich, born August 13, 1924,

resident of the city of Moscow, Russian, with higher education,

married, without previous criminal history –

was sentenced under article 70 part I of the RSFSR Criminal Code to 7 years of incarceration in correctional labor colony with strict regime with further exile for 5 years.

It was ordered to expropriate to the state, as material evidence, the typewriter of “Continental” make, which was found during the search at Orlov’s, and to recover the court expenses of 214 rub. 35 kopeks from him.

The Judicial Collegium for criminal cases of the RSFSR Supreme Court affirmed the verdict without changes by the ruling of July 18, 1978.

The protest raises the issue of annulling the verdict and the ruling with dropping the case due to the absence of *corpus delicti* in Orlov’s actions.

Having heard the report by member of the RSFSR Supreme Court Petukhov I.S. and the concluding statement by deputy RSFSR Procurator Zemlyanushin I.S., who agreed with the protest,

Presidium of the RSFSR Supreme Court

*determined:*

Orlov was found guilty of conducting anti-Soviet agitation and propaganda in 1973-1977. As stated in his verdict, he, while being hostile to the regime existing in the USSR, was spreading slanderous fabrications defaming the Soviet government and social structure in order to undermine and weaken the Soviet state, and created and distributed documents of similar nature in a systematic manner.

The Presidium of the RSFSR Supreme Soviet finds the protest substantiated.

The verdict and the ruling on the appeal are subject to be annulled with cessation of execution of the case due to the absence of *corpus delicti* in Orlov's actions.

Orlov did not plead guilty in court and testified that he indeed wrote and disseminated the documents mentioned in the verdict, but did not consider them slanderous, and did not seek the goals of undermining or weakening the Soviet state while creating and disseminating them.

The verdict fails to give a sufficiently complete and objective assessment of Orlov's explanations and other evidence. Thus, the Court found that the so-called "Open Letter," written and subsequently disseminated by Orlov in September 1973, to contain slander on the Soviet government and social structure, identifying it with slave-owning formation, feudalism and the Nazi Reich.

In addition, other documents created and disseminated by Orlov were found to contain anti-Soviet agitation. The verdict states that in 1974-1976, Orlov created and disseminated documents titled "Moscow Address" from February 13, 1974, "Anatoly Marchenko's Hunger Strike," "Address of Moscow Scientists," "Address" from May 27, 1976, "December 10—International Human Rights Day," "Assessment of Impact ..."; on November 26, 1976 [Orlov] addressed a document beginning with words "Exactly one month has passed" to radio stations Voice of America and BBC. The verdict lists the titles of numerous other documents written and disseminated by Orlov. It finds all these documents slanderous, denying the presence in the USSR of democratic freedoms and containing false assertions of violations by the Soviet Union of international agreements, fabrications about alleged use of "psychiatric repressions" in the USSR, [containing] appeals to revise the fundamental principles of the Soviet state, slander about the living conditions of prisoners in correctional labor institutions and [assertions] that in the USSR citizens receive criminal punishment for political and religious beliefs and that Soviet authorities blackmail, threaten and arrest on fabricated grounds persons who want to leave to settle permanently in the West.

According to the verdict, Orlov took measures [to ensure] imperialist press and radio would make wide-ranging use of his slanderous fabrications; disseminated them within the country; repeatedly organized gatherings with the participation of foreigners, in which he defamed the Soviet state and social structure. Giving this assessment to Orlov's activities, the court gave no consideration to the defendant's explanations: "I am not hostile to the existing order in our country. I take a critical view of everything. It is not my goal to undermine the Soviet state... I am in favor of free dissemination of information in accordance with the Final Act of the European Conference on Security and Cooperation and Article 19 of the Universal

Declaration of Human Rights... I criticized laws and their use when they contradicted international pacts on human rights and such criticism is not banned by Soviet law. My work contributed to the security and improvement of certain elements of Soviet society..." (file pages 62-63, Volume 60).

Regarding the "Open letter" written in September 1973, Orlov testified that he addressed it to Brezhnev; [that] the motives behind it, as with other letters and appeals to the Soviet and western society, to communist parties and heads of state, were not hostile goals of undermining or weakening the USSR, but a concern for the protection of concrete individuals. The goal was to convey his considerations to the Soviet government in order to improve Soviet society, correct existing infringements of human rights in the USSR. Further, he testified that he was fired from work in late 1973 for writing an "open letter" to Brezhnev. He said he knows it did not reach the CC CPSU. This "Open letter" is attached to this criminal case file (file pages 148-153, Volume 30). In the verdict, it is mistakenly determined to contain anti-Soviet agitation, and the court's conclusion that it identifies the USSR government and society with slavery, feudalism, and the Nazi Reich, is unsubstantiated. In the "Open letter", Orlov accompanies his appeal to Brezhnev with the following note, "...In our country, socialism in practice took on features not just of 'feudalism without private property,' but under Stalin even of – slavery without private property..." (file pages 152, vol. 30). Further, the same "Open letter" states: "to imprison opposition in mental institutions and to cripple them with injections – is detestable on the level of sterilization of political rivals under the Nazi Reich," (file pages 153, vol. 30).

There are no grounds to see evidence of crime, as defined in article 70 of the RSFSR Criminal Code, in these Orlov writings, because according to his explanations that they were not aimed at undermining or weakening the Soviet state.

There are no grounds for finding anti-Soviet agitation in the text of other documents compiled by Orlov or signed by him in cooperation with other people. In particular, in the "Moscow Appeal" from 13 February 1974, which Orlov signed along with nine other people, and Academician Sakharov is at the head of the list, indicates that the article "Path of Treason" in the newspaper "Pravda" is "officious," that the "treason" by the writer Solzhenitsyn, "is that he, with a tremendous force, uncovered to the world the monstrous crimes committed in the USSR in the recent past, tens of millions of innocent people, communist and noncommunist, atheists and believers, intellectuals, workers, and peasants, people of various nationalities, fell victim to terror, covered by slogans of social justice..." (file page 19, vol. 35).

This "Moscow Appeal" cannot be considered anti-Soviet agitation. Among a list of demands it asks for the book "The Gulag Archipelago" to be published in the USSR, and for its author, Solzhenitsyn, not to be persecuted.

In the article, "Anatoly Marchenko's Hunger Strike," also included in the criminal case file, it is reported that the author of the book "My Testimony" Marchenko, arrested on February 26, 1975, had announced a hunger strike; his (Marchenko's) "...demands are basic: he wishes to be granted permission for him and his family (wife and child) to emigrate to the USA...Counter-demands of the authorities are absurd...The authorities demand that Marchenko, who already publicly renounced his Soviet citizenship, formally requested his departure not to the USA but to

Israel...” (file page 143, vol. 52). Further in this article Orlov points out [that] “...his (Marchenko) firm position... could play a large role in the battle for liberalization in the Soviet Union, important not only to us, the citizens of the USSR, but also for the security of Europe... In the USSR, the practice of ‘treating’ dissidents in psychiatric hospitals is spreading...” (file pages 144-145, vol. 52).

Orlov’s article titled “Marchenko’s Hunger Strike,” does not qualify as anti-Soviet agitation.

The content of the November 26, 1976 appeal, “To Heads of State – Members of the Helsinki Agreement” comes down to the following: “Exactly one month has passed since the Soviet government extradited Soviet political emigrant Zosimov from Iran. The motivation for this illegal and inhumane act – airplane hijacking – is clearly untenable. Zosimov used an airplane... for the realization of his legal right to leave his own country. This international right is crudely violated by the Soviet government... We ask you to appeal to the Soviet government and insist that in the light of these exceptional circumstances, which forced Zosimov to illegally use the airplane, it should favorably review this issue, give him amnesty and simultaneously allow him to leave the country (file pages 388-389, vol. 23). This “Appeal” was signed by Sakharov, Orlov, and others, five people altogether.

There are no grounds to consider this “Appeal,” as well as the previous documents, anti-Soviet agitation of propaganda.

In the “Address” to Brezhnev, the second one, titled: “December 10 – International Human Rights Day,” Orlov names himself “leader of the public group for facilitating the implementation of the Helsinki Agreement in the USSR.” He wrote on December 12, 1976: “I address you and other leaders of the CPSU. Being in control of the unlimited repressive apparatus, you could conduct a series of reforms without fear of consequences. This refers to:

1. Universal political amnesty.
2. Freedom of action for independent religious, professional, legal, philanthropic, ethno-cultural, and other non-political, non-party associations.
3. Unobstructed functioning of independent public information centers, in particular independent cooperative publishers.
4. Development of legislation concerning citizens’ right to strike.
5. Free migration, including the right of free exit from and return to the country.

Let me remind you that absolutely all the citizens’ rights listed in para 2-5 are stipulated in international pacts, already in effect within the territory of the USSR... The aspiration to avoid, at any cost, the liberalization and democratization of society and social life is a repetition of the mistakes made by the Tsarist government. It is in everyone’s interest that reforms be introduced long before the occurrence of such critical situations when those very same reforms no longer appease, but instead strengthen public passions” (file page 21 vol. 1).

This document contains excessively harsh expressions, but also, as all of the above, was incorrectly recognized by the court as anti-Soviet agitation.

Other documents mentioned in the verdict, compiled or signed by Orlov, [and] recognized by the court as anti-Soviet agitation and propaganda, have the same content as those cited above. Some of them contain such expressions as: “The Soviet government does not intend to carry out its international obligations” regarding human rights (file page 47, vol. 11), “Soviet authorities see an extraordinary danger to themselves in the dissemination of exposing information... Bans have been drastically increased on the already sparse visits allowed to political prisoners and their families... There’s been an attempted attack on the right of prisoners to engage in correspondence...” (file pages 54-55, vol. 11).

In their character, these documents, based on the disposition of Article 70 of the RSFSR Criminal Code in its previous edition, relevant to the activities that Orlov was charged with, cannot be counted as anti-Soviet agitation. They express criticism addressed to particular state agencies and leaders, including the Soviet government itself, regarding the noncompliance with specific points of international agreements on human rights, limiting number of visits for inmates and their correspondence with relatives. They do not contain the goals of undermining or weakening the Soviet state, or of committing certain particularly dangerous state crimes, or dissemination of slanderous fabrications discrediting the Soviet state and social structure in pursuit of the same goals.

The verdict cites evidence in accordance with the materials of the criminal case that the September 1973 “Open Letter” to Brezhnev and other documents, created by Orlov, were widely used by foreign publishing houses: “Posev,” “Chronicle,” by the radio stations “Liberty,” “German Wave,” “Voice of America,” and the “BBC.”

However, it must be admitted that this fact on its own does not prove Orlov’s guilt. His explanations that he was not engaged in anti-Soviet agitation and propaganda, but only criticized certain leaders and state agencies for specific shortcomings, with the intention of achieving, in such a way, the elimination of those shortcomings and improvement of the situation with citizens’ rights and democratizing society in the country were not refuted. These explanations are not given an evaluation in the verdict, they are left without the court review. There are no grounds for considering Orlov’s explanations untrue. In preparation of the verdict, it was not taken into account that criticism of the shortcomings existing in the country in the political, economic, cultural, and other spheres of public life does not constitute a crime under Article 70 of the Criminal Code of the RSFSR.

The qualification of Orlov’s actions, by the investigative authorities and the court, as anti-Soviet agitation and propaganda is a mistake, [made] without sufficient substantiation. Orlov’s intent to commit a particularly dangerous state crime, which is anti-Soviet agitation and propaganda, his goal of achieving, in such a way, the weakening or undermining of the Soviet state, or committing other, particularly dangerous state crimes, is not established.

Based on the above, in agreement with the protest, and in accordance with page 378, paragraph 2 of the Code of Criminal Procedure, the Presidium of the RSFSR Supreme Court

has ruled:

To annul the verdict by the Moscow City Court from May 18, 1978, and the ruling by the judicial collegium for criminal cases of the RSFSR Supreme Court of July 18, 1978 regarding Yuri Fedorovich Orlov, and to drop the case for the absence of *corpus delicti* in his actions.

Chairman

[signature]

V. M. Lebedev

Zerox copy is correct:

Member of Moscow

City Court [signature]

Secretary [signature]

[Seal]

[Translated by Svetlana Savranskaya and Tal Solovey for the National Security Archive.  
Source: Yuri Orlov Personal Archive, courtesy of Sidney Orlov]