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# THE SINGARASA CASE: A BRIEF COMMENT

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**T**he recent judgment of the Supreme Court seeking to invalidate Sri Lanka's accession to the Optional Protocol to the ICCPR has led to questions as to how this judgment came to be given. Yes, there was a case, and as Senior Counsel I would like to explain the circumstances in which it came before the Supreme Court.

An application was made to the Supreme Court in 2005 for the exercise of the Court's inherent power of revision of a conviction and sentence in 1995. This was after the views of the United Nations Human Rights Committee had been conveyed to the State, that Singarasa should be released or retried as his right to a fair trial had been breached. Singarasa had petitioned the UN Human Rights Committee by virtue of the right given to him by an international agreement or treaty entered into by the Sri Lankan State, namely the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).

The Supreme Court constituted a Divisional Bench of five judges to hear the application, and it became known as the 'Singarasa Case'.

The legality or constitutionality of Sri Lanka's accession to the Optional Protocol to the ICCPR did not arise in this case, was not raised by Court and was never argued. Indeed the time given to make oral submissions was limited and an application on behalf of the petitioner for a further date of hearing was ignored.

The Supreme Court could have in passing in the judgment raised the question of the treaty ratification process and left it to be decided in a suitable case, after hearing the Attorney-General on behalf of the executive Head of State and the Minister of Foreign Affairs, who takes the initiative and is responsible for registering the instrument of ratification or accession in the UN.

Singarasa's application to Court was *not* an application to *enforce* or *implement* the views expressed by the Human Rights Committee (HRC) of the UN on an individual's communication in terms of the Protocol. It is a matter of

common knowledge that the views of the HRC are not decisions binding on national courts. All that Singarasa did was to ask for a revision or review of the decisions of the Supreme Court and other courts given earlier. This is possible in our law. The views expressed by the HRC were relied on solely to seek to persuade the Court to take a fresh look at the facts and the law in Singarasa's case. The Supreme Court was invited to reconsider the conviction and sentence of 50 years imprisonment (reduced in appeal to 35 years) in the light of the HRC's views as to the requirements of a fair trial, which is a right guaranteed in our Constitution. Unfortunately the Supreme Court has seen it only as an attempt to substitute for the decisions of our courts the views of the HRC and, without looking at the facts or the law on confessions to the police, pronounced on the constitutionality of the State's accession to the Optional Protocol in 1997. This also explains why the Court said the application was misconceived and without any legal base.

There could be no misunderstanding in the minds of Judges that the petitioner's substantive case was that there had been a grave miscarriage of justice in his conviction, and a number of reasons were given in the petition which were totally independent of the views of the HRC. There is no reference in the judgment to these other arguments and they have not been considered. As stated above time was not given for full argument even though judgment was delivered after many months.

In its views communicated to the State the HRC of the UN had recommended that the Prevention of Terrorism Act (PTA) provision, which cast on the accused the burden of proving that a confession made to the police was not voluntary, should be amended. Singarasa had been convicted, after the confession was held admissible, for not leading any evidence to show that the alleged attacks on Army camps (which formed the basis of the charges) had not taken place or that he was not involved in them. It was a golden opportunity for the Supreme Court to have emerged as the true guarantor of the rights and freedoms of people by including in a judgement – even a judgement refusing the application – a recommendation to this effect.

Singarasa was a Tamil youth of 19 or 20 who had no schooling and spoke only Tamil. His conviction was solely on the basis of a confession which was denied by him at his trial. The evidence was that he made the confession in Tamil to a police officer who understood Tamil but could not write Tamil; his confession was translated into Sinhala and written down by the same police officer. At the end of Singarasa's statement the police officer read out to Singarasa in Tamil what he had written in Sinhala before taking his thumb impression on the record. This was all done in the presence of a senior police officer to whom a confession under the emergency regulations or the PTA had to be made. This officer understood only a little Tamil and the translation into Sinhala was also for his benefit. The Supreme Court could also have commented on the undesirability of a procedure that permitted a police officer to record a statement confessing to committing serious crimes, in Sinhala, when it was made in Tamil. Had the Supreme Court done only this we would have been disappointed but satisfied that the cry for justice by Singarasa, sentenced to prison for 35 years, had been heard. It is responses like this that have made the Supreme Court of India the highly respected body it is.

Nowhere in our Constitution is it said that the Supreme Court is Supreme; it is but another court exercising the judicial power of the People who are Sovereign. It is the People's right to say that the Supreme Court's pronouncement taking away a valuable right conferred on the People was *per incuriam* and in excess of the Court's jurisdiction. A treaty solemnly entered into by the State in the exercise of the executive power and in terms of international law as reflected in the Vienna Convention on Treaties is not, it is submitted with respect, subject to judicial review. There is a procedure in the Protocol for a State Party to denounce the Protocol, but until this is done, the Protocol is in force in the country. It must not be forgotten that Sri Lanka's accession to the Optional Protocol of the International Covenant on Civil and Political Rights was one of the major accomplishments of the late Lakshman Kadirgamar during his distinguished career as Foreign Minister. Both Bench and Bar, at the unveiling of his portrait at the Law Library, paid tribute to Kadirgamar's eminence as a lawyer and to his outstanding contribution to the country as Foreign Minister. ■

R. K. W. Goonesekere is a leading lawyer

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