



Claimant jailed in Kuwait seeks interim measures to secure release

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Marsha Lazareva

A Russian businesswoman bringing an investment treaty claim against Kuwait has applied for interim measures to secure her temporary release from prison in the country while her claim is heard.

In a request dated 27 March, lawyers for Marsha Lazareva seek an order directing Kuwait to temporarily release her from the Kuwaiti prison where she has been held for the past year, to allow her to appear as a “material and essential witness” in the arbitration and ensure she has full access to her counsel.

DC-based Crowell & Moring partner Ian Laird, lead counsel for Lazareva, says: “Ms Lazareva has been the victim of a shocking denial of justice under international law. We are seeking her temporary release so that she has the opportunity to bring her arbitration and exonerate herself.”

The request will be decided by an UNCITRAL tribunal that is still in the process of being constituted. Crowell & Moring has appointed US arbitrator Charles N Brower on Lazareva's behalf and proposed that the case take place before a three-person tribunal in English, with Washington, DC, as the place of arbitration.

Counsel to Kuwait is unclear. The state is using Curtis Mallet-Prevost Colt & Mosle in two other cases pending at ICSID. The firm did not respond to a request for comment.

Lazareva, whom her lawyers describe as one of Kuwait's most successful foreign female investors, is the CEO of Kuwaiti-registered private equity group KGLI. She filed her claim in July last year under the Kuwait-Russia bilateral investment treaty over what she describes as a coordinated state campaign to damage her reputation and diminish the value of her investments in Kuwait.

She says her treatment began with vague, unsubstantiated charges and escalated to travel bans, harassment and improper detention, culminating in her conviction in May 2018 on charges of embezzlement and a 10-year custodial sentence.

The court found that Lazareva had embezzled funds relating to KGLI's provision of advisory services to the Kuwait Port Authority.

Lazareva was also fined US\$73 million and ordered to reimburse US\$36 million in allegedly stolen money. Six other co-defendants were sentenced to between 10 and 15 years' imprisonment.

After being held in what she called "inhumane and cruel" conditions for more than two months following the initial charge against her, she was temporarily released subject to a US\$30 million bail agreement, only to be imprisoned again three months later upon her conviction.

At KGLI, Lazareva had managed the creation of the Port Fund, a Cayman Islands limited partnership whose investors included the Kuwait Port Authority and other Kuwaiti state entities and investors from the Gulf. Following the lifting of a freezing order against US\$496 million of the Port Fund's assets in Dubai, Lazareva says all of the fund's investors, including the Kuwaiti entities, have been fully repaid.

In her request for interim measures, Lazareva says that "many efforts" have been made to engage with the Kuwaiti authorities regarding her case and incarceration since the notice of arbitration was filed, to no avail. According to an accompanying witness statement by British barrister and House of Lords member Lord Carlile, this has included interventions by British and US luminaries of law and politics, as well as the former Russian ambassador to Kuwait.

Given the complex nature of the financial crimes of which she is accused, the request says that counsel in the arbitration cannot adequately examine Lazareva's central role in the management of KGLI without the opportunity to consult with her in private.

The request is also heavily critical of the conditions in Kuwaiti prisons, particularly for women. It notes reports by the Kuwait Society for Human Rights and the US State Department have suggested prisons in the country are overcrowded, fail to meet basic hygiene standards and suffered from widespread corruption in management.

Lazareva says that the conditions mean she lacks the necessary privacy to consider her case, and has been subjected to intimidation, harassment and long hours of interrogation. She cannot meet privately with her lawyers, who are not even permitted to bring documents with them when visiting, the request alleges.

Her continued incarceration has also separated her from her five-year-old son, leading Lazareva to argue that the separation of mother and son alone amounted to a “hardship and anguish” that created the possibility of irreparable harm. Her son, a US citizen, has been unable to return to the US while his mother remains incarcerated, as is being cared for by his octogenarian grandparents.

She has requested that she be released on existing bail without a travel ban, but in the alternative asks to be released under order to remain in Kuwait or that a direction is made to Kuwait’s general prosecutor to make an application to the court regarding her bail terms. A delegation of US political and business figures also recently travelled to Kuwait to formally request Lazareva’s release. The group included Neil Bush, businessman and brother to former president George W Bush, the former US Secretary of Veterans Affairs Jim Nicholson, former US Congressman Ed Royce and former FBI director Louis Freeh.

In a statement published by Crowell & Moring, Freeh said: “Very regrettably, the continued prosecution of Ms Lazareva has deteriorated from a criminal case where her due process has been repeatedly denied, to a serious human rights matter, highlighted by her imprisonment on charges where the relevant facts have been disproven, and key evidence used to convict her has proven to be forged.”

“Due process and fundamental fairness demand that the Kuwaiti government grant Marsha’s immediate, temporary release while her international arbitration plays out.”

GAR reported this month on the outcome of a 2017 request for provisional measures by Al-Jazeera in relation to a journalist jailed in Egypt. An ICSID tribunal recommended that Egypt grant the broadcaster necessary access to the journalist and ensure his humane treatment so he could testify in the arbitration, but declined to order his release or a stay of criminal proceedings against him.

Last year, an SCC emergency arbitrator ordered Mongolia to allow counsel reasonable access to a UK-Australian businessman jailed in the country on a fraud conviction. But the arbitrator declined to order Mongolia to release the claimant or allow him to leave the country, saying there was no fundamental right under the Energy Charter Treaty to be released from incarceration to pursue a treaty claim, even if a claimant’s health is deteriorating.

A Dutch company pursuing an ICSID claim against Romania also sought provisional measures regarding the medical treatment of one of its executives, Dan Adamescu, who was in jail in the country. However, Adamescu died in prison in 2017 before the request was decided.

Maria Lazareva v Kuwait

Counsel to Maria Lazareva

Crowell & Moring

Partners Ian Laird and David Hammond in Washington, DC, with counsel Gordon McAllister and associate John Laird in London

Counsel to Kuwait

Unknown