

*Mission permanente de l'Etat du Koweït
auprès de l'Office des Nations Unies
Genève*



**الوفد الدائم لدولة الكويت
لدى الأمم المتحدة
جنيف**

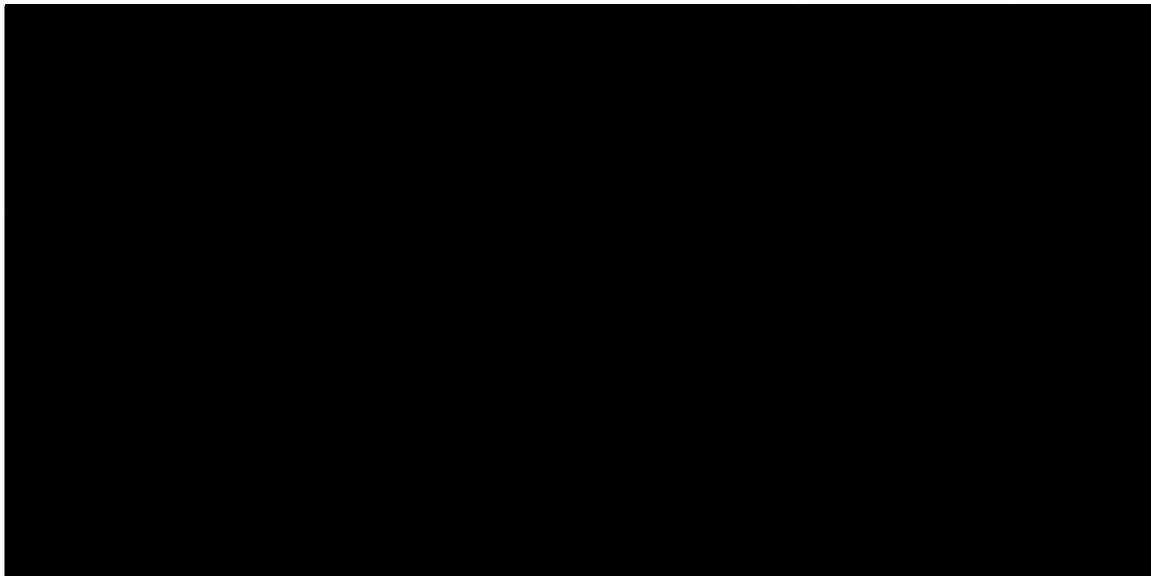
**Mr. Diego García-Sayán
Special Rapporteur
on the independence of judges and lawyers
United Nations
High Commissioner for Human Rights
Palais Wilson
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M 190/2019
Geneva, 18 October 2019

The Permanent Mission of the State of Kuwait to the Office of the United Nations in Geneva presents its compliments to the Special Rapporteur on the independence of judges and lawyers, and has the honor to refer to its note ref. AL KWT 4/2019 dated 11 September 2019, concerning the case of Maria Lazareva.

In reference to the allegations brought forward by your source in your above-mentioned note, we would first like to reaffirm the intention of the State of Kuwait, as always, to positively collaborate and address all queries put forth by the Special Rapporteur on the independence of judges and lawyers.

Moreover, despite the fact that the case of Mrs. Lazareva is still under consideration by the judiciary in the State of Kuwait, and in the same usual spirit of open and positive cooperation with the Special Rapporteur on the independence of judges and lawyers, and for the sake of the truth, as well as in reply to the queries and allegations brought forward by your source in your above-mentioned note ref. AL KWT 4/2019 dated 11 September 2019, we would like to clarify the following:



(Translated from Arabic)

I. The allegations reported by the source

1. It is clear from the information provided by the source that the latter's basic objective is to disseminate inaccuracies and launch allegations aimed at perverting the course of justice, since Ms. Maria Lazareva's case is still being considered by the judiciary in the State of Kuwait. She is not currently in custody and can move around the country freely. She has even been interviewed by the press and the media. For instance, a recent interview with *Russia Today* may be consulted in order to ascertain her situation, her health status and her freedom to make whatever claims she pleases.

2. The allegations contained in the communication submitted to the Working Group are not supported by any documents or evidence, and a scrutiny of the allegations shows that their primary and ultimate objective is to influence the rulings of the judiciary in the State of Kuwait.

3. The allegations reported by the source seek to imply that there are political objectives underlying the matter in question, that there is a victim and that a core human rights-related issue is at stake. In reality, it is a purely legal affair concerning embezzlement, money-laundering and criminal issues relating to the protection of the rights of others, which are certainly also matters of interest to the Special Rapporteur on the independence of judges and lawyers.

4. The groundless information provided by the source includes references to a travel ban and to the imposition of a large sum as bail. With regard to the latter point, we should make it clear that the large amount set as bail was due to the fact that a large sum of money had been embezzled; moreover, the amount of the bail is intended to serve as a deterrent to flight. Travel bans are based on legal rulings handed down by a judge, as will be clarified in due course.

5. The allegations constitute an affront to the Kuwaiti judiciary, especially the claim about the absence of fair-trial guarantees and about the integrity of prosecutors. This is entirely untrue and is gainsaid by the renowned justice and impartiality of the judiciary in Kuwait.

6. It was further alleged that Ms. Lazareva was denied human rights and prevented from communicating with prosecution witnesses. All these allegations are unfounded, as will be shown below.

7. Unable to invoke any legal arguments, the source has relied on false and flimsy allegations concerning hours-long interrogations and deprivation of rest, water and food. All these claims are untrue and their sole aim is to create pretexts such as those set forth in the communication.

8. A further false allegation is that the State of Kuwait has sought to deny her the right to a defence and to deny her access to records. We will provide the names of her lawyers in due course but, in this regard, we would also draw attention to the facilities provided to one of her foreign lawyers who, in response to a request from Ms. Lazareva, was able to visit the State of Kuwait: namely, Cherie Blair from the United Kingdom.

9. We wish to underscore the fact that all the measures taken in the case of Ms. Lazareva were consistent with the international norms governing the right to a fair trial that are enshrined in the International Covenant on Civil and Political Rights, as will be shown in due course.

10. Addressing cases of money-laundering and embezzlement, and preserving the rights of others are a serious matter and an international requirement. In fact, all civilized countries of the world strive to eradicate corruption, which is a curse to all nations and threatens individual and collective security alike, quashing people's hopes and hindering



paths to development. Corruption devours wealth and distorts relations between States and among peoples, undermining the stability of any system in which it takes root. It whets the appetite of criminals to form bands to feast on the crumbs of corruption and, little by little, extends to the capabilities of peoples striking them at their very roots as it follows the lure of globalized technology and gives rise to organized and cross-border crimes, chief among them that of money-laundering, which serves to conceal the profits of corruption. Thus corruption becomes a source of concern for the international community and the people affected cry out for it to be combatted and eradicated wherever it may exist.

The greater the awareness of the dangers of corruption, the greater the need to confront and confine the phenomenon, in line with the United Nations Convention against Corruption (Merida, 2003) and the United Nations Convention against Transnational Organized Crime and the Protocols thereto (Palermo, 2000).

Out of its determination to combat corruption and transnational organized crime, the State of Kuwait ratified the aforementioned Conventions pursuant to Act No. 5 and Act No. 47 of 2006.

The State of Kuwait has also sought to address corruption through various pieces of criminal legislation, including the following:

(a) Act No. 1 of 1993 regarding public funds. Article 1 of the Act states: “Public funds are sacred and it is the duty of all citizens to defend and protect them.” The Act also defines what constitutes public funds and makes the investigation and prosecution of the offences enumerated in the Act the responsibility of the Office of the Public Prosecution exclusively. If prosecutors gather enough evidence to indicate that an individual has committed one of the offences under the Act – which include misappropriation of public funds or facilitating such misappropriation – they may issue an order to ban such an individual from travelling or from disposing of and administering assets, and they may take precautionary measures in that regard.

(b) Act No. 106 of 2013 regarding money-laundering and the financing of terrorism. In this Act, Kuwaiti legislators took account of global developments regarding such offences, also by including a body of precautionary measures. Section I of the Act covers money-laundering offences and article 2 defines what actions constitute money-laundering, in which regard it translates the provisions of articles 5 and 6 of the United Nations Convention against Transnational Organized Crime. Under article 22 of the Act, the Public Prosecutor or his deputy may order the freezing or seizure of funds if there is sufficient evidence to indicate they are related to an offence of money-laundering or the financing of terrorism, or to a predicate offence.

(c) Act No. 2 of 2016 concerning the establishment of the Anti-Corruption Authority and provisions regarding the disclosure of assets. Under the Act an independent public authority was set up to combat and prevent corruption, address its underlying causes, prosecute perpetrators and recover funds and assets.

11. The charges against the accused, Maria Lazareva, involve the crimes detailed above, which both Kuwaiti legislators and the international community have been at such pains to legislate against, as explained earlier.

12. The Office of the Public Prosecution has emphasized that, despite the gravity of the actions imputed to the accused, Maria Lazareva, was able, fully and unhindered, to exercise her right to defence. In addition, she enjoyed all constitutional rights to a fair trial, in accordance with the International Covenant on Civil and Political Rights, the meaning and purport of which is reflected in article 34 of the Kuwaiti Constitution, which reads: “An accused is innocent until proven guilty in a fair trial in which all guarantees necessary to exercise the right to a defence are made available.”

13. The independence, rights and structural underpinning of the judiciary are thus enshrined in the Constitution yet, over and above that, the soundest guarantees for judges are those that they draw from their own internal convictions and their safest redoubt is their own conscience. This is self-reliance and the foundation and core of judicial independence, which cannot be created merely by written texts or determined by law. Laws can only set down the safeguards that uphold and promote those rights. Courts and investigators carry

out their judicial tasks on the basis of substantive evidence, which they accumulate on the exclusive basis of their appraisal of the circumstances and facts of a case, with no account for any other considerations and subject only to the authority of right, justice, conscience and the limits of the law and of the treaties to which Kuwait has acceded, which have a status higher than that of domestic law.

14. In the two cases in question, the interrogation of the accused, Maria Lazareva, took place in the Office of the Public Prosecution which is – by right – a party in the criminal cases it investigates wherein it seeks to apply the law while at the same time being bound by the law and taking account of all the procedural, substantive and human rights of accused persons.

15. The interrogation of the accused was conducted in the Office of the Public Prosecution in the presence of an interpreter, Ruslan Shuzhazhev, a Russian national, who translated from Arabic to Russian and vice versa. The accused and her lawyers were able to make known their demands and to present their defence as set down in the records of the investigation, which are available to the accused.

16. In view of the evidence against the accused, Maria Lazareva, the Office of the Public Prosecution levelled against her the charges described above and referred both cases for trial before the competent court (i.e., the criminal court). This is an ordinary court with an ordinary jurisdiction under article 7 of the Code of Criminal Procedure, which states: “The criminal court is composed of three judges (full court) and examines all cases referred to it”. The case was pursued using customary procedures and with all the guarantees envisaged under the Code to the effect that judicial bodies are to be independent, that they are to have a number of different levels and that court rulings are subject to appeal.

II. Facts and evidence

A. The following two cases were brought against the accused, Maria Lazareva:

1. *Case No. 1496 of 2012 concerning public funds (case No. 23 of 2016)*, combined with case No. 547 of 2013 and case No. 1719 of 2014 concerning public funds, were investigated by the Office of the Public Prosecution based on reports from the President of the Board of Governors of the Kuwait Port Authority and the Director-General of the Public Authority for Social Security regarding the misappropriation of funds from the Port Investment Fund, in which the two aforementioned bodies are shareholders.

The Office of the Public Prosecution listened to witnesses, examined all the documents, questioned the accused, Maria Lazareva, then levelled the following charges against her:

(a) Acting in her capacity as a public official (Investment Manager of the Port Investment Fund, more than 25 per cent of the capital of which is directly held by the Public Authority for Social Security and the Kuwait Port Authority), she misappropriated 129,442 Kuwaiti dinars (KD) and US\$ 6,060 from the Port Investment Fund, exploiting her status as the sole agent responsible for the Fund’s accounts in the State of Kuwait. She transferred the sums to her accounts and issued cheques to herself – as detailed in the case files – with a view to appropriating the money rather than managing or investing the assets of the Fund, as was shown by the investigations.

(b) Acting in her previously stated capacity, she facilitated the misappropriation by the Kuwait and Gulf Link Investment Company of KD 719,000 from the Port Investment Fund, exploiting her status as the sole agent responsible for the Fund’s accounts in the State of Kuwait. She transferred that sum from the account of the Port Investment Fund to account No. 0603723549201 of the Kuwait and Gulf Link Investment Company at Al-Ahli Bank of Kuwait. She then used her status as Chief Executive Officer of the Kuwait and Gulf Link Investment Company to transfer the funds in two instalments – the first of KD 309,000 and the second of KD 410,000 – to Burgan Bank account No. 3160001319 of the Al-Murabitoun International Company, which is owned by the second defendant in the case and others. Her purpose was to facilitate the appropriation of that money rather than managing or investing the assets of the Fund. This act is inextricably linked to the offence of money-laundering which was set forth in the tenth charge of the indictment, as was shown by the investigations.

(c) Acting in her previously stated capacity, she facilitated the misappropriation of KD 1,059,000 and US\$ 89,764,533.68 from the Port Investment Fund by the Kuwait and Gulf Link Investment Company, the Kuwait and Gulf Link Transport Company, KGL International for Ports, Warehousing and Transport, KG LNM Holding Company, Petro Link Holding Company, KGL Asia Regional Operating Headquarters (ROHQ), Capitan Link Holding Company, KGL Petroleum Company and the Clark Gateway Investment Group. She exploited her status as the sole agent responsible for the Fund's accounts in the State of Kuwait – as detailed in the case files – and transferred the two sums in question to the accounts of the aforementioned companies, inside and outside Kuwait, also as detailed in the case files. Her purpose was to facilitate the appropriation of that money rather than managing or investing the assets of the Fund, as was shown by the investigations.

(d) Acting in her previously stated capacity, she facilitated the misappropriation by the MPC-GMO company of KD 307,094.680 and US\$ 401,137.14 from the Port Investment Fund. She exploited her status as the sole agent responsible for the Fund's accounts in the State of Kuwait – as detailed in the case files – and transferred the two sums in question to the accounts of the aforementioned company, after the Fund terminated its investment with MPC-GMO in the financial year 2013 and at the end of the Fund's lifecycle on 13 December 2014. Her purpose was to facilitate the appropriation of that money rather than managing or investing the assets of the Fund, as was shown by the investigations.

(e) Acting in her previously stated capacity, she facilitated the misappropriation by KGL International for Ports, Warehousing and Transport, which is owned by the second defendant in the case and others, of US\$ 20,600,000 from the Port Investment Fund. She exploited her status as the sole agent responsible for the Fund's accounts in the State of Kuwait – as detailed in the case files – and transferred the sum in question in the form of a loan. Her purpose not being to manage or invest the assets of the Fund, she then deleted the loan and the interest from the Fund's financial statements with a view to facilitating the misappropriation of that sum, as was shown by the investigations.

(f) Acting in her previously stated capacity, she facilitated the misappropriation by the Jordanian United Group for Land Transport, which is owned by the defendant in the case and others, of US\$ 900,000 and KD 200,000 from the Port Investment Fund. She exploited her status as the sole agent responsible for the Fund's accounts in the State of Kuwait – as detailed in the case files – and transferred the sums in question to the aforementioned company in the form of financial facilities (a bank guarantee from the Kuwaiti Jordanian Bank in favour of the company). Her purpose was to facilitate the appropriation of that money rather than managing or investing the assets of the Fund, as was shown by the investigations.

(g) Acting in her previously stated capacity, she facilitated the misappropriation by the second defendant in the case of the sum of KD 350,000 from the Port Investment Fund. She exploited her status as the sole agent responsible for the Fund's accounts in the State of Kuwait – as detailed in the case files – and transferred the sum in question to the account of the second defendant at Burgan Bank, also as detailed in the case files. Her purpose was to facilitate the appropriation of that money rather than managing or investing the assets of the Fund, as was shown by the investigations.

(h) Acting in her previously stated capacity, she facilitated the misappropriation by the Clark Gateway Investment Group, which is owned by the second defendant in the case, of US\$ 79,169,662 from the Global Gateway Development Corporation, which is fully owned by the Port Investment Fund. She exploited her status as Investment Manager to transfer ownership of the latter company to the former company, which is owned by the second defendant, in particular the Sabah al-Ahmad City Logistics project and the Medical City project in the Philippines, which are owned by the Global Gateway Development Corporation. She did this without obtaining any authentic payment or fee for the Port Investment Fund. Her purpose was to facilitate the appropriation of that money and those two projects rather than managing or investing the assets of the Fund, as was shown by the investigations.

(i) Acting in her previously stated capacity and mandated to protect the interests of the Port Investment Fund by investing assets belonging to the Public Authority for Social Security, the Kuwait Port Authority and other entities, she deliberately damaged public assets by undertaking financial operations on behalf of the Port Investment Fund in a manner that was detrimental to its interests. Thus, she facilitated, on her own behalf and on behalf of the entities and persons mentioned in the indictments contained in paragraphs (b) to (h) above, the misappropriation of the Fund's assets to obtain a return that caused a loss of US\$ 166,009,756 in the assets of the Port Investment Fund, as was shown by the investigations.

(j) She committed the offence of money-laundering, involving a sum of KD 2,089,000. She exploited her status as the sole agent responsible for the Fund's accounts in the State of Kuwait to transfer the sum in question, via several financial transactions, from accounts of the Port Investment Fund, as explained in detail in the case file. The sum was paid into account No. 0603723549201 of the Kuwait and Gulf Link Investment Company at Al-Ahli Bank of Kuwait. Concealing the true nature of these transactions and their source, she transferred KD 719,000 of the proceeds from the account of the Kuwait and Gulf Link Investment Company to accounts of the Al-Murabitoun International Company. A sum of KD 1,000,000 was transferred to the defendant's personal accounts with Kuwait Finance House and the Capital Bank company; a sum of KD 20,000 was transferred to the Kuwait and Gulf Link Transport Company; and a sum of KD 350,000 was transferred to the second defendant's accounts at Burgan Bank, Al-Ahli Bank of Kuwait, HSBC and Kuwait Finance House, as explained in detail in the case files. Aware that the sums in question derived from the misappropriation (or facilitation of the misappropriation) of assets from the Port Investment Fund, she sought to conceal the movement of those assets, their true nature and their source, as was shown by the investigations.

On 26 April 2017, the Office of the Public Prosecution referred the case against the accused and others to the criminal court, where judgment is due to be rendered on 11 November 2019.

2. *Case No. 1942 of 2015 concerning public funds (case No. 608 of 2017).*

The Office of the Public Prosecution launched investigations into this case on the basis of a report from the President of the Board of Governors of the Kuwait Port Authority regarding the misappropriation of the Authority's funds by one of its employees, who transferred the funds to accounts of the Kuwait and Gulf Link Investment Company and KGL International for Ports, Warehousing and Transport.

The Office of the Public Prosecution questioned witnesses, examined all documents and technical reports, questioned the accused, Maria Lazareva, then levelled the following charges against her:

She participated with others – in agreement with and with assistance from the first defendant – to facilitate the misappropriation of public funds in accordance with a prior agreement to transfer the funds – the exact amounts are detailed in the case files – to their companies (the Kuwait and Gulf Link Investment Company, KGL International for Ports, Warehousing and Transport, and other companies) into the bank accounts discovered during the investigations. They assisted him by unlawfully requesting the transfer of the sums involved and providing the account details with a view to facilitating the misappropriation of the funds. The crime was perpetrated as a result of the aforementioned agreement and assistance, as was shown by the investigations.

On 19 December 2017, the Office of the Public Prosecution referred the case against the aforementioned defendant and others to the criminal court.

At a hearing on 6 May 2018, the criminal court sentenced Maria Lazareva, in her presence, to 10 years' imprisonment with hard labour; ordered her, in conjunction with another defendant, to reimburse KD 11 million; imposed the payment, in conjunction with the same defendant, of a fine of KD 22 million; and ordered her deportation from the country after serving her sentence.

The Office of the Public Prosecution filed an appeal against the judgment, seeking a more severe sentence, while the aforementioned defendant also filed an appeal.

At a hearing on 5 May 2019, the Court of Appeal ruled to set the appealed judgment aside and set the date of 9 June 2019 to look into the case. The court further ordered that the aforementioned accused should be released, subject to a bail payment of KD 20 million, and it imposed a travel ban.

On 2 June 2019, the Court of Appeal ruled to reduce the bail to KD 1 million after finding that the accused was unable to pay.

On 12 June 2019, the accused paid the bail and was released.

The case remains pending before the Court of Appeal and a hearing has been scheduled for this month.

B. In response to the enormous number of inaccuracies relayed by the source, we wish to refute those claims and allegations by submitting the following facts to the requesting party:

1. The allegation in paragraph 1 of the communication that the accused, Maria Lazareva, was arrested in 2012 is untrue. She was, in fact, legally apprehended pursuant to a judicial warrant issued by the Office of the Public Prosecution on 27 November 2017 following an investigation in case No. 1942 of 2015 concerning public funds. The order was issued properly and correctly in accordance with article 62 of the Code of Criminal Procedure, which stipulates: "Investigators may apprehend or order the apprehension of accused persons, on the basis of reliable evidence." The Kuwaiti police executed the warrant on the day after it was issued and the accused was referred to the Office of the Public Prosecution on the same day. She was permitted to obtain assistance from her lawyers Yousef Zahir al-Harbash and Jarrah Faisal al-Anzi, who were present during her questioning and were not separated from her. Following the appointment of the interpreter Ruslan Shuzhazhev, a Russian national, to translate from Arabic into Russian and vice versa, the Office of the Public Prosecution levelled its charges against the accused. However, as she was weeping and in a state of confusion, prosecutors postponed their questioning until the following day, 29 November 2017. During that session, the accused expressed her willingness to respond to the questions posed by the Public Prosecutor.

Owing to the great volume of evidence, documents and records, her interrogation came to an end on 3 December 2017.

The Office of the Public Prosecution then issued a detention order pending investigation against the accused, since it feared that she might interfere with evidence and the progress of the investigation by exploiting her position as Investment Manager of the Port Investment Fund and exercising control over the Fund and its staff. It was also feared that she might abscond.

On 14 December 2017, the detention order was extended by the competent judge for a period of 15 days, as per to article 69 of the Code of Criminal Procedure, which states:

"If it is considered that the interests of the investigation require that the accused be remanded in custody to prevent him or her from absconding or interfering with the course of the investigation, investigators may issue a preventive detention order from the date of the accused's arrest for a maximum of 3 weeks in cases involving serious offences and for a maximum of 10 days in cases involving minor offences.

"Persons in preventive detention may file an appeal against the detention order with the president of the court that is authorized to extend their detention. The president of the court shall issue a ruling on the appeal within a maximum of 48 hours from the date of its submission. Any decision rejecting the appeal must be substantiated.

"The accused shall be brought before the president of the court prior to the expiry of the period of preventive detention so that its extension may be considered. The president of the court shall, whenever so requested, order the extension of detention for a maximum of 15 days in cases involving serious offences and for a maximum of 10 days in cases involving minor offences."

On 19 December 2017, the Office of the Public Prosecution referred the accused and others to the criminal court.

It was insinuated that the accused was hastily referred to the criminal court following interrogation. However, the Office of the Public Prosecution wishes to point out that its investigations into case No. 1942 of 2015 concerning public funds began on 15 October 2015. All witnesses were questioned and technical reports were collected during that interval, pursuant to the provisions of article 98 of the Code of Criminal Procedure. If accused persons deny having committed an offence, they are to be questioned after witnesses for the prosecution have been examined. In that way, the accused can be confronted with the evidence behind the charges. This was the procedure followed in the case in question.

2. The allegations in paragraph 3 of the communication that the accused was arrested and detained in relation to a number of criminal cases associated with her work with the Port Investment Fund which she managed, and that she signed three documents requiring payment for advisory services are unfounded. The case concerning the misappropriation of assets from the Port Investment Fund, recorded as case No. 1496 of 2012 concerning public funds, is entirely independent in terms of its subject matter and evidence from case No. 1942 of 2015 concerning public funds. As noted above, it was the latter case that led to her arrest. She was not apprehended in connection with the former case (No. 1496 of 2012 concerning public funds). Her trial before the criminal court is still ongoing and she is currently at liberty, and she has not been apprehended in connection with any other cases.

3. It was stated that the Court of Appeal quashed Ms. Maria Lazareva's conviction then ordered a *de novo* review of the case rather than returning it to the court of first instance, thereby denying Ms. Lazareva the opportunity of a fair trial at first instance. This claim is false and is based on a mistaken reading of the law.

In fact, according to article 209 of the Code of Criminal Procedure: "The Court may rule to overturn an appealed judgment if it contains a substantial or formal shortcoming that cannot be rectified or if it is found to be in violation of the law, irrespective of whether the appellant draws attention to the shortcoming or the Court itself discovers it. In such a case, the Court must issue a new judgment, in which regard it is not bound by any element of the judgment in first instance."

What this means is that making an appeal entails placing a criminal case, entirely and in all its factual and legal aspects, before the Court of Appeal, which thereby acquires the powers that had been held by the court of first instance. The Court of Appeal can thus amend the judgment in any way that it sees fit, either to uphold it, overturn it or change the penalty. In line with article 209, the Court of Appeal must, if an appealed judgment contains a substantial or formal shortcoming that cannot be rectified, issue a new judgment. In other words, if such a circumstance arises, it cannot return the case to the court of first instance and, were it to do so and the court of first instance to decide on the matter, the law would not be being applied correctly. Consequently, the Court of Appeal was acting within the law by ruling on the case after the court of first instance had had its say within its own mandate. This effectively refutes the allegation being made.

The Constitutional Court of Kuwait has previously ruled on this matter. In fact, in a judgment issued on 21 October 2013, it found that consideration of a case by the Court of Appeal did not amount to a revocation of the right of recourse to law. On that occasion, the Constitutional Court recalled that article 209 contained in Section II (Appeals) of the Code of Criminal Procedure (Act No. 17 of 1960), as amended, states: "The Court may rule to overturn an appealed judgment if it contains a substantial or formal shortcoming that cannot be rectified or if it is found to be in violation of the law, irrespective of whether the appellant draws attention to the shortcoming or the Court itself discovers it. In such a case, the Court must issue a new judgment, in which regard it is not bound by any element of the judgment in first instance." The Constitutional Court ruled to reject the motion from the appellant that this text was unconstitutional. The basis of the argument was that this provision does not, in fact, undermine the right of recourse to law; that it does not derogate from the right to a fair trial; that the accused could, without hindrance, benefit from all due guarantees; and that his rights under the Constitution were undiminished. Therefore, consideration of a case by the Court of Appeal did not deprive the accused of any privileges before the court of first instance where he was able to enjoy all his duly prescribed rights and to submit and supplement all his defence motions. The text of this article was thus

found not to contradict article 34 of the Constitution under which an accused is innocent until proven guilty in a legal trial in which the right to defence is guaranteed. When legislators required the Court of Appeal – if it overturned an appealed judgment – to reconsider the case in question, they did not require it to follow any element of the original judgment, even a confession by the accused before the court of first instance. Moreover article 209 was found not to contradict article 166 of the Constitution, which guarantees the right of recourse to law. In fact, legislators did not deprive accused persons of the right to recourse before the competent court, as defined in binding legal texts, but took account of the fact that the constitutionally guaranteed right of recourse to law does not mean that accused persons can themselves choose the court before which they wish to be tried. Moreover, in establishing courts of different kinds and levels and determining their functions and jurisdictions, legislators are guided by the interests of justice, which can only be served by a fair trial that is neither unduly tardy nor unjustifiably swift. Lastly, in exercising their discretionary powers to regulate legal procedures, legislators act as they see fit to achieve the interests of society as a whole.

4. The accused, in her capacity as Chief Executive Officer of the Kuwait and Gulf Link Investment Company, helped to facilitate the misappropriation of assets of the Kuwait Port Authority by transferring those assets to two companies she owned. This was evinced by an examination of the statements of account of the two companies concerned and by transfer orders which replicated the information in the statements of account, as well as by witness statements and technical reports.

5. The claim that the sittings were delayed without justification is also false. This is evident from the records of the Court of Appeal in case No. 1942 of 2019:

(a) Record of the sitting of 9 June 2019

The Court of Appeal ruled to postpone its examination of the case until a sitting on 23 June 2019. This was done at the request of the defence of the accused, Maria Lazareva, which had asked that defence witnesses be heard. The Court allowed the defence to call the witnesses, to examine the entire case file and to copy the records of the sittings and all other documents;

(b) Record of the sitting of 23 June 2019

The Court heard from the witnesses, while the accused's defence requested that witnesses to the incident be heard, identifying those witnesses in motions presented to the Court and requesting permission to call them for cross-examination at a sitting to be decided by the Court. The defence also signalled its readiness to address the matter should the witnesses fail to appear at that hearing. The Court thus decided to postpone the case until 15 September 2019 on the basis of that request from the defence to submit documents and call witnesses.

(c) Record of the sitting of 15 September 2019

The Court convened its sitting but the accused's defence did not fulfil its obligation to submit the requested documents. The defence then requested a significant delay in which to make its submission. The Court thus ruled to postpone the case until 29 September 2019 and allowed the defence to copy documentation and to call its witnesses.

(d) Record of the sitting of 29 September 2019

The Court heard the submission of the other accused persons in the case while the defence of the accused, Maria Lazareva, requested a further delay, claiming that it had not yet examined the documentation. The accused also requested a delay in order to translate the documents. The Court therefore ruled to postpone the case until 13 October 2019, in line with the request of the defence.

The above information reveals just how gross a slander the source is guilty of. In fact, as the trial records clearly show, the real reason for the succession of sittings was because, each time, the defence of the accused, Maria Lazareva, requested a postponement – from 9 June 2019 to 29 September 2019 – and not because the Court of Appeal so decided, as suggested by the source. The other defendants – unlike the accused – completed the submission of their own defence during the sittings of 15 and 29 September 2019, but

neither the accused nor her defence did likewise. Quite the contrary, on 15 September 2019, her defence requested a delay in which to submit its requests. This shows that the information provided by the source to the Special Rapporteur is untrue.

6. Allegations relating to the treatment she received, the behaviour of the Public Prosecutor, the conditions in which she was questioned and other claims are all likewise false. In the investigations conducted by the Office of the Public Prosecution in case No. 1496 of 2012 concerning public funds, the accused, Maria Lazareva, was summoned to attend two rounds of questioning, on 22 December 2015 and 31 December 2015, but she rejected the summons and failed to appear. The accused was again summoned for questioning on 6 January 2016, and this time she attended together with her lawyer, [REDACTED]. The Office of the Public Prosecution – having appointed the interpreter [REDACTED], a Russian national, to translate from Arabic into Russian and vice versa – listened to her statements then postponed the matter until 12 January 2016 for further questioning. She attended that session with her lawyer, [REDACTED], while the same interpreter was also in attendance. The Public Prosecutor confronted her with the charges against her and the evidence supporting those charges. Her lawyer presented her defence and the accused asked to examine her statements before signing them in the presence of her lawyer. The Public Prosecutor acceded to her request and she signed the statements. The Public Prosecutor then ordered her release on a bail of KD 5,000, which she duly paid and was released.

On 28 January 2016, the Office of the Public Prosecution issued a travel ban on the grounds of the body of evidence against her. It did so as a precautionary measure following completion of the investigations, pursuant to article 24 of Act No. 1 of 1993 regarding public funds, which stipulates: “If the Public Prosecutor has sufficient evidence that a person has perpetrated one of the offences defined in articles 9, 10, 11, 12 or 14 of the present Act, he may order the imposition of a travel ban.”

A summons was issued on 29 August 2016 for her to attend a round of questioning on 18 September 2016 so that she could be confronted with new evidence. The accused attended the session with the aforementioned interpreter and requested that the questioning be postponed for an hour until her lawyer was present. The Public Prosecutor granted her request and – following the arrival of her lawyer, [REDACTED] – listened to the statements of the accused. She and her lawyer presented her defence and requests as well as a number of documents. She promised to provide other documents later on but she failed to appear.

On 26 April 2017, the Office of the Public Prosecution referred the case to the criminal court, where it is still pending. The Office of the Public Prosecution, which serves as the guardian and primary defender of society, took account of the emotional state of the accused (her weeping and confusion) while she was being questioned in case No. 1942 of 2015 concerning public funds, as stated in paragraph 1 of the Office’s reply, and the session was postponed until the following day. She was then questioned over two sessions, confronted with the evidence and permitted to present her defence.

The Office of the Public Prosecution questioned the accused in case No. 1496 of 2012 concerning public funds over three separate sessions.

The Office of the Public Prosecution split up its questioning of the accused in the two above-mentioned cases due to the abundance of evidence and documentation in the case files, all of which she had to be confronted with and to which she could respond only once it had been translated by the interpreter.

All the interrogation sessions were conducted at appropriate times and account was taken of the defendant’s circumstances and her food and drink requirements. All the proceedings were conducted in the sight and hearing of her lawyers who, according to the records of the investigation, did not raise any objection to the proceedings, take any action that would substantiate the allegations or submit any official requests. The accused, Maria Lazareva, freely signed all her statements without reservation; moreover, her lawyers were Kuwaiti nationals and fully aware that, under article 98 of the Code of Criminal Procedure, accused persons have the right not to sign statements and the right to remain silent, but neither of these rights was exercised.

As noted above, the travel ban was imposed as a precautionary measure, in accordance with the applicable legal provision. The accused took advantage of all the legally prescribed safeguards by filing a number of complaints against the ban before the competent court. A representative of the Russian Embassy submitted similar requests. The court responded to one request in February 2017 by lifting the travel ban.

7. With regard to the allegations concerning bail, we should make it clear that the response to the defence of the accused, Maria Lazareva, and the determination of the amount of bail lay with the competent court, which took its decisions in accordance with the Code of Criminal Procedure. The court assessed the situation in accordance with the circumstances of the case and the charges against the accused, and it took account of the provisions of international treaties, which call for the protection of public funds, the prosecution of perpetrators regardless of their nationality, and action to combat organized and transnational crime, including the crime of money-laundering, which the accused was held to have perpetrated in case No. 1496 of 2012 concerning public funds.

8. The suggestion that the court did not hear from all the witnesses is false and slanderous.

The file of case No. 1942 of 2015 concerning public funds and the records of the proceedings clearly demonstrate that the court listened to witnesses for the prosecution just as – sitting on 23 June 2019 – it heard from the witnesses for the defence ([REDACTED], [REDACTED] and [REDACTED]) at the request of the defence counsel for the accused, Maria Lazareva.

In addition, the file of case No. 1496 of 2012 concerning public funds confirms that the court – sitting on 6 May 2018, 30 July 2018 and 15 October 2018 – responded to a request from defence counsel for the accused, Maria Lazareva, by hearing from the following witnesses for the defence: [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

9. Claims were made alleging a discriminatory approach to the detention of the accused, Maria Lazareva, in order to cover failures in the investigation; the exclusion of her legal team from certain interviews and the failure to conduct a fair and impartial assessment of the evidence. These claims are also false.

As explained above, the precautionary measures against the accused were taken under orders issued by a competent and independent judicial body in accordance with the Code of Criminal Procedure. Moreover, the accused did not face any measure restrictive of her liberty except as prescribed in the domestic law of Kuwait.

The claim that the legal team of the accused was excluded from certain interviews is also devoid of truth. The fact is that the questioning of the accused in the two aforementioned cases took place in the Office of the Public Prosecution which is – by right – a party in the criminal cases it investigates, wherein it seeks to apply the law. The accused appeared at the Office of the Public Prosecution in the company of her lawyers [REDACTED] and [REDACTED], while prosecutors also availed themselves of the services of a Russian-national interpreter to translate from Arabic to Russian and vice versa. The accused, Maria Lazareva, and her lawyers were able to submit their requests and make their defence and at no stage was she questioned in the absence of her legal team. In fact, files relating to case No. 1496 of 2012 concerning public funds clearly show that, at the sitting of 29 August 2016, both the accused and the aforementioned interpreter were present and that she requested that the questioning be postponed for an hour until her lawyer could be present. The Public Prosecutor granted her request and did not start the session until her lawyer, [REDACTED], had arrived. This effectively refutes the allegation made. In addition, the accused and her legal team were able to present their defence and to make their demands, both during the preliminary investigations and during the trial, as explained earlier. The records show that that court responded to the legal team of the accused and postponed the trial until they could prepare their submissions, even though the other accused – unlike the individual in question – had already completed their defence. This shows that the source was lying in the information provided to the Special Rapporteur on the independence of judges and lawyers.

10. A claim was made that there is no evidence pointing to theft or embezzlement in case No. 1496 of 2012 concerning public funds and, therefore, no basis on which to prosecute the accused, Maria Lazareva. This allegation is false and slanderous and the aim of the source in making it is to mislead the party concerned, as explained earlier, and to undermine the accusations being levelled at the accused. The provisions of the International Covenant on Civil and Political Rights, which have primacy over domestic law, cannot be invoked in this connection, inasmuch as the Covenant, and judicial norms, cannot serve as a false pretext for legitimizing assaults on the assets of nations and peoples.

Furthermore, the Office of the Public Prosecution has made it clear that the accused enjoyed all fair-trial guarantees, as enshrined in international human rights treaties. She was tried before an ordinary court, whose jurisdiction is based on the provisions of the Code of Criminal Procedure. The trial was conducted using ordinary proceedings, in line with the safeguards guaranteed by recent legislation; i.e., courts of multiple levels made up of independent judges and the right to lodge appeals against court judgments. In fact, fair-trial guarantees are enshrined in the Kuwaiti Constitution, article 34 of which stipulates: “An accused is innocent until proven guilty in a fair trial in which all guarantees necessary to exercise the right to a defence are made available.”

11. The precautionary measures against the accused, Maria Lazareva, were taken under orders issued by a competent and independent judicial body in accordance with the Code of Criminal Procedure.

Moreover, the accused did not face any measure restrictive of her liberty except as prescribed in the domestic law of Kuwait.

(i) Length of remand detention by the Office of the Public Prosecution (17 days)

The Office of the Public Prosecution issued an arrest warrant against the accused on 27 November 2017 in connection with case No. 1942 of 2015 concerning public funds. The warrant was executed on 28 November 2017 and she was detained in connection with the case from that date until a judge issued an order on 14 December 2017 to extend her detention for 15 days.

(ii) Length of remand detention by the criminal court (48 days)

The accused remained in detention pending prosecution from 19 December 2017, the date on which the aforementioned case was referred to the criminal court, until the date of her provisional release pursuant to a court ruling of 4 February 2018.

(iii) Imprisonment of the accused pursuant to a court judgment sentencing her to a prison term of 10 years

On 6 May 2018, the criminal court sentenced the accused, Maria Lazareva, to a term of imprisonment of 10 years with hard labour. It was an enforceable criminal judgment handed down by a competent court and its enforcement began on the date of its delivery and continued until the Court of Appeal ordered her release on 2 June 2019.

12. The allegation that the accused was prevented from meeting her lawyers to consult and prepare her defence is untrue. During the investigations into the two aforementioned cases conducted by the Office of the Public Prosecution, the six sessions of questioning with the accused, Maria Lazareva, were attended by the lawyers whose names were mentioned earlier. The Office of the Public Prosecution’s carefulness in that regard is confirmed by its decision on 18 September 2016 to postpone the interrogation of the accused in case No. 1496 of 2012 concerning the control of public funds until her lawyer was present.

At each interrogation session, her lawyer presented the pleas and requests of the defence. The investigation records confirm that the defence enjoyed complete freedom after each interrogation session. The accused was permitted to engage in consultations with her lawyers and to meet them at all stages of the trial, even during her imprisonment.

The records of the court sittings in the two aforementioned cases show that more than one lawyer was present with the accused to defend her during the proceedings, which

were held in public. Their names are: [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

It is also clear from her case file that, even during her time in prison, she was not prevented from meeting with her lawyers, who in fact visited her on more than 90 occasions during which they were able to provide her with documents relating to the two cases in which she was involved. In addition, many other people, including representatives of the Embassy of the Russian Federation, were allowed to visit her, meet with her, and supply her with foodstuffs and books.

13. We wish to emphasize the fact that the Office of the Public Prosecution and the courts appointed a professional interpreter, named above, to accompany the accused at all stages of the investigation and the trial. In fact, at the request of the accused herself, the court also appointed a second interpreter, [REDACTED]. Moreover, the accused was accompanied throughout the investigation and the trial by numerous lawyers, both from Kuwait and from another Arab State, all of whom spoke Arabic so that the accused and her lawyers were fully aware of all the evidence and documents contained in the case file.

14. It was claimed that the conviction of the accused, Maria Lazareva, was based on insufficient evidence and that the testimony presented by the Office of the Public Prosecution was provided by only one witness. This allegation is devoid of truth. The results of the investigations by the Office of the Public Prosecution fill 543 pages and it took two years to gather the evidence in case No. 1942 of 2015 concerning the control of public funds, which led to the conviction of the accused. The evidence was based on the testimony of 11 witnesses, statements by a number of defendants, technical reports, bank documents, official records, minutes of inspection committee meetings, statements of account and budgets.

15. With regard to the allegation that the treatment of the accused, Maria Lazareva, following the investigations differed from the treatment of the other defendants in the two aforementioned cases, the fact is that all the accused persons received equal treatment, including respect for their right to a defence. However, the same action could not be taken in each case, as they differed depending on the role each defendant had played in committing the offence, the extent to which they benefited therefrom, and the charges filed against them in the light of the available evidence.

16. With regard to the allegation that the person in question was not provided with adequate facilities to consult with her lawyers during her detention in the Central Prison, we should point out that article 30 of Prisons Act No. 26 of 1962 and article 9 of Internal Prison Regulations guarantee lawyers the right to meet their clients in private after obtaining written permission from the Office of the Public Prosecution or the General Department for Investigations. In application of those norms, Ms. Lazareva's lawyers were permitted to meet with her during her period of detention, and the fact that they conducted regular visits refutes the above allegation. The following table shows the number and dates of those visits:

<i>No.</i>	<i>Date of visit</i>	<i>Visitor</i>
1	17 September 2018	The lawyer [REDACTED] [REDACTED]
2	20 September 2018	The lawyer [REDACTED] [REDACTED]
3	10 October 2018	The lawyer [REDACTED] [REDACTED]
4	21 October 2018	The lawyer [REDACTED] [REDACTED]
5	29 October 2018	The lawyer [REDACTED] [REDACTED]

<i>No.</i>	<i>Date of visit</i>	<i>Visitor</i>
6	4 November 2018	The lawyer [REDACTED]
7	7 November 2018	The lawyer [REDACTED]
8	11 November 2018	The lawyer [REDACTED]
9	4 December 2018	The lawyer [REDACTED]
10	12 December 2018	The lawyer [REDACTED]
11	16 December 2018	The lawyer [REDACTED]
12	17 January 2019	The lawyer [REDACTED]
13	30 January 2019	The lawyer [REDACTED]
14	5 February 2019	The lawyer [REDACTED]
15	21 February 2019	The lawyer [REDACTED]
16	28 February 2019	The lawyer [REDACTED]
17	3 March 2019	The lawyer [REDACTED]
18	21 March 2019	The lawyer [REDACTED] and the lawyer [REDACTED]
19	25 March 2019	The lawyer [REDACTED]
20	22 April 2019	The lawyer [REDACTED]
21	6 May 2019	The lawyer [REDACTED]
22	14 May 2019	The lawyer [REDACTED]
23	15 May 2019	The lawyer [REDACTED]
24	22 May 2019	The lawyer [REDACTED]
25	28 May 2019	The lawyer [REDACTED]

17. In addition, the following table contains a list of 13 persons who paid visits to Ms. Lazareva during her period of detention.

<i>No.</i>	<i>Date of visit</i>	<i>Visitor</i>	<i>Nationality of visitor</i>
1	11 February 2019	[REDACTED]	Russian Federation
2	21 February 2019	[REDACTED]	Russian Federation
3	21 February 2019	[REDACTED]	Russian Federation
4	21 February 2019	[REDACTED]	Russian Federation
5	21 February 2019	[REDACTED]	Kuwait
6	21 March 2019	[REDACTED]	United States of America
7	25 March 2019	[REDACTED]	United States of America
8	25 March 2019	[REDACTED]	United States of America
9	22 April 2019	[REDACTED]	Russian Federation
10	22 April 2019	[REDACTED]	United Kingdom
11	22 April 2019	[REDACTED]	Switzerland
12	22 April 2019	[REDACTED]	Russian Federation
13	22 April 2019	[REDACTED]	United States of America
14	28 May 2019	[REDACTED]	United States of America
15	11 February 2019	[REDACTED]	United Kingdom
16	21 February 2019	[REDACTED]	United States of America
17	21 February 2019	[REDACTED]	Russian Federation

18. The allegation that she was deprived access to the washroom is false. Such a practice would not be consistent with international treaties or with the moral standards current in the State of Kuwait, and it is unjust to convey such a false accusation.

19. The rest of the allegations contained in the communication are false and slanderous and the aim of the source in making them is to mislead the party concerned, as explained earlier, and to undermine the accusations being levelled at the accused, which regard misappropriating public funds, deliberately damaging public assets and money-laundering. The provisions of the International Covenant on Civil and Political Rights, which have primacy over domestic law, cannot be invoked in this connection, inasmuch as the Covenant, and judicial norms, cannot serve as a false pretext for legitimizing assaults on the assets of nations and peoples. Furthermore, the Office of the Public Prosecution has made it clear that the accused enjoyed all fair-trial guarantees, as enshrined in international human rights treaties. She was tried before an ordinary court, whose jurisdiction is based on the provisions of the Code of Criminal Procedure. The trial was conducted using ordinary proceedings, in line with the safeguards guaranteed by recent legislation; i.e., courts of multiple levels made up of independent judges and the right to lodge appeals against court judgments. In fact, fair-trial guarantees are enshrined in the Kuwaiti Constitution, article 34 of which stipulates: "An accused is innocent until proven guilty in a fair trial in which all

guarantees necessary to exercise the right to a defence are made available. The physical or mental abuse of accused persons is forbidden.”

20. The individual concerned was released on 12 June 2019 following payment of the bail specified by the Court of Appeal.

21. With regard to the information given by the source concerning the Kuwait Port Authority press release, we would point out that the individual concerned – through her lawyers in London and in Kuwait as well as via media platforms in the United States – has also issued press releases in which she criticizes the Kuwaiti judiciary and launches accusations and threats against the State of Kuwait, including the threat of appealing to the United Nations. This constitutes an attempt to intimidate, pervert the course of justice and influence the judiciary. Furthermore, Ms. Lazareva has held a series of meetings with the press and the media during which she levelled false allegations against the Kuwaiti judiciary. It is important to note that media freedom is enshrined in article 36 of the Constitution, which states: “Freedom of opinion and of academic research is guaranteed. Everyone has the right to express and propagate their opinions by the spoken or written word or by other means, in accordance with the law.” Freedom of opinion and expression is one of the pillars upon which democratic systems rest and, in all civilized democratic States, it has firm constitutional foundations. For that reason, it is enshrined in the aforementioned article of the Kuwaiti Constitution and, as a consequence, all individuals in society have the right to express and propagate their opinions by the spoken or written word or by other lawful means without having to demarcate or restrict the subject matter of their views. Thus, people are free to discuss their opinions and to reach their own conclusions as long as they remain balanced and free from obscenity, falsification or slander and do not abuse others or infringe individual dignity. This is in line with the provisions of the International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations on 16 December 1966.

On that basis, the Office of the Public Prosecution is of the view that the material provided above is sufficient to refute all the claims and allegations contained in the communication and to repudiate the various hypotheses, particularly as the source from which the Working Group has drawn its information – rather than explaining why a legal provision universally applicable to all persons residing in Kuwait (i.e., that of informing the competent authorities of the allegations in question so that their validity may be determined) has not been applied – has spoken out indiscriminately without measure or moderation. This is an extremely important point because the issue at stake here is the credibility of the speaker, which often rests upon his or her intentions and motives. This is clearly illustrated by the scale of the inaccuracies and allegations received from the source.

22. The independence of the legal profession is a matter of the greatest importance in the State of Kuwait, and the law provides lawyers with robust safeguards to carry out their duties freely and without any form of intimidation. Thus, the allegation made by the source regarding intimidation against the international legal team is without foundation. When Ms. Lazareva’s legal team visited Kuwait it enjoyed complete freedom to conduct its activities and meet whomever it pleased without hindrance. In fact, ██████████ sent a letter of thanks to the Permanent Representative, dated 29 March 2019, in which she expressed her satisfaction with the visit. The claim that the international legal team could face reprisals for its recourse to international bodies is also pure fabrication, as evinced by its repeated visits to Kuwait and the cooperation Kuwait has shown towards any inquiry from international bodies on this subject.

23. With regard to measures in place to safeguard judicial independence and steps taken to protect and promote the independence of judges, we would draw attention to the following:

- The judiciary in Kuwait enjoys respect as one of the three powers of the State. According to article 162 of the Constitution, “the honour of the judiciary and the integrity and impartiality of judges are the foundation of governance and the guarantee for rights and freedoms”. Article 163 states that “no one may exercise any authority over judges in rendering their judgments and under no circumstance may

anyone interfere with the course of justice”. Guarantees regarding the independence of the judiciary are also enshrined in law, one being that of their irremovability.

- With a view to strengthening democratic structures and mechanisms and preventing any violation of rights and freedoms, article 50 of the Constitution clearly establishes the principle of the separation of powers. The wording is such as to obviate any controversy or confusion regarding that principle. According to the article, none of the three powers – legislature, executive or judiciary – may relinquish all or part of their constitutional prerogatives (see the explanatory memorandum to the Constitution). In fact, article 50 reads: “In conformity with the Constitution, the system of government shall be based on the separation of powers and the cooperation between them. None of those powers shall relinquish all or part of their prerogatives as set forth in the present Constitution.”
- Within the context of the principle of the separation of powers, the constitutional provision governing the relationship between the country’s Amir and the judicial power is worded differently from that governing his relationship with the executive and legislative powers. Hence, under articles 51 and 52 of the Constitution, legislative and executive powers are vested in the Amir, the Council of Ministers, ministers and the National Assembly (i.e., parliament) whereas, under article 53, judicial power is vested in the courts, which exercise it in the name of the Amir within the limits prescribed in the Constitution.
- With a view to ensuring the proper administration of justice and consummation of legal proceedings, the work of judges is subject to a periodic inspection procedure conducted by the Judicial Inspection Department, which comprises qualified and experienced judges. Measures can be taken against any judge whose performance fails to meet the legally required standards.
- Decree-Law No. 37 of 1990 contains numerous provisions regarding the appointment of judges, as follows:
 - Article 21, as amended pursuant to Act No. 69 of 2003, provides that: “Judges up to first-instance level and their equivalents at the Office of the Public Prosecution shall be promoted on the basis of seniority and qualification, whereas promotion to other positions shall be by selection.
 - In all cases, promotion shall be to the next level only, on condition that the candidate has achieved a proficiency score of not less than ‘above average’ in two consecutive reports.”
- According to article 53 of the Constitution, judicial power is vested in the courts, which exercise that power in the name of the Amir. In chapter V of part IV of the Constitution, the judiciary is enshrined as one of the bulwarks of the public powers of the State. In fact, under article 173, the task of determining the constitutionality of laws and regulations is to be entrusted to a competent court, the composition and procedures of which are to reflect the nature of the important function it exercises. Thus, that function is not left to the jurisprudence of individual courts, which might come up with conflicting opinions in their interpretation of the Constitution or undermine laws and norms by failing to take account of other points of view or considerations. In accordance with that article, the law regulating the Constitutional Court offers room for the involvement of the National Assembly and even the Government in the formation of the Court, as well as high-ranking members of the judiciary. They constitute the authority for the correct judicial interpretation of laws, chief among them the Constitution.
- Act No. 14 of 1973 concerning the establishment of the Constitutional Court was issued in enactment of the foregoing. Article 1 of the Act reads: “A constitutional court is to be established, which shall have the exclusive prerogative to interpret the provisions of the Constitution and to rule on disputes concerning the constitutionality of laws, decree-laws and regulations and on appeals regarding the election of members of the National Assembly or the validity of membership therein. Rulings of the Constitutional Court are binding on all other courts.”

Article 2 of the Act states: “The Constitutional Court is to be composed of five senior judges who are selected by the Supreme Judicial Council by secret ballot. Two supplementary members are also selected. The candidates, who must be Kuwaitis, are then appointed by decree. If one of the principal or supplementary members vacates their post, the Supreme Judicial Council, by secret ballot, selects a replacement, who is likewise then appointed by decree.”

This Court, then, has a particular character and undertakes a legal and technical task in line with its mandate under the Constitution and the law. It is composed only of senior court judges who are selected in a secret ballot by the Supreme Judicial Council then appointed to their duties by means of a royal decree. This is in line with the system used in the country whereby appointment to judicial or leadership roles is done using that means.

- In the same context, attention is drawn to the issuance of Act No. 109 of 2014, under which persons can bring their constitutional disputes directly before the Court, which has the right to overturn any law, decree-law or regulation that is found to violate the safeguards enshrined in the Constitution. The effect of such a piece of legislation on the protection of rights and freedoms is self-evident.
- With a view to ensuring the proper administration of justice and consummation of legal proceedings, the work of judges is subject to a periodic inspection procedure conducted by the Judicial Inspection Department. The Department was set up in line with article 30 of the Judicial Organization Act, as amended, which includes a raft of provisions relating to the appointment of judges.
- The Judicial Organization Act, as amended, includes a raft of provisions relating to the appointment of judges. Article 23 of the Act reads: “Judges and members of the Office of the Public Prosecution, except those at the level of deputy public prosecutor C, cannot be dismissed from office. The contracts of judges and members of the Office of the Public Prosecution may not be terminated, except with their consent.

“Judges of the Court of Cassation and the Court of Appeal cannot be transferred to the Office of the Public Prosecution. except with their consent.”

- With regard to the tenure of judges, article 9 of Decree-Law No. 14 of 1977 concerning the ranks and salaries of judges and members of the Office of the Public Prosecution stipulates: “The term of office of judges and members of the Office of the Public Prosecution and the Department for Legal Advice and Legislation shall end when they reach the age of 70. Persons shall work to the end of the judicial year in which they reach that age and terms of office may not be extended once that age has been reached.”
- The Constitution envisages the establishment of the Supreme Judicial Council, the functions of which are regulated by the Judicial Organization Act No. 23 of 1990. The Council oversees judicial affairs in Kuwait in accordance with the principle of independence. The Act empowers the Council to appoint, promote, transfer and assign judges and members of the Office of the Public Prosecution, to express its opinion on matters relating to them, and to make whatever proposals it deems appropriate. It should be noted that the Act does not empower the Council to intervene in proceedings before the courts or the Office of the Public Prosecution. Although the Council consists of judges of various ranks together with the Public Prosecutor and the Deputy Minister of Justice, the latter does not participate in votes on the Council’s decisions. The Council is authorized to invite the Minister of Justice to its meetings, which the latter is entitled to attend in order to raise important matters but without participating in votes on the Council’s decisions. The role played by the Minister or Deputy Minister of Justice vis-à-vis the Kuwaiti judiciary consists basically in facilitating the work of the judiciary and providing an effective channel of communication, without direct contact, between the judiciary and the other State authorities, in conformity with the principle of the independence and impartiality of the judiciary.

III. Reaffirmation

1. Article 162 of the Constitution stipulates: “The honour of the judiciary and the integrity and impartiality of judges are the foundation of governance and the guarantee for rights and freedoms.” Article 163 states that “no one may exercise any authority over judges in rendering their judgments and under no circumstance may anyone interfere with the course of justice”. The independence, rights and structural underpinning of the judiciary are thus enshrined in the Constitution yet, over and above that, the soundest guarantees for judges are those that they draw from their own internal convictions and their safest redoubt is their own conscience. This is self-reliance and the foundation and core of judicial independence, which cannot be created merely by written texts or determined by law. Laws can only set down the safeguards that uphold and promote those rights. Courts and investigators carry out their judicial tasks on the basis of substantive evidence, which they accumulate on the exclusive basis of their appraisal of the circumstances and facts of a case, with no account for any other considerations.
2. Sufficient material has been provided above to refute all the claims and allegations contained in the communication and to repudiate the various hypotheses, which are entirely untrue and unsubstantiated, especially since the information provided includes charges based on an incoherent narrative that has been made indiscriminately and without measure or moderation. This is an extremely important point because the issue at stake here is the credibility of the speaker, which often rests upon his or her intentions, motives, understanding of the subject matter and knowledge of the applicable rules, and it is clearly illustrated by the scale of the inaccuracies and allegations received from the source, on which the Working Group’s inquiries are based.
3. We wish to reaffirm that the proceedings against Ms. Lazareva had a sound legal basis and all measures were taken by court order and under supervision of the judiciary, which is neutral and impartial. The rights of the accused persons were guaranteed, including the right to a fair trial in accordance with the principles enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
4. We should also point out that the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted under General Assembly resolution 43/173 of 9 December 1988, were duly applied to the person concerned, in particular principles 2, 4, 9, 11, 12, 17, 18, 19, 32 and 37.
5. The Standard Minimum Rules for the Treatment of Prisoners, as approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, were also applied to Ms. Lazareva.
6. We reaffirm that the case concerning Ms. Lazareva has nothing to do with human rights issues or with arbitrary detention, since she enjoyed all legal guarantees, including access to a lawyer, submission of pleas, hearing of witnesses and a public trial. Account was taken of all her procedural and substantive rights, in accordance with the obligations enshrined in the Constitution, Kuwaiti law and the international treaties that the State of Kuwait has ratified and which have primacy over domestic law. As already noted, the law guaranteed Ms. Lazareva all the safeguards enshrined in the Constitution, domestic law and international treaties, including the right to a fair trial at all levels of jurisdiction, the right to defence counsel and to public judicial proceedings, as well as other rights guaranteed by Kuwaiti law and relevant international treaties.
7. We also wish to reaffirm that all the legal proceedings and trials to which Ms. Lazareva has been subjected are consistent with the International Covenant on Civil and Political Rights, particularly part II thereof: article 2 (3) (a) and (b) and article 9 (1) to (4), as well as article 12 (3), articles 13 to 15, article 18 (3) and article 19 (3).
8. We should underscore the fact that the purpose of the allegations made by the source is to exercise some form of pressure and thereby affect the course of the trial and sway the sound legal proceedings being applied against Ms. Lazareva. In fact, charges such as money-laundering and the misappropriation of assets of retirees with small pensions cannot be concealed or passed off with empty human rights-related allegations.

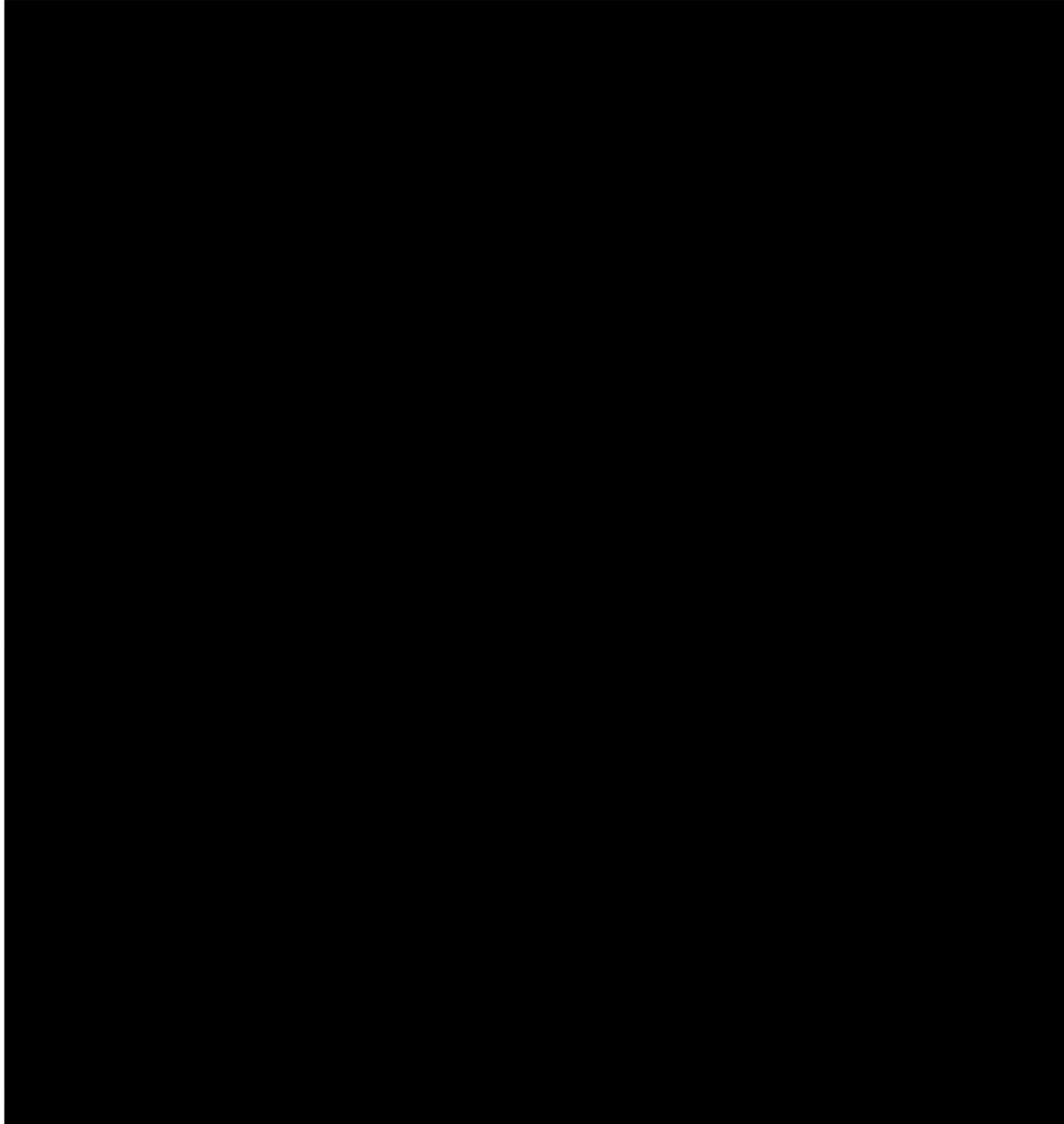
IV. Conclusion

1. We wish to draw attention to Human Rights Council resolution 24/7 of 26 September 2013, which calls for due consideration to be given to the information submitted by States.
 2. We also wish to draw attention to the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council (A/HRC/RES/5/2), which underlines “the centrality of the notions of impartiality and objectivity”. Paragraph (g) speaks of fairness and impartiality while paragraph (f) stresses the importance of objectivity and non-selectivity. Other relevant passages include article 3 (a), (f) and (h) on general principles of conduct, as well as article 6 (a), article 8 (d) and article 9 (d).
 3. From the points we have raised and the facts we have related it should be clear that all the steps taken against Ms. Lazareva were fully consistent with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and all other relevant international rules, as set forth in the Universal Declaration of Human Rights and other international instruments. This effectively disproves the allegations and pretexts put forward by the source, which were intended merely to sway the course of legal and judicial proceedings.
 4. The State of Kuwait remains committed to the promotion of human rights and therefore continues to collaborate with the Special Rapporteur on the independence of judges and lawyers and with all special procedures mandate holders. At the same time, Kuwait wishes to draw attention to the transparency it has demonstrated in all its explanations and replies. On the basis of their adherence to human rights principles, the competent bodies remain ready to reply to any further queries or comments you might have.
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*Mission permanente de l'Etat du Koweït
auprès de l'Office des Nations Unies
Genève*



الوفد الدائم لدولة الكويت
لدى الأمم المتحدة
جنيف



- 5) The State of Kuwait, on the basis of the principle of transparency with regards to human rights cases, and by providing all information and facts, would like to stress on the importance of adding the present reply, and any other future clarifications, on your communications reporting website, as well as in the usual report to be presented to the Human Rights Council for its consideration.

The Permanent Mission of the State of Kuwait to the United Nations Office in Geneva avails itself of this opportunity to renew to the Special Rapporteur on the independence of judges and lawyers, the assurances of its highest consideration.

J.G./n.o.

