

**OPINION No. 6/2005 (LATVIA)**

**Communication addressed to the Government on 18 November 2004.**

**Concerning Ms. Viktoria Maligina.**

**The State is a party to the International Covenant on Civil and Political Rights.**

1. (Same text as paragraph 1 of opinion No. 20/2004.)
2. The Working Group conveys its appreciation to the Government for having provided the requested information.
3. (Same text as paragraph 3 of opinion No. 20/2004.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, which did not submit any reply.
5. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
6. The source informed the Working Group that:
  - (a) Ms. Viktoria Maligina, born on 15 October 1983, permanent resident of Latvia, was arrested on 2 March 2001, at the age of 17, by the police of the First Department of Latvia, and is currently detained at Riga Women's Prison;
  - (b) Ms. Maligina was arrested when she came to testify as a witness. She became a suspect and was held in custody for the first 72 hours by the police of the First Department of Latvia. On 5 March 2001, she was notified of her formal detention for a period of 30 days by the judge of the Kurzemkiy District of Riga. On 5 April 2001, the Special Prosecutor for Organized Crime of Latvia confirmed her detention. On 5 September 2001, the District Court of Riga maintained the detention order up to trial. On 5 March 2003, the Senate prolonged her detention for another six months, extending it again until 30 April 2004;
  - (c) The trial of Ms. Maligina for the offence of which she was accused of committing with others (participation in a grave but non-violent crime) had been scheduled to start in July 2002 but did not take place until April 2003, when it was immediately postponed until February 2004. On 30 March 2004 the verdict was rendered and Ms. Maligina was sentenced to five years' imprisonment in a medium-security prison. Other co-accused in the same criminal procedure appealed the verdict.
7. According to the source, the detention of Ms. Maligina is arbitrary because she has been held for more than three years in pretrial detention in a closed facility, even though she was a

minor when the alleged offence took place and when she was arrested. Ms. Maligina spent about seven months detained while a minor and still remains detained in a closed facility pending appeal by her co-accused, although sentenced to serve in a medium-security facility.

8. The Government replied to the source's allegations that the statement provided to the Working Group by the source is not fully correct. The facts as established by the Latvian court during adjudication of the applicant's criminal case are as follows:

(a) The applicant was connected to a group of five other persons, all of whom have long criminal records and who, during the period in question, committed several violent and non-violent crimes, including murder, burglary, robbery and brigandage using firearms, and illegal acquisition and storage of firearms and explosives;

(b) The applicant had established de facto family life with one of the gang members, who became the accomplice to the crime for which she was arrested and sentenced;

(c) The applicant was aware of the details of at least some of the crimes committed by the criminal gang, as well as of the fact that her de facto husband and accomplice had firearms;

(d) The applicant had a record of drug addiction;

(e) On 1 March 2001, the applicant was interviewed as a witness. She was apprehended on 2 March 2001;

(f) The applicant was accused under article 176 of the Criminal Law of a robbery using firearms. The circumstances of the case were as follows: the applicant told one of the members of the criminal gang (the one who has previously committed murder) with an intent to commit a robbery, about a well-off acquaintance. From 15 to 27 February 2001, the applicant and her accomplice, while preparing for the crime, followed the victim in order to acquaint themselves with his daily schedule. The applicant and her accomplice carefully planned the crime, divided the roles and decided to use the gun of her accomplice. According to the plan, the accomplice was supposed to approach the victim from the back, threatening him with the gun. The applicant was supposed to stay on guard, outside the victim's sight since he knew her, while the accomplice was supposed to find out from the victim where the money was located and take it. On 27 February 2001, the applicant and her accomplice arrived at the victim's residence. When the victim arrived, the accomplice approached him from the back, threatening him with the loaded gun, and ordered him to enter his apartment and give up the money. However, the victim resisted and during the struggle, the accomplice shot the victim twice and killed him. The applicant and her accomplice then escaped from the scene;

(g) It also appears from the criminal case file that the applicant had previously stolen money from the victim, although he did not report her to the police;

(h) During pretrial investigation, the applicant did not cooperate with the authorities, made contradictory statements and tried to hide the details of the crime and of others of which she was aware;

(i) The adjudication of the criminal case involving the applicant started on 10 April 2003. The first instance court judgement was delivered on 29 and 30 March 2004. The court had to interrupt the adjudication twice to establish the mental capacity of one of the co-accused. The appellate court delivered its judgement on 4 February 2005. This judgement has not yet become final, as the applicant has the right to submit an appeal on cassation;

(j) The applicant was sentenced for attempted robbery using firearms, in accordance with article 15, paragraph 4, article 176, paragraph 4, and article 49 of the Criminal Law, to 9½ years' imprisonment with police supervision for 2 years. The applicant started serving her sentence in a partly closed prison facility. The court took into account that the applicant did not have previous convictions, as well as the fact that the applicant pleaded guilty, that she committed the crime while being under age, as well as the fact that her mother and other relatives died while she was in pretrial detention, and imposed a sanction that is lower than the minimum sanction allowed by the relevant article of the Criminal Law. The court also took into account the applicant's role in the crime (the idea of robbing the victim was the applicant's initiative), her reluctance to cooperate with the investigative authorities and her negative attitude, including the fact that she did not study, did not work and had a record of drug addiction, as well as the particularly grave consequences of the crime committed.

9. The Working Group considers that although it is not desirable to extend the period of pretrial detention for so long, in this case from 3 March 2001 until March 2004, the specific circumstances seem to justify such duration. This criminal trial involved serious crimes, with several co-accused, all of them Russian-speaking and without the ability to express themselves in Latvian, which made it necessary to translate the 50 volumes and 151 pages of documents.

10. Although the Working Group understands that the length of the procedure is justifiable, it nonetheless regrets the lack of a separate juvenile justice system, as observed during its visit to Latvia in February 2004, which should have been in charge of the case of Viktoria Maligina.

11. However, the irregularities that may relate to the extension of pretrial detention, the length of the procedure and the lack of a separate juvenile justice system for minors are not sufficient in this case to confer an arbitrary character on the detention of Viktoria Maligina.

12. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Ms. Viktoria Maligina is not arbitrary.

Adopted on 25 May 2005