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TUNNE KELAM
MEMBER OF THE EUROPEAN PARLIAMENT

Mag. Alev Korun
Obfrau Ausschuss für Menschenrechte
Der Grüne Klub im Parlament -
Klub der Grünen Abgeordneten zum Nationalrat
Bundesrat und Europäischen Parlament
Dr. Karl Renner-Ring 3
1017 Wien

Dear Mag. Alev Korun,

I am addressing you in order to raise with you the worrying case of Mr Nail Malyutin, a Russian citizen, whose extradition from Austria is sought by the Russian law enforcement authorities. The criminal prosecution against Nail Malyutin bears signs of political put-up job and fabrication.

On 7 December 2016, the Higher Regional Court of Vienna (Oberlandesgericht Wien) revoked the decision of 29 July 2015 to approve Malyutin's extradition to Russia based on charges of incitement to murder. The court now ordered that the case of Malyutin be re-examined. However, the latest decisions do not affect the very extradition request which remains pending. It is, therefore, critically important that, when re-examining the case, the District Court in Vienna (Landesgericht) and the Austrian government pay attention to the fact which confirms that financial accusations have the same doubtful grounds as the murder-related charges, and are being used as a means to justify the politically motivated extradition.

The decision of the Higher Regional Court of Vienna dated 7 December 2016, reads that should the extradition decision be executed, Malyutin will be transferred to Vladikavkaz (the region in the North Ossetia). This is where the authorities tend to send cases of special importance (e.g. the cases of some Ukrainian 'hostages of the Kremlin'). In the district, torture is commonplace, and the right to defence practically does not exist.

Although the court, which is examining the extradition case, is not obliged to examine the merits of the entire case file, it should not ignore very clear premises showing that the scheme, which had already been applied by Russia in other fabricated cases, was also used in this case, and that the accusations are poor in quality and contradictory. Russia is not able to guarantee a fair trial, decent conditions of detention of the detainee or protection from torture.

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There is high risk that, once rendered to the Investigative Committee of the North Caucasian Federal District, Malyutin would be killed, as Mr Yusufov, against whom Malyutin testified, effectively influences the investigative structures in North Ossetia. In the past, there were multiple examples of suspicious deaths of detainees in this region. Well documented cases of torture in Russian detention facilities, exerted in order to coerce detainees to give 'convenient' testimonies and make confessions, include those examined by the European Court for Human Rights, such as Zayev v. Russia (no.36552/05), Turbylev v. Russia (no. 4722/09). Arbitrarily prolonged pre-trial detention is routinely applied, even in the absence of relevant grounds; it was applied in the case of Tsarenko v. Russia, No.5235/09. Human Rights Watch report for 2015 indicates that even those prisoners whose cases are closely followed by the international community and the media, are being mistreated when criticising authorities.

There are currently no grounds for keeping Nail Malyutin in detention in Austria. As the decision on extradition was dismissed and he has a permanent address of residence in Austria, all the conditions for ruling his release on bail are fulfilled. There are reasons to believe that Russia's accusations, embodied in the extradition request, were designed to keep him in detention for the longest possible period. As his imprisonment in Austria was prolonged beyond the limit of instruction (1 year), there are grounds for claiming compensation from the Austrian state.

Taking the above into consideration, I would like to draw your attention to the serious threat of unfair trial, torture and ill-treatment, resulting in a clear danger to life and health should Mr Malyutin be extradited to Russia. The guarantees made by the Russian authorities are merely formal and will not be observed in practice.

Sincerely,
Tunne Kelam, MEP
Head of Estonian Delegation in the EPP Group

cc. Dr. Josef Cap, Obmann Außenpolitischer Ausschuss



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Background to the case of Nail Malyutin

In December 2014, Malyutin was arrested in Austria, following the submission by Russia of an application with INTERPOL. Austria has not examined the claims of a highly political nature of the case, connected with the fact that Malyutin had incriminated persons, closely linked to Russia's government circles. The court did not pay attention to the arguments of the defence which refuted the claim of the prosecutor.

In 2008, Nail Malyutin revealed illegal money transfers, carried out with the participation of Templestowe Trading Corporation, a company owned by Igor Yusufov, a former energy minister and a member of the Gazprom Board of Directors, and Dmitry Medvedev's trusted person. The transactions, which resulted in losses, suffered by the state enterprise 'Finance Leasing Company' JSC, which was managed by Malyutin, were designed to be a preparation for the acquisition of German shipyards. Malyutin made futile attempts to seek justice before the authorities of the Russian judiciary to which he reported the siphoning out of approx. \$83.4 million from the FLS. Also, in 2012, he informed the German public prosecutor in Schwerin about an illegal source of funds for which the shipyards were purchased. Shortly after, Russia initiated a criminal case, accusing Malyutin of misappropriating funds. The case was initiated illegally, based on the testimony of an employee of the 'K' Department of the Economic Security Service of the FSB, similarly to the manner, in which the case of Sergey Magnitsky had been initiated. In addition to financial charges, he was accused of committing murder. The criminal charges were based on extremely unreliable grounds: it was based on the testimony, given by an ex-officer of intelligence services who was considered by the court as mentally unstable.

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