Judgment of ... *Contd. from* p.3

His appeal was dismissed as the Supreme Court found that the applicant, by words and conduct, had shown disrespect to the court by committing the offence of contempt, and the common law recognised the right of judges to summarily convict persons guilty of such contempt. On 9 August 2001, the applicant lodged an application with the European Court of Human Rights, alleging that he had not received a hearing by an impartial tribunal in violation of Article 6(1) and additional violations under Articles 3, 4, 7, 10 and 13 of the Convention. In April 2003, the application was declared admissible regarding the complaints under Article 6, regarding the right to an impartial tribunal, and Article 10, regarding the right to freedom of speech. On 27 January 2004, a Chamber of the Court delivered a judgment in which it found a violation of Article 6, and awarded the applicant? 15,000 as compensation for non-pecuniary damages. On 19 April 2004, the Government of Cyprus requested that the case be referred to the Grand Chamber, and a panel of the Grand Chamber accepted this request on 14 June 2004.

The Court held that: (1) with respect to the applicant's claim under Article 6, it was of fundamental importance in a democratic society that the courts inspire confidence in the public and above all, as far as criminal proceedings are concerned, in the accused; to that end Article 6 required a tribunal falling within its scope to be impartial;

(2) the impartiality of a tribunal could be tested by either a subjective or an objective approach;

(3) under the subjective approach, it was necessary to try to ascertain the personal conviction or interest of a judge in a particular case, and under this approach the personal impartiality of a judge had to be presumed until there was proof to the contrary;

(4) under the objective approach, it was necessary to determine whether a judge had offered sufficient guarantees to exclude any legitimate doubt in this respect;

(5) the applicant's fears had been objectively justified and the Assize Court had failed to comply with Article 6 under the objective test; it was of note that there was an increasing trend in a number of common law of jurisdictions whereby it was acknowledged that summary proceedings in respect of contempt of court should be used sparingly, after a period of careful reflection, and with appropriate safeguards for the due process rights of the accused. The present case related to a contempt in the face of the court, aimed at judges personally, and in such a situation, the confusion of roles between complainant, witness, prosecutor and judge could prompt objectively justified fears as to the impartiality of the bench;

(6) the applicant's misgivings about the impartiality of the Assize Court were also justified under the subjective test because the judges had acknowledged that they had been 'deeply insulted' 'as persons', the judges used emphatic language and conveyed a sense of personal indignation and shock, the judges imposed a sentence to be enforced immediately, and the judges expressed early in their discussion that they considered the applicant guilty of contempt;

(7) the Assize Court was thus not impartial within the meaning of Article 6 and the Cypriot Supreme Court had failed to remedy the defect in question;

(8) with respect to the applicant's claim that his right to freedom of expression under Article 10 had been violated because the conviction and sentence imposed on him amounted to a disproportionate interference with his right to freedom of expression, it was not disputed that the applicant's conviction for contempt of court amounted to interference with his right to freedom of expression, and the only question at issue was whether the interference was necessary in a democratic society;

(9) interference with freedom of expression in the context of contempt of court proceedings had to strike a fair balance between the need to protect the authority of the judiciary and the protection of the applicant's freedom of expression in his capacity as a lawyer;

(10) the applicant's conduct could be regarded as showing a certain disrespect for the judges, but his comments were aimed at and limited to the manner in which the judges were trying the case, in particular concerning the cross-examination of a witness he was carrying out in the course of defending his client against a charge of murder;

(11) accordingly, the penalty of contempt was disproportionately severe on the applicant and was capable of having a chilling effect on the performance by lawyers of their duties as defence counsel;

(12) the Assize Court's actions thus amounted to a violation of Article 10;

(13) the state was ordered to pay the applicant 15,000 in respect of non-pecuniary damages and 35,000 for costs and expenses.

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50 YEARS AT THE BAR

Mr. P.M. Jayatilaka Attorney- At-Law has completed 50 years at the Bar. A felicitation ceremony to mark the 50th anniversary of P.M. Jayatilaka Attorney- At-Law in the field of cultural activities will be held on the 27 th of August 2006 at the Town Hall, Kurunegala from 9 a.m. to 12 noon. The first Sinhala drama presented by the Sri Lanka Law College Sinhala Union was written and produced by P.M. Jayatilaka (THAWATH NADUWAK). Mr. Jayatilaka is the author of several novels including the trilogy 'Mal Mawatha' 'Bamara Sara' and ; Hantane Geethayak' depicting the Peradeniya Campus life in the early sisters. Retired High Court Judge Gamini Wattegedara will grace the occasion as the chief guest.