

1982 March 15

[A. LOIZOU, MALACHTOS AND SAVVIDES, JJ.]

KHALIL MOHAMED ALI YOLLNES AND OTHERS,
Appellants.

v.

THE REPUBLIC,
Respondent.

(*Criminal Appeals Nos. 4220 and
4222-4226*).

*Jurisdiction—Vessel in distress—Immunity from local jurisdiction
—Not absolute.*

*Criminal Procedure—Charges—Preferment of—No general principle
of Law impeding the prosecution from preferring the more serious
charges wherever the same facts constitute specific lesser
offences.* 5

*Jurisdiction—Criminal jurisdiction—Territorial waters—Foreign ship
anchored at Cyprus port—Offence of unlawful possession of
controlled drugs committed on board ship—Is an offence committed
within the territory of the Republic as defined in section 5(3) 10
of the Criminal Code Cap. 154 (as amended by Law 3 of 1962)
and section 2 of the Territorial Waters Law, 1964 (Law 45 of
1964)—And therefore it is within the criminal jurisdiction of the
Cyprus Courts—Section 5(1)(a) of the Criminal Code read in
conjunction with the provisions of Law 45/1964—Reference in 15
definition of “territory of the Republic” in the said section 5(3)
to “any ship or aircraft registered in the Republic wherever found”
does not take away the jurisdiction of the Court in respect of
offences committed within the territory of the Republic—Issue
of jurisdiction determined by aforesaid express provisions of our 20
Law—And no help can be derived from Common Law.*

On the evening of the 7th October, 1980, the ship
“ARWAD”, registered in Lebanon, sailed from the port of
Beirut with no cargo on board. At a distance of about 14

5 miles from the coast of Lebanon she was approached by a launch
wherefrom they were transhipped thereon sacks containing
narcotics to be delivered in the open sea at a point 50 miles
away from the Italian coast. During the voyage the ship
developed engine trouble and when she asked for help there
10 arrived a tug-boat which undertook and agreed to tow the
ship to Limassol. Upon arrival in the port of Limassol on the
20th October, 1980 the ship anchored at the anchorage of the
Limassol old port. She was visited on the same day by certain
officials of the Republic for the purposes of the free pratique
and inspection and the captain stated that he was carrying no
cargo on board the ship. There followed a search of the ship
by the police on the following day and there were found 153
sacks containing narcotics. Thereupon the men on board
15 the ship were jointly charged, tried and convicted on two counts:
One for unlawful possession of controlled drugs of class "B",
contrary to sections 2, 3, the First Schedule, Part II, sections
6(1)(2), 24(1) and 30 and the Third Schedule of the Narcotic
Drugs and Psychotropic Substances Law, 1977 (Law No. 29
20 of 1977) and section 20 of the Criminal Code, Cap. 154, and the
other with possession of controlled drugs of class "B" for the
purpose of supplying them to others, contrary to sections 2, 3,
the First Schedule, Part II, sections 5(1)(b), 6(3), 24(1) and 30
and Third Schedule of the Narcotic Drugs and Psychotropic
25 Substances Law, 1977.

Upon appeal against conviction Counsel for the appellant
contended:

- (a) That the appellants could not be convicted as they
did not come within the jurisdiction voluntarily.
- 30 (b) That the Court had no jurisdiction to try this case
as the ship "ARWAD", which was registered in
Lebanon, did not come within the jurisdiction of the
Republic of Cyprus but was subject to the Laws of
the Country of its flag.
- 35 (c) That the evidence adduced by the Prosecution did not
establish an offence under sections 5 and 6 of Law
29 of 1977 in view of the provisions of sections 19-23,
which provide specifically for offences committed

on foreign ships whilst in the Republic when controlled drugs are in transit, and are offences of less gravity.

With regard to contention (b) above it was argued that the term "within the territory of the Republic" in section 5(1)(a)* of the Criminal Code, Cap. 154 as amended, does not include offences committed on a foreign ship by a foreigner within the territorial waters of the Republic and that the trial Court was wrong in interpreting the said provision as extending to such offences. It was further argued that jurisdiction in respect of an offence committed in "a foreign country" which term includes a ship registered in such country, is specifically covered by section 5(1)(e) and (3) and section 6* of the Criminal Code which sections should prevail over the provision of para. 5(1)(a) thereof and which sections give jurisdiction for such offences to such Court of competent jurisdiction as the Supreme Court may, subject to the provisions of Article 159 of the Constitution, direct. Counsel, also, submitted that under the Common Law the Admiral had no jurisdiction to try offences by foreigners on board foreign ships whether within or without the limit of three miles from the shore of England; that, therefore, in the absence of statutory enactment the Central Criminal Court had no power to try such an offence.

Held, (1) that since the allegation of appellant 1 that they were brought to Limassol was rightly rejected by the Assize Court as untrue the principles of Law governing the involuntary entrance of vessels in distress and the extent of immunity of such vessels from local jurisdiction need not be examined as there does not exist the necessary factual foundation that would call for a pronouncement on this issue. Suffice it to say, however, that such immunity is not absolute and it cannot be an immunity from every local Law including that which requires the master to make a true report to the Customs Authorities on his cargo (see *Cushin and Lewis v. R.* [1935] L.R. Ex. C.R. 103).

(2) That paragraph (a) of section 5(1)(a) of the Criminal Code, Cap. 154 (as amended) must be read in conjunction with the provisions of the Territorial Waters Law, 1964 (Law 45 of

* Section 5 is quoted at pp. 57-58 *post*.

* Section 6 is quoted at p. 58 *post*.

1964) which defines "territorial waters" as meaning the part of the sea which touches the coast of the Republic which is considered as part of its territory and is subject to the sovereignty of the Republic, and also with section 3 of the said Law which extends the territorial waters of the Republic to 12 miles from the coast measured from low water mark; that these provisions supplement and extend the meaning of the term "territory of the Republic" to include the territorial waters and no doubt an offence committed therein or on board a ship even if it is a foreign registered ship is an offence committed within the territory of the Republic as defined in section 5 subsection 3 of the Code and section 2 of Law No. 45 of 1964; and that consequently the Courts of Cyprus have Criminal Jurisdiction in respect of such offence; accordingly contention (b) should fail.

Held, further, that the reference in the definition of the "territory of the Republic" in subsection 3 of section 5, to "any ship or aircraft registered in the Republic wherever found", does not take away the jurisdiction of the Court in respect of offences committed within the territory of the Republic; that it only extends the jurisdiction of the Court over ships registered in the Republic wherever they are and does not deprive the Courts of Cyprus of their jurisdiction for offences committed on foreign ships within the territorial waters; that, moreover, the definition of the word "foreign country" in subsection 3 of section 5 which includes "any foreign ship" obviously refers to foreign ships on high seas or elsewhere and not within the territorial waters of Cyprus; that it is in that case that these ships are deemed to be a foreign country and in such circumstances that our Courts have limited jurisdiction that covers only the offences referred to in section 7(1)(e) of the Code; that once, therefore, there exist irresistible clearness in the aforesaid provisions of the Law, the presumption against alterations in the Common Law has been rebutted and the aforesaid express provisions of our Law determine the issue of jurisdiction and any attempt to derive help in this respect from the English Law cannot be helpful (see, also, provisions of International Law as stated in International Law by Greig 1970 ed. at p. 230).

(3) That there is nothing in sections 19-23 of Law 29/77 that precludes a prosecution under sections 5 and 6 thereof once the facts of the case support such charges and there is no

general principle of Law impeding the prosecution from preferring the more serious charges wherever the same facts constitute also specific lesser offences; that on the contrary it is usual to prefer charges in the alternative for offences of the same gravity or for offences of lesser gravity and there must be compelling reasons to justify the nonpreferment of the more serious charges which the facts of a case establish; accordingly contention (c) should, also, fail.

Appeals dismissed.

Cases referred to:

Cushin and Lewis v. R. [1935] L.R. Ex. C.R. 103;

Queen v. Keyn [1876-77] 2 Ex. D. 63;

R. v. Dudley and Stephens [1884] 14 Q.B. Div. 373;

Reg. v. James Anderson [1867-71] 11 Cox's Cr. C. 198;

"*Lotus*" case [1927] P.C.I.J. Rep. Ser. A, Nos. 9 and 10.

Appeals against conviction and sentence.

Appeals against conviction and sentence by Khalil Mohamed Ali Yollnes and Others who were convicted on the 6th April, 1981 at the Assize Court of Limassol (Criminal Case No. 14496/80) on one count of the offence of unlawful possession of controlled drugs, contrary to sections 2, 3, First Schedule Part II, sections 6(1)(2), 24(1) and 30 of the Third Schedule of the Narcotic Drugs and Psychotropic Substances Law, 1977 (Law No. 29 of 1977) and section 20 of the Criminal Code, Cap. 154 and on one count of the offence of possession of controlled drugs for the purpose of supplying them to others, contrary to sections 2, 3, First Schedule Part II, sections 5(1)(b), 6(3), 24(1) and 30 of the Third Schedule of the Narcotic Drugs and Psychotropic Substances Law, 1977 (Law No. 29 of 1977) and were sentenced by Loris, P.D.C., Chrysostomis, S.D.J. and Anastassiou, D.J. to the following concurrent terms of imprisonment: Appellants 1 and 6 to 3 years' imprisonment on count 1 and 5 years' imprisonment on count 2. Appellants 2 and 3 to 4 years' imprisonment on count 1 and 7 years' imprisonment on count 2 and Appellants 4 and 5 to 12 months' imprisonment on count 1 and to 18 months' imprisonment on count 2.

D. Zavallis, for appellant in Criminal Appeal No. 4220.

V. Harakis with *Chr. Pourghourides*, for the appellants in Criminal Appeals Nos. 4222-4226.

R. Gavrielides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment of the Court.
5 The six appellants were jointly charged on two counts one for unlawful possession of controlled drugs of class "B", contrary to sections 2, 3, the FIRST SCHEDULE, PART II, sections 6(1)(2), 24(1) and 30 and the THIRD SCHEDULE of the Narcotic Drugs and Psychotropic Substances Law, 1977 (Law
10 No. 29 of 1977) and section 20 of the Criminal Code, Cap. 154, and the other with possession of controlled drugs of class "B" for the purpose of supplying them to others, contrary to sections 2, 3, the FIRST SCHEDULE, PART II, sections 5(1)(b), 6(3), 24(1) and 30 and THIRD SCHEDULE of the Narcotic
15 Drugs and Psychotropic Substances Law 1977 (Law No. 29 of 1977), (hereinafter referred to as the Law).

Appellant No. 1, in Criminal Appeal No. 4222 (Accused No. 1 at the trial) was sentenced to three years imprisonment on Count 1, and five years imprisonment on Count 2.

20 Appellant No. 2, in Criminal Appeal No. 4223 (Accused No. 3 at the trial) was sentenced to four years imprisonment on Count 1 and seven years imprisonment on Count 2.

Appellant No. 3 in Criminal Appeal No. 4224 (Accused No. 4 at the trial) was sentenced to four years imprisonment on
25 Count 1 and seven years imprisonment on Count 2.

Appellant No. 4 in Criminal Appeal No. 4225 (Accused No. 6 at the trial) was sentenced to 12 months imprisonment on Count 1 and 18 months imprisonment on Count 2.

30 Appellant No. 5 in Criminal Appeal No. 4226 (Accused No. 5 at the trial) was sentenced to 12 months imprisonment on Count 1 and 18 months imprisonment on Count 2.

Appellant No. 6 in Criminal Appeal No. 4220 (Accused No. 2 at the trial) was sentenced to three years imprisonment on Count 1 and five years imprisonment on Count 2.

35 All sentences to run concurrently starting from the day of their arrest.

The facts of the case as found by the Assize court and which are not in dispute are as follows:

On the evening of the 7th October 1980, the ship "ARWAD" registered in Lebanon, sailed from the port of Beirut with no cargo on board. Her crew consisted of appellant 1, the master, 5 a Lebanese national, appellant 6, the ship's engineer and second in command, also Lebanese, appellants 4 and 5 Chilians and ex-accused 7 and 8 an Egyptian and Lebanese respectively. In respect of the latter two accused a nolle prosequi was filed and they were called by the prosecution as witnesses. 10

At a distance of about 14 miles from the coast of Lebanon she stopped and a launch approached her. There were three persons on it, appellants 2 and 3, both Italians, and a Lebanese. It carried a cargo of sacks which was transhipped by the crew on to the ship and appellants 2 and 3 went also on board the 15 ship. The launch sailed away with the Lebanese. As stated at the time by appellant 1, the master, they were narcotics to be delivered in the open sea at a point 50 miles away from the Italian coast. During the voyage the ship developed engine trouble twice. On the first occasion her engine was repaired 20 but on the second occasion all efforts made by appellant 6 assisted by appellants 4 and 5 failed. She remained idle on the open sea for a number of days and when all efforts for the repair of her engine failed, appellants 1 and 6 asked for help. Eventually tug-boat "GREAT TITAN" arrived at the 25 scene and undertook her salvage on a "no cure no pay agreement", which was later substituted by a new similar agreement for the towing of the "ARWAD" to Limassol, where she was eventually towed.

Upon arrival in the port of Limassol in the morning of the 30 20th October 1980, she anchored at the anchorage of the Limassol old port. At 11:30 a.m., for the purposes of the free pratique and inspection, a boarding group went aboard the ship among which were an officer of the Aliens and Immigration Branch and a Custom's Guard, a Marine Police Constable 35 and with them Ferez Naoum, the agent of the ship in Cyprus. Appellant 1, who introduced himself as the Captain of the vessel, gave all the necessary information to the authorities for the free pratique and as a result a number of documents were prepared. The ship Stores Declaration signed by him showed 40

that the articles declared were 16 thousand cigarettes only. A declaration by all persons on board the "ARWAD" was made also as to the nature and quantities of goods each one had, which were obtained outside Cyprus or during the voyage
5 and were not being imported as merchandise or for sale. The goods so declared were six-hundred cigarettes.

On the 21st October 1980, at about noon, P.S. 1740 Andreas Psiloghenis of the Marine Police, together with two policemen of the Marine Police, two of the Narcotics Section and two
10 others from the Dogs Section and a Customs Guard Michalis Anastassi, went on board the "ARWAD" for a search. One of the two police officers of the Narcotics Section was P.S. 1559 Nicos Stelikos, in charge of the Narcotics Squad of Limassol. The crew was gathered in the lounge, P.S. Stelikos
15 asked for their passports and asked appellant 1 whether he was carrying any cargo on board. His reply was in the negative. Following this reply a search was carried out on the ship and, with the help of the dogs, the police eventually found in the hatch in front a number of sacks containing a substance which
20 seemed to P.S. Stelikos to be hashish. He took two slabs into the lounge and showed them to Appellant 1. He cautioned him in English and in Greek and the appellant said in Greek "I don't know anything. I bought the ship. I don't know what it had in it". Upon this P.S. Stelikos arrested all the
25 appellants, he cautioned them again in English and in Greek and they gave no reply. He then arranged for the ship to be towed to Limassol new port. At the new port a group of police officers headed by Chief Inspector Pandelis Frydas, second in charge of the C.I.D. of Limassol, were waiting for
30 the arrival of the "ARWAD". Among this group were P.C. 1800 Andreas Neocleous of the C.I.D., Ntinios Panaghides, Assistant Collector of Customs, P.C. 972 Kyriacos Pelendridis, P.S. 1753 Philachtis Aristodemou, a police photographer and Customs Officer Andreas Demetriou.

35 On arrival of the "ARWAD" this group went on board. The sacks were counted and were found to be 123 in number. Then a new search was carried out and another 30 sacks were found in the anchor chain compartment of the ship. P.S. 1753 Philachtis Aristodemou took photographs of the ship
40 and of the cargo on board.

Taking the last ground first it has to be pointed out that the allegation of appellant 1, that they were brought to Limassol involuntarily was rejected by the Assize Court as untrue and reasons were given for that finding. He was present, on his own admission, when appellant 6 made the first telephone call to Ferez Naoum, their agent in Limassol asking him to secure a ship to tow "ARWAD" to Cyprus. Also as stated by Ferez Naoum, appellant 6, made a second call to him on the day prior to the arrival of "ARWAD" to Cyprus to the effect that she was being towed there. Furthermore a new salvage agreement was signed in Limassol and the Assize Court accepted that there was a change of plans as to the port where "ARWAD" was to be towed, but such a change of plans must have occurred on the day prior to the day of arrival of "ARWAD" to Limassol and not at a time when she was a few miles away from Cyprus within its territorial waters. To these reasons we would like to add two more features of the case, the first one is that they accepted free pratique, and that also the master and the crew were issued landing cards and it was afterwards that the narcotics in question were discovered.

Therefore, the principles of Law governing the involuntary entrance of vessels in distress and the extent of immunity of such vessels from local jurisdiction need not be examined as there does not exist the necessary factual foundation that would call for a pronouncement on this issue. Suffice it to say, however, that such immunity is not absolute and it cannot be an immunity from every local Law including that which requires the master to make a true report to the Customs Authorities on his cargo. See *Cushin and Lewis v. R.* [1935] L.R. Ex. C.R. 103.

With regard to the first ground of law, learned counsel has argued that the term "within the territory of the Republic" contained in section 5(1)(a) of the Criminal Code, Cap. 154, as amended, does not include offences committed on a foreign ship by a foreigner within the territorial waters of the Republic and that the trial Court was wrong in interpreting the said provision as extending to such offences. Such interpretation of this statutory provision he said was in clear violation of the rules of construction inasmuch as it was contrary to the presumption that the legislature does not intend to make any change

in the existing law beyond that which is expressly stated in or follows by necessary implication from the language of the statute in question. It was urged that jurisdiction in respect of an offence committed in "a foreign country" which term, as it will be seen, includes a ship registered in such country, is specifically covered by section 5(1)(e) and (3) and section 6 of the Criminal Code which sections should prevail over the provision of para. 5(1)(a) thereof and which sections give jurisdiction for such offences to such Court of competent jurisdiction as the Supreme Court may, subject to the provisions of Article 159 of the Constitution, direct. Under the Common Law, he said—and in that respect reference was made to the case of *Queen v. Keyn* [1876–1877] 2 Ex. D., page 63—"the admiral had no jurisdiction to try offences by foreigners on board foreign ships, whether within or without the limit of three miles from the shore of England; that that and the subsequent statutes only transferred to the Common Law Courts and the Central Criminal Court the jurisdiction formerly possessed by the admiral; and that, therefore, in the absence of statutory enactment, the Central Criminal Court had no power to try such an offence".

Counsel for the appellants in order to add more force to his argument drew the attention of the Court to the Territorial Waters Jurisdiction Act of 1878, which was passed as a result of the decision of the majority of the court in *R. v. Keyn* (supra) and where express provision is made for such purpose. A position which was not followed in Cyprus. In fact section 2 of the said Law and the recital of the act are declaratory of the Law as it was laid down by the minority of the judges in *R. v. Keyn* (supra) and *R. v. Dudley and Stephens* [1884] 14 Q.B. Div. 373.

Another argument advanced against the wide construction, as he alleged that was given by the Assize Court to section 5(1)(a) is that such a construction is contrary to International Law and is not supported by what has come to be known in International Law as the "floating island principle" that is that a foreign ship bearing the national flag of a State, for purposes of jurisdiction is treated as if it were the territory of that State. In support of this latter argument reference has been made to the cases of *Reg. v. James Anderson* [1867–71] 11 Cox's

Cr. C. 198 and *The "Lotus" case* (1927) P.C.I.J. Rep. Ser. A, Nos. 9 & 10.

5 The territorial and extra-territorial application of the Criminal Code and any other Law creating an offence is governed by sections 5 and 6 of the Criminal Code, Cap. 154. Section 5 in so far as relevant to the present proceedings reads as follows:

"Territorial and extra-territorial application.

5.-(1) The Criminal Code and any other Law creating an offence are applicable to all offences committed-

10 (a) within the territory of the Republic; or

(e) in any foreign country by any person if the offence is-

(i) treason or an offence against the security of the Republic or the constitutional order;

(ii) piracy; or

15 (iii) connected with the coin or currency notes of the Republic; or

(iv) related to the unlawful dealing in dangerous drugs; or

20 (v) one to which, under any International Treaty or Convention binding on the Republic, the law of the Republic is applicable.

(2) No criminal proceedings shall be instituted in the Republic in respect of an offence committed in a foreign country if the accused having been tried in such country
25 for such offence was either convicted or acquitted.

(3) For the purposes of this section-

'foreign country' means any country outside the Republic and includes the Sovereign Base Areas and any ship or aircraft registered in such country or Area;

30 'territory of the Republic' includes its territorial waters within twelve miles of the coast of the Republic measured from low water mark and any ship or aircraft registered

in the Republic wherever found, unless under the provisions of international law such ship or aircraft is subject at the time to a foreign law”.

Section 6 reads:

“6.—(1) An offence committed in a foreign country to which the Criminal Code or any other Law of the Republic shall apply under the provisions of section 5 shall be tried by such Court of competent jurisdiction as the Supreme Court may, subject to the provisions of Article 159 of the Constitution, direct. 5 10

(2) For the purposes of this section ‘foreign country’ has the meaning assigned to such expression by sub-section (3) of section 5”.

The aforesaid two statutory provisions introduced by Law No. 3 of 1962 substituted sections 5 and 6 regarding the territorial application of the Criminal Code as in force until then. Section 5 as it was then reads as follows: 15

“Territorial Application.

5. The jurisdiction of the Courts of the Colony for the purposes of this Law extends to every place within the Colony or within three miles of the coast thereof measured from low water mark”. 20

Comparing the wording of this section with the wording of paragraph (a) of section 5(1), one might immediately think that the Criminal Jurisdiction of the Courts of Cyprus extends only over the territory of the Republic and does not extend to offences committed within its territorial waters, particularly so in view of the non-inclusion of the words “or within three miles of the coast thereof measured from low water mark” which existed in section 5 prior to the enactment of the amending Law No. 3 of 1962. The position, however, becomes clear and unquestionable, if paragraph 5(1)(a) is read in conjunction with the provisions of the Territorial Waters Law, 1964, (Law No. 45 of 1964) which defines “territorial waters” as meaning the part of the sea which touches the coast of the Republic which is considered as part of its territory and is subject to the sove- 25 30 35

reignty of the Republic, and also with section 3 of the said Law which extends the territorial waters of the Republic to 12 miles from the coast measured from low water mark. These provisions supplement and extend the meaning of the term "territory of the Republic" to include the territorial waters and no doubt an offence committed therein or on board a ship even if it is a foreign registered ship is an offence committed within the territory of the Republic as defined in section 5 subsection 3 of the Code and section 2 of Law No. 45 of 1964, and consequently the Courts of Cyprus have Criminal Jurisdiction in respect of such offence. The reference in the definition of the "territory of the Republic" in subsection 3 of section 5, to "any ship or aircraft registered in the Republic wherever found", does not take away the jurisdiction of the Court in respect of offences committed within the territory of the Republic. It only extends the jurisdiction of the Court over ships registered in the Republic wherever they are and does not deprive the Courts of Cyprus of their jurisdiction for offences committed on foreign ships within the territorial waters. Moreover the definition of the word "foreign country" in subsection 3 of section 5 which includes "any foreign ship" obviously refers to foreign ships on high seas or elsewhere and not within the territorial waters of Cyprus. It is in that case that these ships are deemed to be a foreign country and in such circumstances that our Courts have limited jurisdiction that covers only the offences referred to in section 7(1)(e) of the Code.

Once therefore there exist irresistible clearness in the aforesaid provisions of the Law, the presumption against alterations in the Common Law has been rebutted and the aforesaid expressed provisions of our Law determine the issue of jurisdiction and any attempt to derive help in this respect from the English Law cannot be helpful.

The aforesaid interpretation of our Law is also in conformity with the principles of International Law. As stated in International Law by Greig 1970 edition, at p. 230,

"Jurisdiction

The problems that arise once a foreign ship enters the internal waters of a state stem from the fact that it is poten-

tially subject to two jurisdictions. It remains subject to the jurisdiction of the state of the flag of which it is flying; but, unless it is a warship or other public ship operated for a non-commercial purpose, it also comes under the territorial jurisdiction of the coastal state. 5

In criminal cases

Unless the vessel is a public ship and entitled to immunity according to the laws of the coastal state, a crime committed on board a foreign ship in port is subject to the jurisdiction both of the local courts and of the courts of the flag state..... 10

In the *Eisler case*, (1949), 26 B.Y.B.I.L. 468, British police boarded a Polish vessel at anchor in internal waters off Southampton to arrest Eisler on a warrant pending the hearing of a request for his extradition by the United States Government. In reply to a protest by the Polish Government that a state's jurisdiction over territorial and internal waters did not entitle it to arrest persons on board a foreign vessel for the purpose of extradition to a third state, the British Government argued that the Polish claim was tantamount to a right of asylum on board a merchant ship, a right 'quite contrary to the practice of States' which had been rejected on previous occasions by the Polish Government itself. 'The absence of any right to grant asylum on board merchant ship sprang', the reply continued, 'from a universally recognised principle of international law that a merchant ship in the ports or roadsteads of another country falls under the jurisdiction of the coastal state.' '' 15 20 25

No doubt a ship by entering the internal waters of a foreign state brings itself within the territorial jurisdiction of that state and becomes subject to the operation of its laws and within the competence of its courts. 30

We therefore agree with the approach of the Assize Court that it had jurisdiction to try this case and that there arose no need to invoke the provisions of section 6(1) of the Code, earlier set out in this judgment, whereby certain offences have to be tried by such Court of competent jurisdiction as the Supreme Court may, subject to the provisions of Article 159 of the Constitution, direct. 35

With regard to the second ground argued in this appeal that as the appellants never intended to come to Cyprus and or that their arrival in Cyprus was only temporary in order to have their engine repaired and then proceed abroad, sections 5 19-23 which come in part V of the Law under the heading "controlled drugs in transit" were applicable in this particular case and not sections 5 and 6, on which they were charged and convicted. The significance of this argument is that offences coming within the ambit of sections 5 and 6 carry more serious sentences.

The Assize Court rejected this submission on the ground that the provisions of sections 19-23 of the Law do not rule out the possibility of prosecution under sections 5 and 6 thereof. Section 19 of the Law empowers the comptroller of customs to 15 confiscate or detain controlled drugs in transit in respect of which he has reasons to believe that a permit or certificate in respect of them is either false or obtained by fraud or otherwise.

Section 20 prohibits the removal of controlled drugs from 20 the means of conveyance by which they were brought into the Republic in transit or the transportation of such controlled drugs in the Republic without a transport permit. Section 21 prohibits the interference with controlled drugs and section 22, the change of the destination of controlled drugs in transit 25 without a permit from the appropriate Minister, and section 23 gives the definition for terms used in this part of the Law.

There is nothing in the aforesaid statutory provisions that precludes a prosecution under sections 5 and 6 thereof once the facts of the case support such charges and we know 30 of no general principle of Law impeding the prosecution from preferring the more serious charges wherever the same facts constitute also specific lesser offences. On the contrary it is usual to prefer charges in the alternative for offences of the same gravity or for offences of lesser gravity and in our view 35 there must be compelling reasons to justify the nonpreferment of the more serious charges which the facts of a case establish. This ground therefore also fails.

For all the above reasons all these appeals against conviction which have been heard together are hereby dismissed. We

dismiss also the appeals against sentence which in any event have not been pursued by the appellants before us.

Appeals dismissed.