

Russian Businesswoman Loses \$100M Claim Against Kuwait

By **Caroline Simson**

Law360 (August 16, 2022, 9:37 PM EDT) -- A prominent Russian businesswoman who was sentenced to more than two decades of hard labor in Kuwait for allegedly embezzling public funds has lost her \$100 million arbitral claim accusing the Persian Gulf nation of orchestrating a politically motivated campaign against her.

A spokesperson for Crowell & Moring LLP, which represents Marsha Lazareva, confirmed to Law360 on Tuesday that an arbitral tribunal ruled by majority on Aug. 12 that it lacked jurisdiction in the case. The tribunal concluded that Lazareva did not qualify for protection under the applicable investment treaty between Kuwait and Russia since she did not sufficiently control private equity company KGL Investment KSCC, which she argued was the basis of her investment in the country.

Crowell & Moring said that Lazareva disagrees with the award and is currently reviewing her options, including seeking annulment.

"Kuwait convicted her in the Kuwait courts as a person who fully controlled and was responsible for the actions of the company. In contrast, Kuwait then took the positions that she lacked sufficient control for purposes of establishing jurisdiction under the treaty. The majority agreed," the firm spokesperson said. "Because the majority's ruling was on jurisdiction only, the tribunal specifically did not address Ms. Lazareva's claims that Kuwait's treatment of her violated international law and her human rights and nothing in the tribunals' award undermines the significant evidence supporting her claims."

Curtis Mallet-Prevost Colt & Mosle LLP partner Charles Buderer, representing Kuwait, told Law360 that they're "pleased that the tribunal rejected [Lazareva]'s attempt to use the investment treaty as a tool for undermining legitimate criminal proceedings in Kuwait," saying there was never any basis for her claims since Lazareva was lawfully convicted in the country.

"It is, however, disappointing but predictable to see that Ms. Lazareva, notwithstanding the tribunal's award, continues to wage her aggressive and unsubstantiated PR campaign and advance conspiracy theories that never had any credibility," he added. "Her allegations, as well as her repeated reliance on paid commentators masquerading as independently concerned bystanders, were debunked in the arbitration proceedings."

Lazareva, vice chairman and managing director of KGL Investment KSCC, alleged in her 2018 notice of arbitration that the campaign against her orchestrated by Kuwait was meant to serve as payback for her support of democratic and human rights reforms in the country.

She also claimed that the "demonstrably false" charges brought against her were not only aimed at harming her investments, but were also meant to serve as retribution for a lawsuit filed by KGL to recover money allegedly owed by a Kuwaiti state entity, and for a separate lawsuit accusing Kuwaiti authorities of using fabricated documents to conduct an audit of a private equity fund Lazareva helped to create, which included among its investors several Kuwaiti state entities.

Crowell & Moring said in early 2020 that Lazareva had been sentenced to seven years' hard labor based on allegedly false charges that her company had billed the Kuwait Port Authority for work it had never performed.

The firm said at the time that neither she nor her defense team had been told about the hearing during which the verdict was rendered, and that it came less than three months after she was sentenced to 15 years' hard labor in a separate case involving other allegedly false charges.

In her position at KGL, Lazareva helped to create a private equity fund called The Port Fund, which focuses on ports and related logistics opportunities in emerging markets, according to KGL's website. Its investors included the Kuwait Ports Authority and the Kuwait Public Institution for Social Security.

Despite the fact that The Port Fund boasted a successful investment record — with an average return on investment of around 8% — Lazareva was arrested in 2017 by Kuwaiti authorities under the erroneous charges that she and others had wasted public funds and embezzled KPA money, according to the notice of arbitration. Kuwait also froze nearly \$500 million in funds belonging to The Port Fund in Dubai.

Lazareva was detained for questioning for more than two months, only being released after posting \$30 million in bail, according to a statement issued by Crowell & Moring. Three months later, she was hauled back into prison and only allowed minimal medical attention, causing her health to decline, the firm said.

Lazareva is represented by Crowell & Moring LLP.

Kuwait is represented by Charles Buder, Justin Jacinto, Luciana Ricart and William Hampson of Curtis Mallet-Prevost Colt & Mosle LLP.

The case is Marsha Lazareva v. the State of Kuwait. A case number wasn't immediately available.

--Editing by Daniel King.