



Warsaw, 04 February, 2015

**The case of Artur Trofimov: political persecution of an ally of the Kazakh opposition**

Artur Trofimov is accused in a Russian criminal case against Kazakh opposition politician Mukhtar Ablyazov. As in the case of Tatiana Paraskevich and Ablyazov himself, Kazakhstan is striving to get Trofimov through a Russian extradition request. Austria refused to extradite Trofimov to Russia and granted him additional protection. However, within the framework of international cooperation in the field of criminal investigation, Austrian prosecutor's office opened a case on Trofimov and is considering the charges brought by the Russian investigation agency. To Russia and Kazakhstan, Trofimov is an important source of information about the activities of oppositionist Mukhtar Ablyazov. In their attempts to gain access to Trofimov, Kazakh and Russian authorities use the same methods which were used against Tatiana Paraskevich and other colleagues of Ablyazov. The methods include nonprocedural cooperation between the Kazakh side and the Russian investigators; violations by investigators and judges, included in the 'Magnitsky list'; pressure exerted by secret services; forgery of documentation held by investigators; attempts to negotiate with the accused to persuade him to testify against Mukhtar Ablyazov in exchange for closure of criminal cases.

On **28 October, 2011**, Russia issued an international arrest warrant for Artur Trofimov on charges of fraud in collusion with Mukhtar Ablyazov.<sup>1</sup> According to the Russian investigators, Trofimov was involved in improper lending to companies in the Seychelles, causing a loss to the Kazakh BTA Bank in the amount of \$ 731,080,416. On **22 October, 2012**, Trofimov applied for political asylum in Austria, but soon after, on **23 November, 2012**, he was arrested by Austrian police on the basis of Russia's extradition request. On 22 February, 2013, Trofimov was released from custody on bail.

***On 4 December, 2013, the Federal Office for Refugees granted Trofimov additional protection in accordance with the Austrian Law on the Status of Refugees, although this protection doesn't entitle him to be recognised as a refugee.*** Additional protection is only valid on the territory of Austria. The status entitles the person concerned to receive the permission for stay in Austria; in the case of Trofimov, the permission has been extended until 4 December, 2016.<sup>2</sup> Trofimov is currently seeking full asylum protection.

***On 28 January, 2014, the Land Criminal Court of Vienna, citing Trofimov's additional protection status, rejected Russia's request for his extradition.***

In accordance with paragraph 65 of the Criminal Code and under the agreement on mutual legal assistance between Austria and Russia, the Austrian authorities should conduct their own investigation into the charges levied against a person who they refused to extradite. Therefore, on 15 October, 2014, based on Russia's accusations, the Austrian Central Prosecutor's Office for criminal cases in the field of economy and corruption opened a case against Artur Trofimov under Article 153 of the Criminal Code of Austria ('breach of trust') and Article 278 of the Criminal Code of Austria ('criminal association'). The case is under preliminary investigation. Trofimov is fully cooperating with the prosecutor's office.

<sup>1</sup> The criminal case in the Russian Federation № 280011; charged under Article 159.4 of the Criminal Code ('Fraud in business').

<sup>2</sup> Additional protection (in German - der Status des subsidiär Schutzberechtigten) is granted in accordance with Article 8, section 1, Article 34, section 3 of the Law on the Status of Refugees.

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## RUSSIAN AND KAZAKH AUTHORITIES NEED ARTUR TROFIMOV AS AN IMPORTANT SOURCE OF INFORMATION IN THE CASE OF MUKHTAR ABLYAZOV

Over many years, the citizen of the Russian Federation, Artur Trofimov has been a colleague of the Kazakh opposition politician, Mukhtar Ablyazov - the main opponent of the current Kazakh regime and a personal enemy of President Nursultan Nazarbayev. Amnesty International, Human Rights Watch, International Federation for Human Rights, the League of Human Rights in France and more than a dozen Ukrainian and Russian human rights organisations have repeatedly reported on **the political nature** of Mukhtar Ablyazov's case. Several members of PACE and MEPs protested against Ablyazov's possible extradition from France.<sup>3</sup>

Human rights activists have repeatedly noted that the increasingly frequent cases of persecution of Mukhtar Ablyazov's family and associates in Europe indicate the existence of a political order from the Kazakh authorities.<sup>4</sup> Ablyazov holds refugee status in the UK and his partners and family members have been granted political asylum in Poland (Muratbek Ketebayev), Italy (Alma Shalabayeva and Alua Ablyazova), the Czech Republic (Tatiana Paraskevich) and the United Kingdom (Zhaksylyk Zharimbetov and Roman Solodchenko).

***In Russia, Artur Trofimov is connected to the same criminal case as Mukhtar Ablyazov and his colleague Tatiana Paraskevich.*** The Czech Republic granted Paraskevich international protection and refused to extradite her to Ukraine or Russia. Amnesty International stated that Paraskevich could face rendering from Ukraine and Russia to Kazakhstan, torture and unfair trials '*due to her links with the Kazakh oppositionist Mukhtar Ablyazov*'.<sup>5</sup>

Russian human rights organisation '**Memorial**', the All-Russian Civil Movement '**For Human Rights**', the renowned lawyer, **Mark Feigin**, and the Kazakh theatre director and social activist **Bulat Atabayev** expressed their support for Artur Trofimov and urged the Austrian authorities to grant him political asylum, as the criminal case has a clear political nature and serves Kazakhstan and Russia as a means of obtaining 'convenient' evidence against Mukhtar Ablyazov.<sup>6</sup>

***The publicising of the evidence of corrupt cooperation between Kazakhstan and the Russian and Ukrainian investigative agencies in the criminal case against Ablyazov and his colleagues caused significant reverberations.*** On the basis of this evidence, the High Court in London refused to extradite Ablyazov's ally, Igor Kononko, to Ukraine.<sup>7</sup>

According to Muratbek Ketebayev (an opposition politician and Ablyazov's longtime associate, who was granted political asylum in Poland), in June 2009, during a private meeting, **Nursultan Nazarbayev addressed the then Prime Minister Vladimir Putin with a request that the extradition of Ablyazov from Europe be facilitated.** Negotiations were formally documented with a protocol, and Putin gave adequate instructions to the Russian Interior Ministry.<sup>8</sup> Muratbek Ketebayev also published a document, according to which one of the leaders of the Kazakh National Welfare Fund 'Samruk-Kazyna', Umirzak

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<sup>3</sup> <http://www.amnesty.org/en/news/france-ensure-safety-kazakhstani-opposition-figure-2013-08-01> ; <http://www.hrw.org/news/2013/08/08/france-protect-critic-kazakhstan-government> ; <https://www.fidh.org/en/eastern-europe-central-asia/kazakhstan/kazakhstan-open-letter-to-mr-valls-and-mr-fabius-concerning-the-potential-13908> ; <http://www.amnesty.org/en/for-media/press-releases/france-stop-extradition-kazakhstani-opposition-activist-risk-torture-2014-1> ; MEPs Viola von Cramon, Elmar Brok, Barbara Lochbihler, Nicole Kiil-Nielsen, Niccolò Rinaldi, Benedek Javor, Graham Watson, Kosma Zlotowski, Tunne Kelam, Ana Gomes, Heidi Hautala, Rebecca Harms and others. - <http://en.odfoundation.eu/a/5504,international-support-of-mukhtar-ablyazov-as-an-opposition-politician>

<sup>4</sup> <http://www.amnesty.org/en/news/aleksandr-pavlov-extradition-2013-11-08>

<sup>5</sup> <http://www.amnestyusa.org/sites/default/files/uaa29513.pdf>

<sup>6</sup> It should also be noted that on charges of 'inciting social discord' and collaboration with Ablyazov, the opposition party 'Alga' and 34 non-state media outlets were banned, and opposition leader Vladimir Kozlov was imprisoned. - <http://en.odfoundation.eu/a/3420,report-independent-and-opposition-media-in-kazakhstan-are-on-the-brink-of-annihilation>

<sup>7</sup> <http://en.odfoundation.eu/a/5173,evidence-of-the-fabrication-of-the-extradition-request-with-regard-to-the-opposition-politician> ; <http://en.odfoundation.eu/a/4317,bta-bank-files-false-charges-in-cooperation-with-investigative-authorities-of-ukraine-russia-and-france>

<sup>8</sup> <http://www.respublika-kz.info/news/politics/37219/>

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Shukeyev reported the results of the talks with the Russian side regarding Abylazov's case to the administration of the Kazakh president.<sup>9</sup>

According to the published information, on **5 November, 2013**, Russian presidential aide, Yevgeniy Shkolov assured the Kazakh delegation that *"the criminal prosecution of Mr. Abylazov and his associates will be subjected to special monitoring"*. Also, Shkolov supported the proposals to *"assign curators of the BTA Bank issue in the Supreme Arbitration Court of the Russian Federation and the Federal Bailiff Service for the control of court trials, provide an objective review, engage in decision-making, as well as execute court orders in the Russian Federation"*. The Russian side has promised to provide *"recognition by the Russian Federation of court decisions, issued in the Republic of Kazakhstan"* on the case of Abylazov. At the same time, it is indicated that the Russian Interior Ministry *"has not yet resolved the issue"* of accusing Abylazov and his associates of *"organising a criminal association"*.<sup>10</sup>

According to the documents, published in the media, a lawyer Andrey Pavlov, one of the persons included in the Magnitsky list, held consultations with the Russian investigation agency on the case of Abylazov and his associates<sup>11</sup>. Journalists have revealed that Andrey Pavlov is the director of the Russian consultancy company 'Quorum Debt Management' and a representative of Kazakhstan's BTA Bank. And so, on the 5 and 6 September, 2013, ***Russian investigator Nikolay Budilo sent to the representative of Kazakhstan's BTA Bank, Andrey Pavlov, draft charges against Abylazov and his colleagues (also against Artur Trofimov)***. At the same time, the Russian investigator requested that the representative on the Kazakh side verify the names of the companies, the initials of those accused and specify the amount of damages inflicted. In correspondence with BTA's lawyer Pavlov, investigator Budilo signs his messages as follows: "Sincerely, your friend and partner!"<sup>12, 13</sup>

## **SIGNS OF THE POLITICAL NATURE OF THE TROFIMOV CASE**

Numerous incidents of procedural violations and pressure applied to the defendants and witnesses confirm the obvious political nature of the criminal case.

- **The investigation is carried out by investigators from the 'Magnitsky list'**

As in the case with Abylazov and Paraskevich, in Russia, the case against Trofimov is carried out by investigators who are included in the list of sanctions imposed in relation to the Magnitsky case.<sup>14</sup> The head of the investigative team is currently Nikolay Budilo, whom the government of Kazakhstan has awarded a pistol (CZ 75 B, 9mm Luger, No. 4880V).<sup>15</sup> Also, investigators Natalia Vinogradova and Oleg Urzhumtsev were engaged in the criminal case against Abylazov and Trofimov. The criminal investigation has been supervised by Deputy General Prosecutor, Viktor Grin. According to the lawyer, Mark Feigin, these people belong to the group of workers of law enforcement and judicial bodies, which

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<sup>9</sup> According to these data, the Kazakh side held meetings with Russian presidential aide Yevgeniy Shkolov, First Deputy Prime Minister Igor Shuvalov and Moscow Mayor, Sergey Sobyenin.

<sup>10</sup> <https://www.facebook.com/mur.ketebayev/posts/748212861921722>

<sup>11</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-528.148+01+DOC+PDF+V0//EN&language=EN>;  
<http://www.interfax.ru/world/365533>

<sup>12</sup> [http://www.moscow-post.com/redactor/shantazh\\_kak\\_metod\\_sбора\\_dokazatelnoy\\_bazy16146/](http://www.moscow-post.com/redactor/shantazh_kak_metod_sбора_dokazatelnoy_bazy16146/); <https://onlytruth9999.wordpress.com/>;

<sup>13</sup> The name of the recipient's e-mail is Nikolay Gudilo, but there is reason to believe that this pseudonym may that of investigator Nikolay Budilo. In particular, this recipient also received messages from member of the law firm 'Ilyashev and Partners', Roman Marchenko. The firm received information from the Kazakh side and gave instructions to the Ukrainian investigator in the case of Abylazov. Marchenko addressed the recipient, using the abbreviation 'NN'. Nikolay Nikolayevich are Budilo's first name and patronymic.

<sup>14</sup> <http://www.europarl.europa.eu/news/en/news-room/content/20140331IPR41184/html/Magnitsky-list-MEPs-call-for-EU-sanctions-against-32-Russian-officials> ;

[http://www.csce.gov/index.cfm?Fuseaction=Files.Download&FileStore\\_id=1744&ei=zclFUKqjO5La4QTisIHwBA&usg=AFQjCNGI9Rp6GZQCCn3ccmeC4yFjpI2wKA](http://www.csce.gov/index.cfm?Fuseaction=Files.Download&FileStore_id=1744&ei=zclFUKqjO5La4QTisIHwBA&usg=AFQjCNGI9Rp6GZQCCn3ccmeC4yFjpI2wKA)

<sup>15</sup> According to the information provided by the Embassy of the Republic of Kazakhstan in the Russian Federation, on 26 September, 2012, at the Embassy, investigator Budilo received a pistol as an award. The award was presented on the basis of the Resolution of the Government of the Republic of Kazakhstan dated 31 January, 2012 No.177 for official use. - <https://onlytruth9999.wordpress.com/>

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specialise in *“the execution of political instructions in order to eliminate persons, inconvenient to the government, through the abuse of Russian law”*.<sup>16</sup>

In his statement, financier William Browder cited details of the case of Sergey Magnitsky, and stressed that persons included in the ‘Magnitsky list’ are engaged in the case of Trofimov: *“Given my own experience of persecution by these individuals, I believe that Mr. Trofimov will meet the same fate as Sergei Magnitsky, if he is extradited to Russia. Until the officials implicated in the Sergey Magnitsky case face justice in accordance with the law, no objective investigation can take place in Russia”*. Earlier, the Russian Federation declared William Browder wanted, but Interpol has recognised the request as politically motivated and dismissed it.<sup>17</sup>

- **Pressure exerted on the defendants in order to obtain incriminating evidence**

According to counsel Andrey Krupenik, investigator Nikolay Budilo offered Artur Trofimov a chance to ***“cooperate with the investigation”, which meant defaming Abylazov***. In exchange, Trofimov was promised a simplified procedure for the trial and a *“more lenient punishment”*. The same “offer” was presented to another defendant in the case, Tatiana Paraskevich.<sup>18</sup> The human rights organisation ‘Memorial’ stated that the charges against Trofimov *“are based solely on the testimony of a small number of persons, collaborating with the investigation. The practice of fabrication of prosecution evidence in accordance with the same scheme is characteristic of Russian investigative bodies in general, and especially for manifestly political cases”*. The case of **Yelena Tishchenko**, ex-lawyer of several Russian companies that have been in the litigation against Kazakh BTA Bank in Russia, serves as a good example.

Russian investigators accused the lawyer Yelena Tishchenko of money laundering in connection with the criminal case against Abylazov and others. She was detained in Moscow on 31 August, 2013, and subsequently arrested. While in a detention facility, Tishchenko agreed to *“cooperate with the investigation”*, and at the end of December 2013 she was amnestied, and BTA Bank backed down from claims against her. ***On 10 October, 2013, while in the Russian detention facility, Tishchenko addressed a letter to the General Prosecutor of Kazakhstan, Askhat Daulbayev, expressing her willingness to ‘help’ the investigating authorities.***<sup>19</sup> In November 2013, she was interrogated by representatives of the Kazakh prosecutor's office.

Special attention should be paid to the following excerpt from the letter of the representative of BTA Bank, Andrey Pavlov to his colleagues in Kazakhstan: *“During the talks with the leaders of the 1st Department of the General Prosecutor’s Office of the Republic of Kazakhstan on 22 November, 2013, Tishchenko gave details of Abylazov’s illegal political activity, his role in organising mass riots, inciting ethnic hatred in the Republic of Kazakhstan, creating an atmosphere of intolerance towards people of Kazakhstan in the Russian Federation, his procurement of weapons and military equipment, also for the president of the Central African Republic”*.<sup>20</sup>

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<sup>16</sup> According to the defence, in August 2011, Investigator Natalia Vinogradova threatened Counsel Yuriy Gervis who defends Trofimov’s colleague, D. Vorotyntsev. The investigator told the lawyer, *“... don’t provoke me, or you’ll see another corpse...”*. The counsels suggest that Investigator Vinogradova referred to the tragic example of Sergey Magnitsky.

<sup>17</sup> <http://www.interpol.int/en/News-and-media/News/2013/N20130726>

<sup>18</sup> Attorney at law, Vojtech Trapl, representing the interests of BTA Bank, offered the counsel of Paraskevich a chance *“to cooperate with the investigation”*, - namely, he expected Paraskevich to give *‘truthful testimony’* against Abylazov. In exchange, BTA Bank promised to request that Ukraine close the criminal case. - <http://en.odfoundation.eu/a/5242,the-czech-authorities-refused-to-extradite-tatiana-paraskevich-to-ukraine-and-russia-as-of-today-interpol-hasn-t-removed-her-from-the-wanted-list>

<sup>19</sup> <http://izvestia.ru/news/563573> ; <http://www.respublika-kaz.info/news/politics/36058/>

<sup>20</sup> In a letter dated 29 November, 2013, Andrey Pavlov stated that in the period from 15 November, 2013 to 29 November, 2013, *‘Y.Y. Tishchenko gave detailed and comprehensive evidence about all participants of the criminal group’*, which would allow the prosecution of Abylazov’s other partners. The recipients of the letter included the following addresses: [e\\_molshanova@bta.kz](mailto:e_molshanova@bta.kz), [yemolchanova@bta.kz](mailto:yemolchanova@bta.kz). - <http://obozrevatel.com/crime/91247-kto-kak-i-dlya-chego-davil-na-elenu-tischenko.htm> ; <http://www.respublika-kaz.info/news/politics/39350/>

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- **Efforts to bring about the arrest with the use of illegal methods**

On **18 March, 2010**, the Interior Ministry sent a request to the Border Guard of the Russian Federation for the arrest of Trofimov. This request specified that the investigator had filed a motion with the court to arrest Trofimov. However, the document provided by the counsels confirms that it was only on **8 November, 2011**, that Investigator P. Zhesterov filed a motion with the Tver District Court in Moscow to arrest Trofimov. Thus, a warrant for the arrest of Trofimov had no legal basis at that time. The decision to issue an international arrest warrant also arouses suspicion. According to Trofimov, in June 2011, he gave the Russian police his residential address and expressed his willingness to reply to correspondence.

- **Questionable decisions of the judges from the 'Magnitsky list'**

On 10 November, 2011, Artur Trofimov was arrested *in absentia* by a Russian court. According to his counsels, on 9 November, 2011, Judge A. Kovalevskaya expressed her doubts over whether there is sufficient evidence for an arrest *in absentia*. But the following day, without explanation, Judge Kovalevskaya was replaced by another judge - Alexey Krivoruchko, a person included in the 'Magnitsky list'. For 28 days, the management of the Tver District Court did not issue the minutes of the hearing to the counsels, although this should have been done within 3 days. Perhaps the minutes were compiled after the fact, as they contained gross errors (for example, it stated that on 9 November, 2011, Trofimov was present in court, even though he was abroad at that time). Other judges who presided over the case against Trofimov and Ablyazov's colleagues in Russia, and are also named in the 'Magnitsky list', include: Sergey Podoprigrorov, Yelena Stashina and Svetlana Ukhnaeva.

- **Obstruction of legal practice**

Dmitriy Kharitonov, the counsel of Artur Trofimov, was not allowed to participate in the case within 6 months, while he had all the necessary documents and permits. Also, Investigator Budilo for a long time refused to admit to the case Ablyazov's Russian counsel, Mark Feigin. The same practice was applied by Ukrainian investigator Maksim Melnik, who had previously been engaged in the case against Ablyazov in Ukraine. Ablyazov's defenders were given the opportunity to begin familiarising themselves with the criminal case only after the change of political leadership in Ukraine.

- **Harassment by the Kazakh special services**

Artur Trofimov reported that on 9 May, 2013, in Vienna, near his house he was approached by Toksan Adykenov, who, according to Trofimov, is closely linked with the Kazakh special services. The man stated that Trofimov will soon fear for his life and the lives of his loved ones, should he fail to give incriminating evidence against Ablyazov. Trofimov believes that this confirms his home in Vienna is subject to surveillance by the Kazakh special services.

**The Open Dialog Foundation hereby urges law enforcement agencies of the Republic of Austria to take into account the political context of the charges against Artur Trofimov and Ablyazov's other colleagues, as well as to pay attention to the documents, published in the media, revealing the corruption cooperation between Kazakh and Russian authorities within the framework of the case of Ablyazov. The criminal prosecution of Ablyazov and his colleagues (including Artur Trofimov) fall within the scope of political interests of the Kazakh authorities. Russian investigators from the 'Magnitsky list' follow the instructions of the Kazakh side. Their methods of operation prevent impartial criminal proceedings being conducted. According to Trofimov, he cannot feel safe now, as the Russian and Kazakh law enforcement and intelligence agencies may try to get him 'at all costs' due to his unwillingness to give the 'convenient' testimony in the case of Mukhtar Ablyazov.**



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**Given the above, the Open Dialog Foundation is concerned about the opening of a case investigating against Artur Trofimov in the Republic of Austria, based on a Russian case file of dubious credibility. It should be noted that undue influence from the Kazakh side was exerted not only on Ukrainian and Russian investigative authorities, but also on investigative authorities of the Czech Republic (the case of Tatiana Paraskevich), Spain (the case of Alexander Pavlov), Italy (the case of Alma Shalabayeva and 6-year-old Alua Ablyazova), as well as France and Great Britain (the case of Mukhtar Ablyazov). We express our hope that the Republic of Austria will not succumb to the manipulation of the Kazakh and Russian security services, and will not help to facilitate political persecution by authoritarian regimes.**

**The Open Dialog Foundation welcomes the decision of Austria to refuse to extradite Trofimov to Russia, where he would face a politically motivated trial, torture, interrogation in the interests of Kazakhstan, or illegal rendering to Kazakhstan. We stand in solidarity with the appeals of Russian human rights activists who call for the granting of political asylum to Trofimov. We hereby urge the Austrian authorities to heed the position of international human rights organisations citing the political nature of the case against Ablyazov and his colleagues, as well as to carefully and comprehensively consider the circumstances of the case.**

You are welcome to support our appeals by addressing the following persons and institutions:

- The Central Prosecutor's Office for criminal cases involving economic crimes and corruption (Zentrale Staatsanwaltschaft zur Verfolgung von Wirtschaftsstrafsachen und Korruption (WKStA), Department 9 (Geschäftsabteilung 9) - Dampfschiffstraße 4, 1030 Wien, Österreich, tel. +43 1 521 52 5930, fax: +43 1 521 52 5920;
- Federal Office for Aliens and Refugees (Bundesamt für Fremdenwesen und Asyl) - Regionaldirektion Wien, Hernalser Gürtel 6-12, 1080 Wien, Österreich (official - Herr Oberauer);
- Federal Minister of Justice Wolfgang Brandstetter - Museumstraße 7, 1070 Vienna, tel. +43 152 15 20;
- Federal Minister of Europe, Integration and Foreign Affairs Sebastian Kurz - Minoritenplatz 8, 1010 Vienna, tel. +43 050 11 500, fax +43 050 11 590;
- The Austrian Ombudsman Board (Günther Kräuter, Gertrude Brinek and Peter Fichtenbauer) - 1015 Vienna, Singerstrasse 17, P.O. Box 20, tel. +43 015 15 050, fax: +43 0151505-150, e-mail: [post@volksanwaltschaft.gv.at](mailto:post@volksanwaltschaft.gv.at)

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