



Warsaw, 13 August, 2015

THE CASE OF ALEKSANDER ORLOV

For more than 15 years, the illegal prosecution of a 60-year-old citizen of Poland, a member of the Union of Journalists of Ukraine, human rights activist and father of three, including two minors, Aleksander Orlov, has been ongoing in Ukraine. For the last 4 years, in spite of his serious health condition and advanced age, he has been held in the Odessa detention centre. Orlov is awaiting a verdict. The proceedings have comprised almost 100 hearings, and all indications show that the progress of which has been deliberately hampered. The reason for the prosecution of Aleksander Orlov could be his active journalistic and civil activities, including his involvement in the fight against corruption.

The criminal case against Aleksander Orlov consists of two episodes. The first dates back to 2000 and is associated with charges of illegally possessing drugs. In the second episode, Orlov was accused of involvement in a murder. Both these allegations are dubious and are not based on strong evidence, and the judicial bureaucratic process has been accompanied by a number of violations, and has become artificially procrastinated.

1. CHARGES OF ILLEGALLY POSSESSING DRUGS

On 13 April, 2000, in Odessa, Aleksander Orlov was detained by police on suspicion of possessing illegal drugs. During his detention, police failed to draw up a custody report or search protocol, and after some time, heroin was 'found' in Orlov's pocket¹, which resulted in the bringing of criminal charges against him. On 19 April, 2000, Orlov was released from custody. During the subsequent criminal proceedings, he remained under house arrest. On 1 September, 2000, at the end of the pre-trial investigation, the case was referred to the Oktyabrsky District Court of Odessa. **On 31 January, 2003, the court acquitted Aleksander Orlov due to a lack of evidence of his guilt.**

On 22 April, 2003, the Appellate Court overturned the verdict of the Odessa district court of first instance due to procedural irregularities and sent the case back for retrial. On 13 April, 2006, the Primorskiy Court of Odessa found Orlov guilty on all counts, sentenced him to 1 year's imprisonment before releasing him from custody due to the expiration of the period of limitation for criminal responsibility. On 20 June, 2006, the Appellate Court overturned that decision and ordered a retrial.

On 12 June, 2007, the Primorskiy Court closed the criminal case against Aleksander Orlov due to the statute of limitations for criminal responsibility. However, on 18 September, 2007, the Appellate Court quashed the judgment for a third time and remitted the case for retrial.

On 15 December, 2011, the European Court of Human Rights concluded its consideration of the case 'Ukraine v Orlov'. **The ECHR ruled that in the case of Orlov, the duration of the proceedings was excessive and failed to meet the 'reasonable time limit'**, in breach of Art. 6, section 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Also, the ECHR ruled that Orlov be paid 3000 euros compensation for moral damage.²

¹ <http://maidan.org.ua/static/mai/1008008714.html>

² http://zakon4.rada.gov.ua/laws/show/974_921

Despite the decision of the ECHR, the case against Aleksander Orlov as regards the illegal possession of drugs has not been closed.

2. CHARGES OF CONSPIRACY TO MURDER AND COMPLICITY TO COMMIT MURDER: PROCRASTED JUDICIAL CONSIDERATION.

On 11 September, 2007, Sergey Mrochko, an inspector of the Road Transport Inspection Authority, was murdered in Odessa. His assassins were identified only 4 years later. They transpired to be Aleksander Arutinov and Boris Veretskiy - members of Georgi Stoyanov's criminal group (Georgi Stoyanov died in 2010). The detainees pointed to Stoyanov as the mastermind behind the murder. According to the investigation bodies, and the first testimonies of the accused, it was Aleksander Orlov who requested that Stoyanov kill Mrochko. At the court session of 24 June, 2015, Veretskiy changed his testimony; he claimed that they hadn't followed Orlov's instructions, but had only obeyed Stoyanov who had ordered that they 'frightened' Sergey Mrochko.³

Orlov himself flatly denies involvement in the murder. The reasons for the initiation of criminal proceedings against him he explained as follows: *"Having entered into a criminal conspiracy, Vasiliy Kalischuk, Shalit and other officers of the Department for the Fight with Organised Crime (DFOC) at the Main Directorate of the Ministry of Foreign Affairs of Ukraine (MD MFA) for the Odessa Province have chosen me as the mastermind and organiser of the murder committed in 2007, when I worked as deputy director of the Odessa Central Bus Station. In other words, just because I worked in this position, and they had a 'dead-end' investigation [Orlov means a number of criminal cases on charges of legal violations and corruption that had been previously conducted by officers of the DFOC, which they probably could not, or did not want, to solve in accordance with the facts], and so they decided to pin that crime on me [thereby attributing to him a crime he had not committed]. It was an act of revenge".* It is worth noting that Kalischuk had a personal motive for taking revenge against Orlov - he owed the journalist a large sum of money.⁴

According to Orlov, V. Kalischuk and A. Shalit act alongside 'Stoyan's criminal group'. During one of the hearings, Shalit was supposed to photograph Orlov's attorney's face using a mobile phone in order to transfer the image to thugs who were planning to intimidate the lawyer. Orlov's family members were subjected to harassment, threats, surveillance and attempts to blackmail. According to Orlov's testimony, when he was being escorted, Colonel Shalit threatened that at his order, the journalist would be mocked and oppressed by other prisoners, over whom the officer had control.

Aleksander Orlov, Aleksander Arutinov and Boris Veretskiy were arrested in September 2011. Following the detention, Aleksander Orlov was subjected to **torture, while psychological pressure was exerted on his family members**. On 15 September, 2011, during his interrogation, Orlov was brutally beaten by DFOC Major A. Shchelkonogov in the presence of Investigator Guzunova, a counsel and an interpreter; consequently, Aleksander sustained a neck vertebrae injury. Orlov was not rendered medical assistance; instead, he was immediately taken by private car to the detention centre, whose staff did not want to admit him due to the injuries he had sustained – finally, the journalist was admitted after a phone call from DFOC was made to the detention centre management.

The counsel informed Orlov that the investigators demanded \$500, 000 for the settlement of the case, as they believed that a Polish person, who had been to the United States, must be a rich man and could 'buy himself out' of the situation. Orlov, in fact, had no money.

³ <https://www.youtube.com/watch?v=Mt50-q2VMzs>

⁴ http://od-news.com/index.php?option=com_content&task=view&id=27355&Itemid=6

During brutal searches, conducted by Shalit in the house of Orlov's wife, police officers demanded that she hand over gold, jewellery and cash. Orlov's infant daughters witnessed violent and vulgar behaviour towards their mother – during the search, police officers were shouting: "That's the end of your husband!", "Find yourself a lover!".

On 28 April, 2012, Orlov's case was sent to court for consideration. According to the criminal case file, Orlov has been accused of ordering a killing and conspiracy to commit murder (Art. 28, Art. 115 of the Criminal Code of Ukraine) and unlawful possession of controlled drugs (Art. 229-6 of the Criminal Code of Ukraine).

The matter became artificially protracted both during the investigation and after the court's verdict had been handed down. Over a period of 10 months, the court was determining which court the case should be referred to for consideration, and deciding on the composition of the panel of judges. It was only on 18 February, 2013, that the Odessa Primorskiy Court finally held the first hearing on the case.

On 19 August, 2015, another, the 100th (!) hearing shall be held. More than 20 times, hearings have been postponed for various reasons (the lack of Orlov's counsel, the absence of witnesses, the lack of an interpreter; several times Orlov was just not brought to the courtroom). On 21 April, 2015, for the first time, the court heard the testimony of the aggrieved party - Ms. Rudenko, the widow of Sergey Mrochko. She requested that the court apply a more lenient sentence in respect to the accused Arutinov and Veretskiy, as they had started to pay her 'compensation'. At the same time, Rudenko asked the court to apply to Orlov the most severe punishment possible, as he does not pay her compensation and continues to refuse to admit his guilt.⁵

3. THE DETERIORATION OF THE HEALTH CONDITION OF THE DEFENDANT DUE TO HIS PROLONGED DETENTION

Immediately following his arrest, the most severe measure of restraint in the form of detention was applied in respect to Alexander Orlov. He was placed in Detention Centre No. 21 in Odessa, where he remains incarcerated to this day. According to the accused himself, the conditions of detention in remand prison No. 21 are terrible. *"Violation of all reasonable time limits of unlawful arrest, torture, torture, torture at every moment (...) In court, I am sitting on the floor, the documents and the case file are on the bench. Six to eight hours in a basement in a solitary confinement cell of the court without food, being forced to breathe in cigarette smoke, with no water!!! With no windows or fresh air (...) Also in the detention centre cell – always surrounded by the smoke, always with smokers. Although they try to exhale the smoke through the feeding flap (...), it does little good"*, - Aleksander himself stated.

The sanitary conditions in the cell are disastrous: dirt, insects, rotting mattresses, broken bunks. In the institution, AIDS and tuberculosis are widespread. Orlov is only alive thanks to food parcels, brought by his wife – it's impossible to eat the food they serve in the detention facility. He does not get any dairy products or meat, only porridge and rotten beets, cucumbers and tomatoes. Orlov has consistently refused to pay bribes by which other prisoners are afforded wholesome food from outside the bars.

The terrible conditions of incarceration in the detention facility, pressure exerted on him in order to force him to give testimony, convenient to the authorities and to confess to a crime he did not commit, as well as his advanced age (he is 60 years old) - all this has led to the significant deterioration of Aleksander Orlov's health condition. The presence of the forensic medical opinion No. 44 of 5 March, 2015, explicitly corroborates this fact. Thus, the operative part of the opinion states that at the time of the medical examination of Aleksander Orlov, the commission of experts diagnosed him with the

⁵ http://od-news.com/index.php?option=com_content&task=view&id=44547&Itemid=1

following diseases: ischemic heart disease, atherosclerotic cardiosclerosis, 2nd degree hypertension, heart failure, a duodenal ulcer in remission, chronic cholecystitis, chronic pancreatitis, osteochondrosis, and others. During his stay in the surgical department in connection with the operation at the end of July 2015, Orlov was guarded constantly by three armed guards (one constantly handcuffed to him), and at night he was handcuffed to the bed.

It is worth noting that during numerous court hearings, Aleksander Orlov has filed 7 petitions to change his remand in custody to a less stringent measure of restraint, citing his serious health condition. Not once was any petition taken into account by the judges of the Primorsky District Court in Odessa (during the trial, the panel of judges was changed 5 times), who believed that the state of Aleksander's health is normal (although incidents in which he lost consciousness during court sessions should have indicated otherwise).

4. JOURNALISTIC AND CIVIL ACTIVITIES OF ALEKSANDER ORLOV

Orlov's criminal prosecution may be due to his journalistic and civil activities.

In 1998, at the request of his friends, Aleksander Orlov left Poland (where he had lived for many years and was granted Polish citizenship) to Odessa in order to help create a human rights organisation 'Ruthenia-Mir' 'Ruthenia-World'. He was appointed chief editor of the Internet portal 'Nabat' ['Alarm']⁶, which has become a popular channel of mass media, serving to expose abuses of power. Orlov described, in particular, the case of disappearance of journalist Georgiy Gongadze, which caused an international scandal and has become a stain on the reputation of the then Ukrainian authorities after revealing that the murder of the journalist was carried out on the order of President Kuchma's entourage. Orlov described incidents of fraud in the organisation of tenders and the practice of exporting arms to Liberia and Sierra Leone, which were under embargo. He brought to light various incidents of the falsification of tenders and the practice of transporting weapons to countries under embargo: Liberia and Sierra Leone. He covered the case of the criminal practice of bankruptcy of the State Shipping Company 'Black Sea Shipping Company' in Odessa, irregularities in the transfer of the franchise of the oil port of Odessa, as well as cases of police officers' co-operation with international criminal groups and the participation of police officers in contract killings.⁷ In 2003, Orlov disclosed juicy details regarding the history of the then newly-appointed Prime Minister Viktor Yanukovich and the history of the 'Donetsk clan'. His articles appeared, in particular, on the Internet portals 'Ukraina Kriminalnaya' ['Criminal Ukraine'], 'Maidan' ['Maidan'] and 'Svoboda' ['Freedom']. According to Orlov's testimony, at the time when he worked as a journalist, he was followed by the members of the Security Service of Ukraine, and the authorities treated him as a persona non grata: he was denied entry into the territory of Ukraine for 2 years.

In addition, Aleksander Orlov described the illegal actions of the criminal organisation leader Aleksander Argent (alias 'Angel') and his cooperation with law enforcement authorities of the city of Odessa.⁸ Orlov's journalistic works also include articles – the results of his journalistic investigation into the Mayor of Odessa Gennadiy Trukhanov, as well as Ukraine's MP Sergey Kivalov, who continues to be a very influential figure in Odessa and, supposedly, is one of the symbols of corruption in the country⁹ (currently, Kivalov is the chairman of the Committee on Justice of the Supreme Council; Kivalov is also a representative of Ukraine to the Venice Commission, which issues opinions on planned constitutional reforms in Ukraine; as the chairman of the Central Election Commission, he was responsible for the

⁶ <http://www.gazetanabat.narod.ru/>

⁷ <https://onedrive.live.com/view.aspx?resid=D388935E206E38E0!316&app=Word&authkey=!AJRoQjsONliwINO>

⁸ https://www.facebook.com/permalink.php?story_fbid=1616854788586475&id=100007859081599

⁹ <http://www.tvn24.pl/wiadomosci-ze-swiata,2/byly-wspolpracownik-janukowycza-zbudowal-palac-w-odessie.539390.html>

mass falsification of election results in 2004, which directly led to the outbreak of the Orange Revolution; Kivalov also serves as president of the Odessa Academy of Law).

While in custody, Orlov has made attempts to help other detainees – he writes letters on their behalf, complaints, describes incidents of violations of the rights of detainees. Because of this, he is often subjected to searches, during which prison employees confiscate his notes.

5. SUPPORT FROM THE MASS MEDIA AND THE CIVIL SOCIETY

In February 2012, a number of journalists and civil society activists signed and sent to former President Viktor Yanukovich a joint letter containing a request to bring about the release of the illegally detained Aleksander Orlov.¹⁰

The previous intervention of Polish and Ukrainian authorities in the case of Orlov did not yield satisfactory results. The gaps in the establishment of basic data were apparent: for example, the fact that Orlov is only a Polish citizen (he never held Ukrainian citizenship). The family was not able to pay for a lawyer through their own means – only a public defender was present during the hearings; it was impossible to meet with him outside the courtroom in order to agree on a strategy to defend Orlov. Due to financial difficulties, Orlov's daughter transferred from a Polish school to Ukrainian one.

The Ukrainian Parliament Commissioner for Human Rights (Ombudsman) Valeriya Lutkovskaya promised to take steps to bring about the release of Orlov from prison before the verdict of the court is handed down, but this promise has not been fulfilled. The Office of the Commissioner for Civil Rights of the Republic of Poland sent a request to the Ukrainian Ombudsman, pointing to the protracted nature of the proceedings. In July 2015, the office of the Commissioner for Civil Rights addressed the Consul of the Republic of Poland in Odessa with a request to present an update on the legal and actual status of the case of Orlov.

Orlov, from his cell, is striving to maintain contact with journalists, and with their help describe the conditions in which he is held: the articles appeared, in particular, on the internet portal www.kz.com.ua and Odessa Daily. Journalist Irina Goloborodko, who wrote about the violation of the law in the case of Orlov, received anonymous threats on the phone.

In recent weeks, the case of Aleksander Orlov has been closely monitored by members of the Polish parliament. And so, Andrzej Lewandowski, Adam Rybakowicz, Tadeusz Woźniak and Maria Zuba addressed the governor of the Odessa province Mikheil Saakashvili with a request to assist the cessation of illegal actions of the investigative bodies and the court in the case of Orlov. On the initiative of Hanna Machińska, the director of the Information Bureau of the Council of Europe in Warsaw and the Open Dialog Foundation, on 19 August, 2015, members of parliament Małgorzata Gosiewska from the party 'Law and Justice' and Marcin Świącicki from the 'Civic Platform' party will travel to Odessa on a special mission on behalf of the Polish Sejm; the aim of the mission is to verify the conditions of detention of Aleksander Orlov.

The history of the criminal prosecution of Aleksander Orlov is a blatant example of the arbitrariness of the Ukrainian law enforcement system. In the absence of conclusive evidence of guilt of the accused, proceedings are protracted by design. All this time, Aleksander Orlov, despite his advanced age and poor health condition, has remained in prison.

The Open Dialog Foundation hereby demands an immediate alteration of the measure of restraint for Aleksander Orlov from pre-trial incarceration to house arrest, as legal prerequisites for this action do

¹⁰ <http://www.048.ua/article/122670>

exist (Art. 150 and Art. 274 of the Criminal Procedure Code of Ukraine¹¹) - serious health condition (confirmed by the opinion following a forensic medical examination) and the advanced age of the accused.

According to the decision of the ECHR (the case 'Orlov against Ukraine'), Aleksander Orlov should be acquitted of the charges of illegal possession of drugs.

We also believe that the litigation procedure in the case of Aleksander Orlov is artificially protracted and therefore must be accelerated.

The Open Dialog Foundation hereby calls on the Ukrainian and international community to closely monitor the case of Aleksander Orlov and to demand from the competent authorities of Ukraine that he be immediately released, and that the prosecution process in his regard be ceased.

All those wishing to support our demands are requested to send their appeals to the following persons and institutions:

Institutions in Ukraine:

- Primorskiy District Court of Odessa – 65029, Odessa, 33 Balkovskaya Street, tel.: +38 048 784 71 36, e-mail: inbox@pm.od.court.gov.ua;
- Prosecutor of the City of Odessa Gyunduz Mamedov – 65026, Odessa, 24 Lanzheronovskaya Street, tel.: +38 048 731-90-00;
- Head of the MD of the MIA (police) of Ukraine for Odessa Province Giorgi Lortkipanidze – 65014, Odessa, 14 Yevreyskaya Street, tel.: +38 048 779 40 25;
- Acting Head of Department for Combatting Organised Crime of the Main Directorate of the Ministry of Internal Affairs for Odessa Province Nikolay Chernov – 65011, Odessa, 23 Osipova Street, tel.: +38 048 722 42 95;
- Head of Detention Centre No. 21 Leonid Nanarov – 65059, Odessa, 11 Lyustdorfskaya Doroga, tel.: +38 048 765 73 93;
- The Ukrainian Parliament Commissioner for Human Rights Valeriya Lutkovskaya – 01008, Kiev, 21/8 Institutskaya Street, tel.: +38 044 253 75 89, e-mail: hotline@ombudsman.gov.ua;
- Chairman of the Odessa Regional State Administration Mikhail Saakashvili – 65032, Odessa, 4 Shevchenko Street, tel.: +38 048 718-95-82, e-mail: genotdel@odessa.gov.ua;

International institutions:

- Secretary General of the Council of Europe Parliamentary Assembly, Wojciech Sawicki – e-mail: wojciech.sawicki@coe.int;
- Vice-President of the European Parliament Ryszard Czarnecki – Rue Wiertz 60, 1047 Brussels, Belgium, tel.: +32 2 28 45441, e-mail: ryszard.czarniecki@europarl.europa.eu
- Deputy Chairman of the Polish Delegation of the European People's Party, Andrzej Grzyb – the coordinator of the Group of the European People's Party in the European Parliament Subcommittee on Human Rights – Rue Wiertz 60, 1047 Brussels, Belgium, tel.: +32 2 28 45185, e-mail: andrzej.grzyb@europarl.europa.eu
- Chairman of the Subcommittee on Security and Defence of the European Parliament Anna Fotyga – Rue Wiertz 60, 1047 Brussels, Belgium, tel.: +32 2 28 45356, e-mail: anna.fotyga@europarl.europa.eu
- EU High Representative for Foreign Affairs and Security Policy Federica Mogherini – 1049 Brussels, Rue de la Loi / Wetstraat 200, tel.: +32 2 584 11 11; +32 (0) 2 295 71 69;

¹¹ Pursuant to the new Code of Criminal Procedure of 2012, all cases referred to the Court before the entry into force of the new Criminal Procedure Code (i.e. before November 2012), are to be considered in accordance with the Criminal Procedure Code of Ukraine of 1960. The case of Orlov was filed with the court in April 2012, i.e. before the entry into force of the new Code.

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- Head of the European Parliament Committee on Foreign Affairs Elmar Brok – Rue Wiertz 60, 1047 Bruxelles, Belgique, tel.: +32 2 28 49013 (Brussels), +33 3 881 76902 (Strasbourg);
 - United Nations High Commissioner for Human Rights Ra'ad Zeid Al-Hussein – Palais des Nations CH-1211 Geneva 10, Switzerland, tel.: +41 22 917 9220;
 - President of the European Commission, Jean-Claude Juncker – 1049 Brussels, Belgium Rue de la Loi / Wetstraat 200, e-mail: president.juncker@ec.europa.eu.

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