1984 June 25

[TRIANTAFYLLIDES, P., A. LOIZOU, DEMETRIADES, LORIS, STYLIANIDES, PIKIS, JJ.]

DEMETRAKIS LOUCA AND ANOTHER,

Accused.

v.

THE REPUBLIC.

(*Question of Law Reserved No.* 199).

Statutes—Repeal by implication—Principles applicable—Sections 100 (*a*) *and* (*b*), 331, 333, 334, 335 *and* 337 *of the Criminal Code, Cap.* 154 *have not been repealed by sections* 9, 188 *and* 189 *of the Customs and Excise Law,* 1967 (*Law* 82/67)—*And assuming that the offences created by the above laws coincide they coexist as "duplicated offences"—Section* 37 *of the Interpretation Law, Cap.* 1 *and section* 2(*a*) *of the Criminal Code, Cap.* 154.

Criminal Law—Duplicated offences—No principle of law impeding prosecution from preferring more serious charges wherever the same facts constitute, also, specific lesser offences—Sections 100(*a*) *and* (*b*), 331, 333, 334, 335 *and* 337 *of the Criminal Code, Cap.* 154 *have not been repealed by sections* 188 *and* 189 *of the Customs and Excise Law,* 1967 (*Law* 82/67)—*Assuming that the offences created by the above laws coincide they coexist as "duplicated offences"—Perfectly legitimate for prosecutor to charge the accused with offences contrary to the relevant provisions of Cap.* 154—*Section* 37 *of the Interpretation Law, Cap.* 1 *and section* 2(*a*) *of the Criminal Code, Cap.* 154.

By means of nineteen counts in the information the two accused were charged, separately and jointly, with the commission of offences of forging and uttering official and other documents and of offences of official corruption and conspiracy to commit a felony, all of them contrary to the relevant provisions* of the Criminal Code, Cap. 154. In the course of the trial the Assize

* The relevant provisions are quoted at pp. 392-394 post.

Court reserved for the opinion of the Supreme Court, under section 148 of the Criminal Procedure Law, Cap. 155, the following three questions of Law:

"(1) Whether the provisions of sections 188 and 189 of the Customs and Excise Law 1967* (Law 82/67 supersede the provisions regarding forgery in the Criminal Code, Cap. 154, in sections 331, 333, 334, 335 and 337 in relation to forgery of customs forms and/or documents.

(2) Whether the provisions of section 9 of the Customs and Excise Law 1967 (Law 82/67) supersede the provisions regarding official corruption in the Criminal Code, Cap. 154 in sections 100(a) and 100(b) in relation to corruption of a customs officer.

(3) Whether in view of the existence of sections 9, 176, 188 and 189 of Law 82/67, there was permitted the framing of the information in its present form".

Held, unanimously, that the first two of these questions of law should be answered in the negative and that the third one should be answered in the affirmative:

Per Triantafyllides, P. in his concurring judgment, Demetriades, Loris and Stylianides, JJ. concurring, that one provision repeals another by implication if, but only if, it is so inconsistent with or repugnant to that other that the two are incapable of standing together; that even assuming that the offences created by the sections in question of Law 82/67 coincide with offences created by Cap. 154, none of the provisions concerned of Cap. 154 has been repealed by implication or has, in any way, been abrogated or superseded by means of the aforesaid sections of Law 82/67; and that, consequently, all the relevant offences created by Cap. 154 and Law 82/67, respectively, coexist as "duplicated" offences" and, depending on the circumstances of each case, it may be decided to prosecute in respect of any one of them (see s.37 of the Interpretation Law, Cap. 1 which is applicable in the present case); that, therefore, it was perfectly legitimate for the prosecution to decide in the present case to charge the two accused with the offences contrary to the relevant provisions

* The relevant provisions of the Customs and Excise Law, 1967 are quoted at pp. 394–397 post.

of Cap. 154, which are set out in the information (see section 178 of Law 82/67 which empowers the Director of the Department of Customs and Excise to compound any offence committed contrary to sections 188 and 189 of Law 82/67; and *Yollness* v. *Republic* (1982) 2 C.L.R. 46 where it was held that there is no general principle of law impeding the prosecution from preferring more serious charges whenever the same facts constitute, also, specific lesser offences).

Per A. Loizou J. in his concurring judgment:

(1) That on the basis of section 2(a) of the Criminal Code and section 37 of the Interpretation Law, Cap. 1 and as no contrary intention appears in any of the relevant enactments there does not exist a principle of Law preventing the prosecution to elect and seek punishment under any of those Laws under which the act or omission of the accused constitutes an offence. Furthermore, the principle of implied repeal or abrogation could not be favourably viewed by Courts, particularly so in the case of modern enactments where the later ones contain a list of earlier enactments which are expressly repealed and where an omission of a particular statute from such list would be a strong indication of an intention not to repeal that enactment (see, also, *Yiollness* v. *Republic* (1982) 2 C.L.R. 46).

(2) That this Court has repeatedly and consistently stressed that the procedure under section 148(1) of Cap. 155 should be sparingly invoked and the Courts in the instances where they have a discretion thereunder should not readily exercise same in favour of reserving Questions of Law applied for on behalf of an accused person (see *Police* v. *Ekdotiki Etcria* (1982) 2 C.L.R. at pp. 81–84 and the *Republic* v. *Sampson* (1972) 2 C.L.R. 1 at pp. 71–72).

Per Stylianides J. in his concurring judgment:

The Customs and Excise Law, 1967 (Law 82/67) as well as other specific laws likewise create parallel duplicated offences to those of the Criminal Code, Cap. 154. These specific laws, when not inconsistent or repugnant to the provisions of the Criminal Code, do not impliedly repeal the Code and definitely leave a discretion to the Attorney-General, according to the particular circumstances of each case, to initiate prosecution either under the Criminal Code or under the specific law.

Per Pikis, J. in his concurring judgment:

(1) Section 2(a) of the Criminal Code predicates by way of introduction to the Criminal Code that criminal liability under Cap. 154 leaves unaffected liability under any other law in force in the country. It is hard to contemplate a clearer expression of legislative intention that duplication of an offence in any form by any other law leaves liability, under the Criminal Code, unaffected. It is a strong provision against repeal by implication. Section 2(a) reproduces, in effect, the principle of English law that common law offences are not abolished or repealed by duplicating or coining them as statutory offences (see, *Maxwell on Interpretation of Statutes*, 12th ed., p. 195, and cases discussed therein and s.37 of the Interpretation Law, Cap. 1).

(2) Courts lean against repeal by implication, unless it is an unavoidable inference. In the case of offences under the Criminal Code, there is hardly any room ever for implying a repeal in face of the plain provisions of s.2(a)—Cap. 154. Consequently, even if we were to assume that sections 189 and 9 of Law 82/67, respectively, duplicated the offences of forgery and official corruption under the Criminal Code, the duplication left unaffected liability to prosecution under the Criminal Code and the questions asked must be answered accordingly.

However, I must not be taken as subscribing to the correctness of the assumption made above. For, in my view, the offences created by sections 189 and 9 of Law 82/67 are not identical to those of forgery and official corruption under the Criminal Code. Even if I were to assume that the word "forgery" (πλαστογραφία) is used as a term of art and imports the definition of "forgery" at common law, I would still be bound to notice differences between the two offences affecting their ingredients.

(3) Similarly, I am of the opinion that s.9 of Law 82/67 does not duplicate the offence under s.100(b) of the Criminal Code. In an agreement with the Assize Court, I notice that the element of "corruptly", a separate ingredient of the offence under s. 100(b) is not encountered in s.9.

Order accordingly.

Cases referred to:

Attorney-General v. *Pouris* (1979) 2 C.L.R. 15;

Yiollness v. *Republic* (1982) 2 C.L.R. 46 at p. 61;

Police v. *Ekdotiki Eteria* (1982) 2 C.L.R. 63 at pp. 81-84;

Republic v. *Sampson* (1972) 2 C.L.R. 1 at pp. 71-72;

Cutner v. *Phillips* [1891] 2 Q.B. 267 at p. 272.

Questions of Law Reserved.

Questions of law reserved by the Assize Court of Larnaca (Papadopoulos, P.D.C., Constantinides, S.D.J. and Arestis, D.J.) for the opinion of the Supreme Court under section 148 of the Criminal Procedure Law, Cap. 155 relative to a ruling of the said Assize Court made before the accused were charged in Criminal Case No. 3918/84 with the commission of offences of forging and uttering official documents, official corruption and conspiracy to commit a felony in contravention of sections 100, 331, 333-335 and 337 of the Criminal Code, Cap. 154 and sections 9, 176, 188 and 189 of the Customs and Excise Law, 1967 (Law No. 82/67).

G. Cacoyiannis with *N. Cleanthous*, for accused 1.

E. Efstathiou with *G. Savvides* and *Chr. Vassiliades*, for accused 2.

M. Kyprianou, Senior Counsel of the Republic with *L. Kourshoumba* (*Mrs.*) for the Republic.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment. On the 5th June 1984 an Assize Court in Larnaca, while hearing criminal case No. 3918/84, reserved for the opinion of the Supreme Court, under section 148 of the Criminal Procedure Law Cap. 155, the following three questions of law:

"(1) Κατά πόσο οι διατάξεις των άρθρων 188 και 189 του Περί Τελωνείων και Φόρων Καταναλώσεως Νόμου του 1967 (Νόμος 82/67) υπερισχύουν των Περί Πλαστογραφίας Διατάξεων του Ποινικού Κώδικα, Κεφ. 154, άρθρα 331, 333, 334, 335 και 337, προκειμένου περί πλαστογραφίας τελωνειακών εντύπων και ή εγγράφων.

(2) Κατά πόσο οι διατάξεις του άρθρου 9 του Περί Τελωνείων και Φόρων Καταναλώσεως Νόμου του 1967 (Νόμος 82/67)

υπερισχύουν των Περί Δεκασμού Δημοσίου Λειτουργού Διατάξεων του Ποινικού Κώδικα, Κεφ. 154, άρθρα 100(α) και 100(β) προκειμένου περί δωροδοκίας τελωνειακού λειτουργού.

(3) Δεδομένης της ύπαρξης των άρθρων 9, 176, 188 και 189 του Νόμου 82/67 επιτρέπετο η διατύπωση του κατηγορητηρίου υπό την παρούσα μορφή".

("(1) Whether the provisions of sections 188 and 189 of the Customs and Excise Law, 1967 (Law 82/67) supersede the provisions regarding forgery in the Criminal Code, Cap. 154, in sections 331, 333, 334, 335 and 337 in relation to forgery of customs forms and/or documents.

(2) Whether the provisions of section 9 of the Customs and Excise Law 1967 (Law 82/67) supersede the provisions regarding official corruption in the Criminal Code, Cap. 154 in sections 100(a) and 100(b) in relation to corruption of a customs officer.

(3) Whether in view of the existence of sections 9, 176, 188 and 189 of Law 82/67, there was permitted the framing of the information in its present form").

We are unanimously of the opinion that the first two of these questions of law should be answered in the negative and that the third one of them should be answered in the affirmative, even though we have not reached such opinion all of us for exactly the same reasons.

TRIANTAFYLLIDES P. I shall give in this judgment my own reasons for sharing the unanimous opinion of the Supreme Court regarding the answers which it has just given today to three questions of law reserved by an Assize Court in Larnaca in relation to criminal case No. 3918/84.

By means of the nineteen counts in the information the two accused in that case were charged, separately and jointly, with the commission of offences of forging and uttering official and other documents and of offences of official corruption and conspiracy to commit a felony, all of them contrary to the relevant provisions of the Criminal Code, Cap. 154.

It is useful to quote first the relevant provisions of Cap. 154

and of the Customs and Excise Law, 1967 (Law 82/67), which were referred to in connection with the aforesaid questions of law:

Sections 100, 331, 333, 334, 335 and 337 of Cap. 154 read as follows:

Official corruption.

"100. Any person who—

(a) being employed in the public service, and being charged with the performance of any duty by virtue of such employment corruptly asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office; or

(b) corruptly gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for any person employed in the public service, or to, upon, or for any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed,

is guilty of a misdemeanour, and is liable to imprisonment for three years, and also to a fine.

Definition of forgery.

331. Forgery is the making of a false document with intent to defraud.

Making a false document.

333. Any person makes a false document who–

(a) makes a document purporting to be what in fact it is not;

(b) alters a document without authority in such a manner that if the alteration had been authorised it would have altered the effect of the document;

(c) introduces into a document without authority whilst it is being drawn up matter which if it had been authorised would have altered the effect of the document;

(d) signs a document—

(i) in the name of any person without his authority whether such name is or is not the same as that of the person signing;

(ii) in the name of any fictitious person alleged to exist whether the fictitious person is or is not alleged to be of the same name as the person signing;

(iii) in the name represented as being the name of a different person from that of the person signing it and intended to be mistaken for the name of that person;

(iv) in the name of a person personated by the person signing the document provided that the effect of the instrument depends upon the identity between the person signing the document and the person whom he professes to be.

Intent to defraud.

334. An intent to defraud is presumed to exist if it appears that at the time when the false document was made there was in existence a specific person ascertained or unascertained capable of being defrauded thereby and this presumption is not rebutted by proof that the offender took or intended to take measures to prevent such person from being defrauded in fact; nor by the fact that he had or thought he had a right to the thing to be obtained by the false document.

General punishment for forgery.

335. Any person who forges any document is guilty of an offence which, unless otherwise stated, is a felony and he is liable, unless,

owing to the circumstances of the forgery or the nature of the thing forged, some other punishment is provided, to imprisonment for three years.

Imprisonment for ten years.

337. Any person who forges any judicial or official document shall be liable to imprisonment for ten years".

Sections 9, 176, 188 and 189 of Law 82/67 read as follows:

Bribery and collusion

"9.-(1) If any Director or officer or any person appointed or authorised by the Director to discharge any duty relating to an assigned matter—

(a) directly or indirectly asks for or takes in connection with any of his duties any payment or other reward whatsoever, whether pecuniary or otherwise, or any promise or security for any such payment or reward, not being a payment or reward which he is lawfully entitled to claim or receive; or

(b) enters into or acquiesces in any agreement to do, abstain from doing, permit, conceal or connive at any act or thing whereby the Republic is or may be defrauded or which is otherwise unlawful, being an act or thing relating to an assigned matter,

he shall be guilty of an offence under this section.

(2) If any person—

(a) directly or indirectly offers or gives to the Director or any officer or to any person appointed or authorised by the Director as aforesaid any payment or other reward whatsoever, whether pecuniary or otherwise, or any promise or security for any such payment or reward; or

(b) proposes or enters into any agreement with

the Director, officer or person appointed or authorised as aforesaid,

in order to induce him to do, abstain from doing, permit, conceal or connive at any act or thing whereby the Republic is or may be defrauded or which is otherwise unlawful, being an act or thing relating to an assigned matter, or otherwise to take any course contrary to his duty, he shall be guilty of an offence under this section.

(3) Any person committing an offence under this section shall be liable to a fine not exceeding five hundred pounds.

Customs prosecutions.

176.-(1) Prosecutions for offences against this Law, and proceedings for the recovery of Customs duties or penalties, or for the condemnation or forfeiture of vessels or other means of conveyance or goods are herein referred to as "Customs prosecutions" and are made subject to any direction of the Attorney-General of the Republic.

(2) Customs prosecutions may be instituted in the name of the Director in any Court. In the case of an appeal where the decision appealed against relates to any customs duty or fine leviable against any vessel, or means of conveyance or goods, the appellant shall, pending the appeal, deposit in Court the amount payable under the decision appealed against unless the Court of appeal otherwise directs.

(3) Customs prosecutions may be instituted at any time within three years next after the date when the offence was or appears to have been committed.

(4) No witness on behalf of the Director in any Customs prosecution shall be compelled to disclose the fact that he recevied any information or the nature thereof or the name of the person who gave such information.

Untrue declarations etc.

188.-(1) If any person—

(a) makes or signs, or causes to be made or signed, or delivers or causes to be delivered to the Director or an officer, any declaration, notice, certificate or other document whatsoever; or

(b) makes any statement in answer to any question put to him by an officer which he is required by or under any enactment to answer,

being a document or statement produced or made for any purpose of any assigned matter which is untrue in any material particular, he shall be guilty of an offence under this section.

(2) Where by reason of any such document or statement as aforesaid the full amount of any duty payable is not paid or any overpayment is made in respect of any drawback, rebate or repayment of duty, the amount of the duty unpaid or of the overpayment shall be recoverable as a debt to the Republic or may be recovered as a civil debt.

(3) Without prejudice to the last foregoing subsection, where any person who contravenes the provisions of this section does so either knowingly or recklessly, he shall be guilty of an offence and be liable to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding two years or to both; and any goods in relation to which the document or statement was made shall be liable to forfeiture.

(4) Without prejudice to sub-section (2) of this section, where any person contravenes the provisions of this section in such circumstances that he is not liable under the last foregoing sub-section, he shall be guilty of an offence

and be liable to a fine not exceeding three hundred pounds.

Counterfeiting documents etc.

189. If any person—

(a) counterfeits or falsifies any document which is required by or under any enactment relating to an assigned matter or which is used in the transaction of any business relating to an assigned matter; or

(b) knowingly accepts, receives or uses any such document so counterfeited or falsified; or

(c) alters any such document after it is officially issued; or

(d) counterfeits any seal, signature, initials or other mark of, or used by, any officer for the verification of such a document or for the security of goods or for any other purpose relating to an assigned matter,

he shall be guilty of an offence and be liable to a fine not exceeding five hundred pounds, or to imprisonment not exceeding two years, or to both".

It has been argued by counsel for the accused that the provisions of the aforequoted sections of Cap. 154 and, in particular, of sections 100 and 337 thereof, have been impliedly repealed or abrogated in so far as are concerned the offences to which sections 9, 188 and 189 of Law 82/67 relate.

In the case of *The Attorney-General* v. *Pouris*, (1979) 2 C.L.R. 15, extensive reference was made to the notion of implied repeal of an earlier statute by a subsequent one (at p. 94 et seq.) and it is not necessary to repeat in this judgment everything which there was stated in this respect then.

It is useful, however, to quote paragraphs 966, 967 and 969 in Halsbury's Laws of England, 4th ed., vol. 44, pp. 607, 608, 610:

"966. *General principles.* Repeal by implication is not

favoured by the Courts, for it is to be presumed that Parliament would not intend to effect so important a matter as the repeal of a law without expressing its intention to do so. However, if provisions are enacted which cannot be reconciled with those of an existing statute, the only inference possible is that, unless it failed to address its mind to the question, Parliament intended that the provisions of the existing statute should cease to have effect, and an intention so evinced is as effective as one expressed in terms.

The rule is, therefore, that one provision repeals another by implication if, but only if, it is so inconsistent with or repugnant to that other that the two are incapable of standing together. If it is reasonably possible so to construe the provisions as to give effect to both, that must be done, and their reconciliation must in particular be attempted if the later statute provides for its construction as one with the earlier, thereby indicating that Parliament regarded them as compatible, or if the repeals expressly effected by the later statute are so detailed that failure to include the earlier provision among them must be regarded as such an indication.

967. *Affirmative enactments.* The repeal of one enactment by another is particularly difficult to imply where both are framed in the affirmative. Similar difficulties arise where the purpose of each is to subtract from an existing rule so that the statutes are negative in form but are to be treated among themselves as affirmative. This does not, however, mean that the relationship between affirmative, or quasi-affirmative, enactments is governed by some particularly stringent rule. The position is rather that, whereas the complete repugnance between two enactments which is necessary in all cases to found an implied repeal may exist in other cases merely by virtue of the terms in which the enactments are framed, and without their being actually irreconcilable in matter, it can as between affirmative, or quasi-affirmative, enactments derive from their matter alone. In other words, it is only if the irreconcilability of their matter is such as necessarily to import a negative that one such enactment will be held to have repealed another by implication.

969. *Repeal of general enactment by particular enactments.* To the extent that the continued application of a general enactment to a particular case is inconsistent with special provision subsequently made as respects that case, the general enactment is overridden by the particular, the effect of the special provision being to exempt the case in question from the operation of the general enactment or, in other words, to repeal the general enactment in relation to that case.

.....".

Having perused carefully the provisions of the relevant sections of Cap. 154 and of Law 82/67 I have reached the conclusion, in the light of the principles to which reference has been made in this judgment, that, even assuming that the offences created by the sections in question of Law 82/67 coincide with offences created by Cap. 154, none of the provisions concerned of Cap. 154 has been repealed by implication or has, in any way, been abrogated or superseded by means of the aforesaid sections of Law 82/67; and, consequently, all the relevant offences created by Cap. 154 and Law 82/67, respectively, coexist as "duplicated offences" and, depending on the circumstances of each case, it may be decided to prosecute in respect of any one of them.

Thus, in the present case there is applicable section 37 of the Interpretation Law, Cap. 1, which reads as follows:

"37. Where an act or omission constitutes an offence under two or more Laws, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Laws, but shall not be liable to be punished twice for the same offence".

Section 37, above, corresponds to section 33 of the Interpretation Act 1889, in England, which has been replaced by section 18 of the Interpretation Act 1978; and the said section 18, which is substantially the same as the aforesaid earlier section 33, reads as follows (see Halsbury's Statutes of England, 3rd ed., vol. 32, p. 455 and vol. 48, p. 1307):

"18. *Duplicated offences*

"Where an act or omission constitutes an offence under two or more Acts, or both under an Act and at common

law, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished more than once for the same offence".

It was, therefore, perfectly legitimate for the prosecution to decide in the present case to charge the two accused with the offences contrary to the relevant provisions of Cap. 154, which are set out in the information.

I am strengthened in my above view by the fact that section 178 of Law 82/67 empowers the Director of the Department of Customs and Excise to compound any offence committed contrary to sections 188 and 189 of Law 82/67; and it would, indeed, be unthinkable to find that the Legislature intended that serious cases of forging and uttering official customs documents can only be prosecuted as offences committed contrary to sections 188 and 189 of Law 82/67, which can be compounded under the said section 178 of such Law, and that they cannot be prosecuted, also, under the relevant provisions of Cap. 154.

Before concluding I would like to point out that in *Yollness* v. *The Republic*, (1982) 2 C.L.R. 46, it has been held (at p. 61) that there is no general principle of law impeding the prosecution from preferring more serious charges whenever the same facts constitute, also, specific lesser offences.

For all the foregoing reasons I share with all my other learned brother Judges the opinion that the questions of law reserved should be answered in the negative in so far as the first two of them are concerned and in the affirmative in so far as the third one is concerned.

This case is now to be remitted to the Assize Court for further proceedings in the light of the unanimous opinion of this Court on the aforesaid questions of law.

A. Loizou J.: I had no difficulty in reaching with my brethren the unanimous answers that have been given to the three questions reserved by the Assize Court of Larnaca for the opinion of this Court under section 148 of the Criminal Procedure Law, Cap. 155.

Counsel for the accused has relied solely on the principle of implied repeal or abrogation of an earlier Statute by a sub-

sequent one in arguing that the offences created by sections 9, 188 and 189, of the Customs and and Excise Law, 1967 (Law No. 82 of 1967), have repealed or abrogated sections 100(a) and 100(b) and sections 331, 333, 334, 335, 337 of the Criminal Code, Cap. 154.

The various, relevant to the case in hand, statutory provisions as well as a very pertinent passage from Halsbury's Laws of England 4th Edition Volume 44, pp. 607, 608, 610, have been quoted by the learned President in his judgment, who also referred to what he had said as regards the notion of implied repeal or abrogation in his dissenting judgment in the case of the *Attorney-General* v. *Pouris* (1979) 2 C.L.R. 15, at p. 94 et seq., and this renders unnecessary for me their repetition.

What I feel I should point out is section 2 of the Criminal Code, which in so far as relevant provides that:

"Nothing in this Law shall affect—

(a) the liability, trial or punishment of a person for an offence against any Law in force in the Republic other than this Law; or

.....

Provided that if a person does an act which is punishable under this Law and is also punishable under another Law of any of the kinds mentioned in this section, he shall not be punished for that act both under that Law and also under this Law".

This is a provision that shows clearly that there may be duplication of offences and the prosecutor may elect in respect of which offence an accused person will be prosecuted, where the same set of facts may constitute offences under different Laws and in particular offences under a special Law, and offences created by the Code. The only limitation placed by the Code in respect of this situation is to be found in the proviso hereinabove set out that if the act of a person is punishable, both under the Code and under another Law, such person should not be punished for that act, both under that other Law and also under the Code.

This brings me to section 37 of the Interpretation Law, Cap. 1 which reads as follows:

"Where an act or omission constitutes an offence under two or more Laws, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Laws, but shall not be liable to be punished twice for the same offence".

This section corresponds to section 33 of the English Interpretation Act of 1889, which now has been replaced by section 18 of the Interpretation Act of 1978 which under the heading Duplicated Offences reads:

"Where an act or omission constitutes an offence under two or more Acts, or both under an Act and at common law, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under or any of those Acts or at common law, but shall not be liable to be punished more than once for the same offence".

It should be observed that both in the Interpretation Act and in section 2(a) of the Code and the proviso thereto, the liability to prosecution and punishment under two Statutes is possible subject to the limitation that such a person should not be punished more than once for the same offence. Moreover it should be noticed that in section 18 of the English Act, reference is made not only to the possibility of prosecution under the various Acts under which an act or omission constitutes an offence but also to the Common Law, if an act or omission constitutes an offence thereunder. In this respect we should not lose sight of the fact that the Criminal Code, though as such a Law, which in section 2 of Cap. 1 is defined as meaning any enactment by the competent legislative Authority of the Colony—now the Republic—is in substance the General Criminal Law of the Land and stands for all intends and purposes as the English Common Law. It was an effort to codify the English Common Law and was modelled on Criminal Codes enacted for British colonial territories. It took cognizance of the fact that there are shortcomings natural and unavoidable in any attempt at codifying Case Law and for that purpose by section 3 thereof its interpretation was to be in accordance with the principles of legal interpretation obtaining in England and expressions used therein were and still are to be presumed so far as it is consistent with their context, and

except as may be otherwise expressly provided, to be used with the meaning attaching to them in English Criminal Law can be construed in accordance therewith. This opened the door to a concurrent reception of the English Common Law.

This historical retrospect would not be complete if no mention was made to the objections raised at the time to its introduction, obviously on account of those provisions which were included in it, and which were thought by the drafters essential for the administration of a colonial territory, but that is another matter.

This brings me to the principle where a Statute in England prescribes a special remedy or penalty for an offence which is already an offence at Common Law, the remedy at Common Law is not taken away except by express negative words.

Reference in this respect may be made to *Archbold Criminal Pleading Evidence and Practice* 41st Edition paragraph 1-8 at p. 3:

> "Where a statute prescribes a new penalty or remedy for an offence which is already an offence at common law the remedy at common law is not taken away except by express negative words (e.g. 'and not otherwise', *Crofton's case* (1670) 1 Mod. Rep. 34) and the prosecutor has the option of proceeding either by indictment at common law or by the mode specified by the statute; *R.* v. *Richard Carlile* (1819) 3 B. & Ald. 161; and see *Maxwell on Statutes*, 12th ed., p. 95".

In regard, however, to sec. 18 of the Interpretation Act, it was said in *Archbold* (supra) same page that:

> "If a later statute describes an offence created by a former statute, and affixes to it a different punishment, varying the procedure, and giving an appeal where there was no appeal before, the prosecutor must proceed for the offence under the later statute. *Michell* v. *Brown* (1858) 1 E.& E. 267".

As regards repeal by implication it should be pointed out

by reference to the cases summed up in *Maxwell on Interpretation of Statutes*, 12th edition, p. 191 that

> "A later statute may repeal an earlier one either expressly or by implication. But repeal by implication is not favoured by the Courts. 'Forasmuch', said Coke, 'as Acts of Parliaments are established with such gravity, wisdom and universal consent of the whole realm, for the advancement of the commonwealth, they ought not by any constrained construction out of the general and ambiguous words of a subsequent Act, to be abrogated'. If, therefore, earlier and later statutes can reasonably be construed in such a way that both can be given effect to, this must be done. If, as with all modern statutes, the later Act contains a list of earlier enactments which it expressly repeals, an omission of a particular statute from the list will be a strong indication of an intention not to repeal that statute. And when the later Act is worded in purely affirmative language, without any negative expressed or implied, it becomes even less likely that it was intended to repeal the earlier law".

Emphasis should be stressed on the fact that in the Customs and Excise Law, 1967, express reference is made to the previous Laws that were repealed by it in its third Schedule and under section 196 which provides;

> "196.-(1) The enactments set out in the Third Schedule to this Law, being enactments relating to matters with respect to which provision is made in this Law or is authorised by this Law to be made by regulations, directions or conditions made, given or imposed thereunder, are hereby repealed to the extent specified in the third column of that Schedule.
>
> (2) Where a provision of any Law has been substituted for a provision of any other Law and that other Law is repealed by virtue of this section the repeal shall not extend to the first mentioned provision unless that provision is itself expressly repealed".

Needless also to say that this Law was a Law to consolidate, extend and amend certain enactments relating to Customs and Excise some of which pre-existed the enactment of the Criminal Code.

Furthermore in the case of *Yiollness* v. *Republic* (1982) 2 C.L.R. p. 46, the question arose whether the appellant in that case should hav been prosecuted on lesser offences prescribed in the Narcotic Drugs and Psychodropic Substances Law, 1977 Law No. 29 of 1977 to preclude a prosecution under another section (sections 5 and 6) which carried more serious sentences. That there is no general principle of Law impeding the prosecution from preferring more serious charges whenever the same acts constitute also specific lesser offences.

In support of the arguments advanced regarding the implied repeal or abrogation of the offences of forgery created by the Code by the specific lesser offences created by the Customs and Excise Law, counsel for the accused has invoked the expression "unless otherwise stated", to be found in section 335 of the Code as introducing the implied repeal of the offences under the Code, and as indicative of the intention of the legislature to have the offences created by the Code superseded by other created by the Customs and Excise Law, 1967.

Section 335 which provides the general punishment for forgery reads:

> "Any person who forges any document is guilty of an offence which, unless otherwise stated, is a felony and he is liable, unless, owing to the circumstances of the forgery or the nature of the thing forged, some other punishment is provided, to imprisonment for three years".

This section is in that part of the Code headed "Punishment for Forgery" and is followed by several other sections coming under that heading. The expression unless otherwise stated cannot but refer to what is stated in the Code itself and not in any other Law in which case the said expression would be followed by such expressions as "any Law in force in the

Republic" or "any other Law" etc., as it was clearly done whenever that was the intention of the legislator and in that respect, we find this in sections 2 and 4 of the Law etc. The said expression, therefore, which is clear in itself does not help at all the arguments advanced on behalf of the accused.

Before concluding, however, I would like to point out that this Court has repeatedly and consistently stressed that the procedure under section 148(1) of Cap. 155 should be sparingly invoked and the Courts in the instances where they have a discretion thereunder should not readily exercise same in favour of reserving Questions of Law applied for on behalf of an accused person. The position in this respect was reviewed by Triantafyllides P., in the case of *Police* v. *Ekdodiki Eteria* (1982) 2 C.L.R. 63 at pp. 81–84. I feel, however, that I should cite here what I said in the case of the *Republic* v. *Sampson* (1972) 2 C.L.R. 1 at pp. 71–72 in relation to the proper application of section 148(1) of Cap. 155, cited also with approval in *Ekdodiki* (supra):–

> "The use of the word 'may' in this context signifies the existence of a discretion in such instance ..... Such discretion, however, should be exercised judicially and though as it was pointed out in the case of *Charalambous* (supra) an application should not be refused merely for the sake of avoiding an interruption of the trial, yet, undue interruptions are not conducive to the good administration of criminal justice. Furthermore, the notion of shortening proceedings by securing in advance a statement of the law by the Court that has the final word in the matter, cannot solely be the reason for exercising a Court's discretion in favour of reserving a question of law. It is a discretion to be exercised, when an application at the instance of the defence is made only for the sake of doing justice in a case and particularly for the sake of saving an accused person from embarrassment in the conduct of his defence and from the likelihood of the detrimental consequences which a ruling given against an accused may bring. If anything, it would only be proper that such a question should be reserved after the ruling of a trial

Court is given, so that its reasoning, if persuasive enough, may render unnecessary an application for such a reservation or reveal their thinking in case they eventually refuse to reserve. It is in the province of trial Courts to determine points of law, whether novel or not, together with the determination of the factual issues that arise in the course of a criminal trial and if reservations of law are made for the opinion of the Supreme Court without the trial Court's pronouncement on the issues raised, the impression may be formed that for legal points trial Courts should seek in advance, the assistance of this Court. This is not the purpose of section 148 of the Criminal Procedure Law, the appellate jurisdiction of the Supreme Court being primarily to review the rulings and judgments for which complaint is made by way of appeal or other procedural means".

In the light of the above I have come to the conclusion that on the basis of section 2(a) of the Code and section 37 of the Interpretation Law, Cap. 1 and as no contrary intention appears in any of the relevant enactments there does not exist a principle of Law preventing the prosecution to elect and seek punishment under any of those Laws under which the act or omission of the accused constitutes an offence. Furthermore, the principle of implied repeal or abrogation could not be favourably viewed by Courts, particularly so in the case of modern enactments where the later ones contain a list of earlier enactments which are expressly repealed and where an omission of a particular statute from such list would be a strong indication of an intention not to repeal that enactment. Also when a later enactment is worded in purely affirmative language.

It is for the above reasons that I have agreed to the answers given by this Court in this case.

DEMETRIADES J.: I agree with the judgment of the President of the Court.

LORIS J.: I fully agree with the judgment delivered by the President of the Court.

STYLIANIDES J.: I agree with the reasons given by the learned President of this Court.

The Customs and Excise Law, 1967 (Law 82/67) as well as other specific laws likewise create parallel duplicated offences to those of the Criminal Code, Cap. 154. These specific laws, when not inconsistent or repugnant to the provisions of the Criminal Code, do not impliedly repeal the Code and definitely leave a discretion to the Attorney-General, according to the particular circumstances of each case, to initiate prosecution either under the Criminal Code or under the specific law.

PIKIS J.: Accused were charged on information with forgery, utterance of forged documents and bribery by a public officer, contrary to the relevant provisions of the Criminal Code. Before arraignment, counsel for the accused asked the Court to set aside the information on the ground, as I perceive the effect of their submission, that the particulars of the offence, because of the nature of the documents allegedly forged and the capacity of the accused as customs employees, did not disclose the offences set out in the information. Their submission before the Assize Court, repeated before us, was that the provisions of the Criminal Code defining "forgery" and related offences set out in Part VIII of the Criminal Code, and those of s.100 defining official corruption, became inapplicable to acts of forgery of customs documents and the bribery of customs employees, because of their repeal necessarily to be implied from the enactment of the Customs and Excise Law—82/67.

The Assize Court dismissed the submission as ill founded. On the application of the accused, they reserved, under s.148 of the Criminal Code, three legal questions for our opinion, turning on the substance of the submission of the accused. At the root of the questionnaire, lies the query whether the relevant provisions of the Criminal Code, founding the information, were abrogated in relation to the forgery of customs documents and the bribery of customs employees.

Specifically, the submissions advanced before us on behalf of the accused, were the following:-

(A) The words "some other punishment is provided" in the context of s.335 of the Criminal Code, laying down the general punishment for forgery—three years' imprisonment—expressly reserve power for the legislature to make a different provision by separate Act for the punishment of specific acts of forgery, defined by another law. The submission was expanded to support the proposition that the legislature expressly made the application of the provisions of the Criminal Code to forgery, dependent on the liberty of the legislature to coin distinct offences of forgery in special areas of criminal activity and provide a different punishment. The argument turns exclusively on the interpretation of the provisions of s.335. The suggested interpretation is incompatible with any fair reading of the plain provisions of s.335. It could only be countenanced by re-writing the section in a manner that would have no relevance to its present content. All that s.335 provides, is that persons committing the crime of forgery defined by the Criminal Code, will be liable to three years' imprisonment, unless some other provision is made in the Criminal Code. Such other provision is made in ss. 336, 337 and 338, providing severer penalties for the forgery of certain classes of documents. I shall, therefore, concern myself no further with this submission of accused.

(B) The offence of "forgery", created by the provisions of s.189 of Law 82/67, is identical to that of "forgery" defined by s.331. Therefore, the legislature must be presumed to have intended to repeal the provisions of the Criminal Code in relation to customs documents, envisaged by s.189, by casting such offence in a distinct context. This implication is reinforced by the provision for a different punishment—two instead of three years' imprisonment.

(C) For similar reasons, s.9 superseded the provisions of s.100 of the Criminal Code, by envisioning a similar crime to bribery of a public officer, specially referable to the bribery of a customs official.

Counsel for the Republic refuted to suggestion that the relevant provisions of Law 82/67 abrogated by necessary implication

the aforementioned provisions of the Criminal Code and drew our attention to a body of caselaw establishing that repeal of a statute by implication is an extreme inference that should not be drawn except in the clearest of cases. Such conclusion can only be drawn if, in the words of A.L. Smith, L.J., in *Cutner* v. *Phillips* [1891] 2 Q.B., 267, 272, "the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one that the two cannot stand together".

The undesirability of finding repeal by implication is given statutory sanction by two legislative provisions, the effect of which was not, it seems to me, correctly weighed by counsel for the accused. These are s.2 of the Criminal Code and s.37 of the Interpretation Law.

Section 2(a) predicates by way of introduction to the Criminal Code that criminal liability under Cap. 154 leaves unaffected liability under any other law in force in the country. It is hard to contemplate a clearer expression of legislative intention that duplication of an offence in any form by any other law leaves liability, under the Criminal Code, unaffected. It is a strong provision against repeal by implication. Section 2(a) reproduces, in effect, the principle of English law that common law offences are not abolished or repealed by duplicating or coining them as statutory offences (see, *Maxwell on Interpretation of Statutes*, 12th ed., p. 195, and cases discussed therein). Section 2(a) is an apt provision in the context of the Criminal Code, a statute that codifies, to a large extent, common law offences.

Apart from s.2(a)—Cap. 154, there is s.37 of the *Interpretation* Law, laying down that acts or omissions made criminal offences by more than one statutes, render the offender liable to prosecution under both enactments, unless a contrary intention appears in either of the two laws. As already noticed, Courts lean against repeal by implication, unless it is an unavoidable inference. In the case of offences under the Criminal Code, there is hardly any room ever for implying a repeal in face of the plain provisions of s.2(a)—Cap. 154. Consequently, even if we were to assume that sections 189 and 9 of Law 82/67,

respectively, duplicated the offences of forgery and official corruption under the Criminal Code, the duplication left unaffected liability to prosecution under the Criminal Code and the questions asked must be answered accordingly.

However, I must not be taken as subscribing to the correctness of the assumption made above. For, in my view, the offences created by sections 189 and 9 of Law 82/67 are not identical to those of forgery and official corruption under the Criminal Code. Even if I were to assume that the word "forgery" (πλαστογραφία) is used as a term of art and imports the definition of "forgery" at common law, I would still be bound to notice differences between the two offences affecting their ingredients. Falsity, in the context of "forgery", is statutorily defined by s.333. It would be arbitrary to assume that the element of falsity under s.189 would be similarly defined. Equally unjustified would be to assume that the presumption created by s.334 of the Criminal Code, as to intent of defraud, has any application to the proof of s.189. "Forgery" under the Criminal Code is not defined exclusively by s.331 but by a series of sections of the law having no application whatever to the definition of "forgery" under s.189—Law 82/67. I incline to the view that the two offences, though they present similarities, they are different in substance. Consequently, a question of repeal by necessary implication could not arise.

Similarly, I am of the opinion that s.9 of Law 82/67 does not duplicate the offence under s.100(b) of the Criminal Code. In an agreement with the Assize Court, I notice that the element of "corruptly", a separate ingredient of the offence under s.100(b) of Cap. 154, is not encountered in s.9. Their view is also correct that certain conduct expressly prohibited by the provisions of s.9, is not postulated as a distinct mode of committing the offence under s.100(b) of Cap. 154.

Lastly, the suggestion that the legislature necessarily contemplated the repeal in relation to customs matters of the provisions of the Criminal Code on "forgery" and "official corruption", is defeated by the fact that the legislature directed its attention to the necessity of repeal of legislation consequent on the enactment of Law 82/67, without any reference whatever to the Cri-

minal Code. Such omission has been held to furnish strong indication of an intention not to repeal a statute (see, *Maxwell on Interpretation of Statutes*, 12th ed., p. 191).

In view of the above, I associate myself with the answers given to the questions reserved for our opinion. 5

Order accordingly.