CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL
FROM THE ASSIZE COURTS AND DISTRICT COURTS

[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU,
HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

1976
Aug. 20,
1977
Febr. 3

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THE REPUBLIC
v.
NICOLAOS
SAMPSON

THE REPUBLIC,

v.

NICOLAOS SAMPSON,

Accused.

(*Question of Law Reserved No.* 166).

Amnesty—Offences against the state and directly connected with the coup d'etat of July 15, 1974*—Amnesty announced by the President of the Republic in a public speech on the 7th December,* 1974*—No enactment by the House of Representatives of any relevant legislation giving the requisite legal effect to such amnesty—Relevant provisions of the Criminal Code, Cap.* 154 *not rendered inoperative as regards the matters in respect of which the accused has been charged—Consequently he could not set up successfully a plea of pardon—Section* 69(1)(c) *of the Criminal Procedure Law, Cap.* 155*—Nor could the said amnesty be treated as suspending the operation of the Criminal Code* (supra) *by virtue of the application of the "Law of Necessity"—Because it was possible, at that time, for the House of Representatives to meet and enact the necessary legislation for the purpose of giving full effect to the amnesty.*

Member of the House of Representatives—Taking over the office of the President of the Republic as a result of the coup d'etat of July 15, 1974*—His seat in the House of Representatives became ipso facto vacant by reason of the very fact of the taking over unconstitutionally of the office of "President of the Republic"—No leave of the Supreme Court, under Article* 83.2 *of the Constitution, for his*

arrest and prosecution was required—Coup d'Etat (Special Provisions) Law, (1975) (*Law* 57/75) and the case of *Aristides Liasi and Others v. The Attorney-General of the Republic and Another* (1975) 3 *C.L.R.* 558 *not relevant—Articles* 41, 70 *and* 71 *of the Constitution.* 5

Jurisdiction—Assize Court—Offences against the constitutional order and the security of the Republic—Article 156 *of the Constitution—Rendered totally inoperative by the exceptional events which preceded, and eventually led to the enactment of the Administration of Justice (Miscellaneous Provisions) Law*, 1964 (*Law* 33/64)— 10 *Exclusionary provision in section* 20(1) *of the Courts of Justice Law*, 1960 (*Law* 14/60), *which is based on Article* 156, *rendered inoperative too—Assize Court possessed jurisdiction under the said section to try accused in respect of above offences*—Republic *v.* Liassis (1973) 2 *C.L.R.* 283 *followed.* 15

Constitutional Law—Constitution—Construction of constitutional provisions—Principles applicable—Article 53 *of the Constitution—Provisions of, so clear, unambiguous and specific and so limited to particular matters, that there is no room for holding that they confer, expressly or by implication, either when read alone or in* 20 *conjunction with any other Article of the Constitution the power on the President of the Republic to grant an amnesty with its full legal consequences, including suspension of the operation of the Criminal Code, Cap.* 154—*The very specific and restrictive provisions of the said Article* 53 *make the corresponding constitutional* 25 *situation in Cyprus altogether different from that in the U.S.A.*

"*Law of Necessity*"—*Offences against the state and directly connected with the coup d'etat of July* 15, 1974—*Amnesty announced by the President of the Republic in a public speech on the 7th December,* 1974—*No relevant Law enacted by House of Representatives*— 30 *Said amnesty cannot be treated, by virtue of the "Law of Necessity" as having by itself the effect which a Law of the House of Representatives, enacted for the purpose, would have had—See, also, under "Amnesty."*

Words and Phrases—"Amnesty" ("ἀμνηστία")—"*Exercise of pre-* 35 *rogative of mercy or of the power to remit, suspend or commute a sentence after conviction*"—("Χάρις")—"*Pardon*".

Criminal Procedure—Question of Law arising during the trial—Section 148(1) *of the Criminal Procedure Law, Cap.* 155—*A trial Court may reserve a question of law without first expressing its opinion* 40 *thereon—Fact that the trial proper had not yet commenced, did not exclude applicability of the said sub-section.*

Criminal Procedure—Plea—Plea of pardon—Section 69(1)(c) *of the Criminal Procedure Law, Cap.* 155—*See, also, under "Amnesty".*

The accused was committed for trial before an Assize Court in Nicosia, for offences against the state, contrary to sections 40 and 41 of the Criminal Code, Cap. 154, and directly connected with the coup d' etat of July 15, 1974. When charged, but before pleading to the counts contained in the information, he entered the following special pleas under section 69 of the Criminal Procedure Law, Cap. 155:

" 1. That he has obtained a pardon for the offences with which he is charged, in that the acts and/or offences which are described in the Information have been amnestied by the President of the Republic, His Beatitude Archbishop Makarios the III, in a speech* that He on 7.12.74, delivered.

2.(a) That the accused is a Member of the House of Representatives, having been elected as such in 1970 for five years and that the term of office of the House of Representatives has been extended by Laws 29/75 and 25/76, the latter providing that the term of office of the present House shall continue in office till the House to be elected on 5.9.76 assumes office but in no event later than the 31.12.76.

(b) That even if the accused acted as President of the Republic during the coup d' etat of the 15.7.74; that in view of the provisions of Law 57/75 and that as the accused has neither died nor resigned in writing nor has he become disqualified by the other reasons provided in Article 71 of the Constitution, i.e. those provided by paragraphs (c) and (d) of this Article, he continues to be a Member of the House of Representatives.

As Article 83.2 of the Constitution provides that a Member of the House of Representatives cannot be arrested, prosecuted or imprisoned without the leave of the High Court (now read 'Supreme Court') so long as he continues to be a Representative and as such leave has not been granted, the Assize Court has no jurisdiction to try the accused.

* The speech is quoted at p. 15 *post.*

(3) That the Assize Court has no jurisdiction to try the accused in view of the provisions of Article 156 of the Constitution which require that a special Court be constituted to try the offences of the type the accused is charged with and that although the Supreme Court has held in the case of *The Republic* v. *Liassis,* (1973) 2 C.L.R. 283, that the provisions of Article 156 are totally inoperative, the position must be reconsidered in the light of the events that intervened since the judgment in the aforementioned case was delivered".

After the conclusion of the arguments of counsel for both sides on the above preliminary objections, counsel for the accused applied under section 148(3)(b)* of the Criminal Procedure Law, Cap. 155, that the Assize Court may reserve, for the opinion of the Supreme Court the points of law raised in his preliminary objections before the delivery of its judgment on these points. The Assize Court then heard arguments as to whether the points of law raised by the defence should be reserved for the opinion of the Supreme Court at that stage; and proceeded to reserve the above special pleas as questions of law, under section 148** of Cap. 155, without expressing its own opinion thereon.

The questions of Law, as formulated by the President of the Assize Court, were the following:

" 1. Whether the President of the Republic has, under Article 53 of the Constitution or by virtue of the Law of Necessity, a constitutional right to grant amnesties for the offences with which the accused is charged and, if so, whether the contents of the aforementioned extract from the speech of the President of the Republic, His Beatitude Archbishop Makarios the III, constitute such an amnesty and, if so, whether the accused has been pardoned under s. 69 of Cap. 155 for the offences with which he is charged in the Information.

2. Whether having regard to the accused acting as the President of the Republic during the coup d' etat of the 15.7.74 and in view of the provisions of Law 57/75, he has been disqualified as a Member of the House of

* Quoted at p. 16 *post.*

** Quoted at p. 16 *post.*

Representatives and his seat has become vacant in which case the leave of the Supreme Court for the arrest and prosecution of the accused was not necessary under Article 83.2 of the Constitution.

3. Whether the judgment in the case of *The Republic* v. *Liassis*, (1973) 2 C.L.R. 283, is still good Law having regard to the events that there intervened in the country since the judgment was delivered".

The third point was reserved by the Court despite the fact that the members of the Court felt that they were bound by the decision in the *Liassis* case (*supra*) and this they did only because the defence has submitted that the said judgment should be reconsidered.

Held, (1) that, as no relevant legislation was subsequently enacted by the House of Representatives, the amnesty announced by the President of the Republic in his speech on December 7, 1974, does not have in law the effect, either under Article 53 of the Constitution or on the basis of the application in the present instance of the "Doctrine of Necessity", of rendering inoperative the relevant provisions of the Criminal Code, Cap. 154, as regards the matters in respect of which the accused has been charged; that the accused, therefore, cannot plead successfully, under section 69(1)(c) of the Criminal Procedure Law, Cap. 155, that he has obtained a pardon for the offences with which he is charged.

(2) That the accused having taken over the office of the President of the Republic as a result of the coup d' etat of July 15, 1974, his seat in the House of Representatives became ipso facto vacant and, consequently, no leave of the Supreme Court was required, under Article 83.2 of the Constitution, for his arrest and prosecution; and that the Coup d' Etat (Special Provisions) Law, 1975 (Law 57/75) did not result in reviving his lost status as a Member of the House of Representatives.

(3) That in accordance with the decision of the Supreme Court in the case of *The Republic* v. *Liassis*, (1973) 2 C.L.R. 283, from which there is no reason to depart, the Nicosia Assizes possess jurisdiction to try the accused in the present case; and that, accordingly, the case will be remitted to the Assizes for further proceedings in the light of the above opinion.

(*A*) *Per Triantafyllides, P., L. Loizou, and Malachtos, JJ. concurring:*

(1) Looking at the provisions of Article 53 of our Constitution

as a whole, I find them to be so clear, unambiguous and specific, and so limited to particular matters, that I can see no room for holding that they confer, expressly or by implication, either when read alone or in conjunction with any other Article of the Constitution, the power on the President of our Republic to grant an amnesty with its full legal consequences, including suspension of the operation of the Criminal Code, Cap. 154.

(2) (*Regarding the argument that the announcement of an amnesty by the President of the Republic on December 7, 1974, should be treated as an amnesty suspending the operation of the Criminal Code, Cap.* 154, *by virtue of the application of the* "*Law of Necessity*" (*see, inter alia,* The Attorney-General of the Republic v. Ibrahim and others, 1964 *C.L.R.* 195), *in view of the very difficult for our country times in which the President of the Republic decided to announce such amnesty*). No doubt they were, indeed, both tragic and difficult times, but even during those times and, in particular, on or about December 7, 1974, it was possible for the House of Representatives to meet and enact the necessary legislation for the purpose of giving full legal effect to the amnesty announced by the President of the Republic; therefore, it cannot be held that the announcement, by the President of the Republic of an amnesty, without the enactment of a relevant law of the House of Representatives, should be treated, by virtue of the "Law of Necessity", as having by itself the effect which a Law of the House of Representatives, enacted for the purpose, would have had.

(3) In view of the non-enactment by the House of Representatives of any relevant legislation giving the requisite legal effect to the amnesty announced by the President of the Republic on December 7, 1974, the relevant provisions of the Criminal Code, Cap. 154, were not rendered inoperative as regards the matters in respect of which the accused has been charged and, consequently, he could not plead successfully, under section 69(1)(c) of Cap. 155, that he has obtained a pardon for the offences concerned; consequently, his trial has had to continue according to law.

(4) I cannot accept that either Law 57/75, or the approach adopted in the *Aristides Liasi* case (1975) 3 C.L.R. 558 can be justifiably relied on in support of the contention of counsel for the accused that, because the taking over by the accused of the

office of "President of the Republic" has been devoid of any legal effect, he has not lost, as a result of such taking over, his status as a Member of the House of Representatives. In my view the reason for which the accused, who was Member of the House of Representatives, lost his status as a Member of the House on taking over the office of "President of the Republic" was the very fact itself of such taking over; because, since a Member of the House of Representatives who becomes lawfully the President of the Republic ceases to be a Member of the House, by virtue of the combined effect of Articles 41, 70 and 71 of the Constitution, it follows a fortiori that somebody who, in breach of his oath to the Constitution as a Member of the House of Representatives, takes over the office of "President of the Republic" unconstitutionally, as a result of a coup d' etat, ceases ipso facto to be a Member of the House of Representatives; and one cannot expect to find a provision to that effect in the Constitution, because there are contained therein, in this respect, provisions envisaging only constitutional and lawful happenings, and not, also, instances of unconstitutional and unlawful usurpation of power as a result of the coup d' etat (see, also, *Hoti Lal* v. *Raj Bahadur AIR* (1959) Raj. 227).

(5) In the light of all the foregoing I have no doubt at all that the seat of the accused in the house of Representatives became ipso facto vacant when he took over the office of "President of the Republic" on July 15, 1974, and, therefore, no leave of the Supreme Court was required, under Article 83.2 of the Constitution, for his arrest and prosecution in the present case.

(6) I see no reason to depart from the view expressed by this Court in the case of *Republic* v. *Andreas Liassis* (1973) 2 C.L.R. 283 at p. 288; and as the exclusionary provision in section 20(1) of the Courts of Justice Law, 1960 (Law 14/60), which is based on Article 156, was rendered inoperative, too, when Article 156 became inoperative (see the *Andreas Liassis* case, *supra*, at p. 288), it follows that the Nicosia Assizes possessed jurisdiction under the said section to try the accused in the present case.

Per curiam: (1) I should point out that it is highly desirable that in all cases in which a trial Court is faced with the possibility of having to resort to the procedure under subsection (1) of section 148, in circumstances in which subsection 3(b) of section 148 would be eventually applicable, the trial Court should express its own opinion on the parti-

cular question of law raised before it, prior to deciding whether or not to actually exercise its discretionary powers under subsection (1) of section 148; because, once the parties to the case know the decision of the trial Court on the question of law raised, they will be enabled to reconsider their position in the light of the reasoning contained in such decision; and, also, the trial Court will be assisted, in exercising its said discretionary powers, by any comments that may be made, by the parties, in relation to such reasoning. 5 10

(2) I would not go, however, so far as to say that reserving a question of law under subsection (1) of section 148, without first having expressed its own opinion thereon, is a course which is never open to a trial Court, because, indeed, there do exist precedents when such a course was followed (see, for example, *Queen* v *Erodotou*, 19 C.L R. 144, and *The Republic* v. *Liassis*, (1973) 2 C L R. 283). 15

(3) It has to be stressed, too, that the powers under section 148(1) should be exercised sparingly, and only in appropriate cases, so as to avoid interrupting the continuity of trials (see, *inter alia*, *The Republic* v. *Kalli* (*No.* 1), 1961 C.L.R. 266 and *In re Charalambous and Another*, (1974) 2 C.L R. 37);but, I do think that in the present case the relevant discretion of the Assize Court was exercised in a manner which was reasonably open to it in the circumstances of this very serious case 20 25

(B) *Per Hadjianastassiou, J.:*

(1) In view of the principle of enumerated powers and in the light of the clear and unambiguous wording of Article 53 and the rest of the Articles dealing with the executive power, I have decided that the argument of counsel for the accused that one may draw the conclusion or that it is a necessary implication from the constitutional power of the President, that he has the right to validly grant amnesty to the accused, is a wrong one, because, in my opinion, no such implication can be drawn from the wording of Article 53. 30 35

(2) Furthermore, I am not prepared to adopt the English and American principles regarding the operation and effect of pardon, nor am I inclined to follow the observations made by Chief Justice Marshall in *U.S.* v. *Wilson* (7 Pet. 150; 8 L. Ed. 640), 40

because the constitutional drafter of Cyprus, in spite of the provisions of s. 69 of our Criminal Procedure Law, Cap. 155, made no reference at all, nor thought it necessary to include the right of pardon in the Constitution—though fully aware of its meaning and effect.

(3) The Doctrine of Necessity permits deviation from the relevant constitutional provisions only if and when the imposed measures required under the exceptional circumstances cannot be taken by the appropriate constitutional organs or in accordance with the Constitution. It has not been disputed or challenged by counsel for the accused that on that date the House of Representatives was still functioning and certainly I can take judicial notice that the said House continued to enact laws even during those difficult times. Only, therefore, in accordance with the Constitution the legislative power shall be exercised by the House of Representatives and once it was functioning, there was nothing to stop the House from enacting a general law of amnesty either before or after the announcement by the President of granting amnesty. That decision, if it was taken would have been in accordance with the Constitution. It, therefore, follows that the prerequisites of applying the Doctrine of Necessity in the case in hand were not in existence. I would reiterate once again that on that date there was no necessity to suspend the constitutional provisions because of the impossibility of applying them. (See Odent on Contentieux Administratif Vol. 1 at pp. 136–137).

(4) That when he took over the office of the President of the Republic, contrary to the law and the Constitution, his seat in the House became vacant; and once the seat of the accused became ipso facto vacant, in my view, no leave of the Supreme Court was required under Article 83.2 of the Constitution for his arrest and prosecution in the present case.

(5) The argument which I have had in this case has not caused me to change the views which I held when the *Republic* v. *Liassis* (1973) 2 C.L.R. 283 was decided, or to disagree with any of the conclusions reached. Moreover, I am convinced that I must agree with the view i.e. had Article 156 aimed at ensuring such an object put forward by counsel, then the constitutional drafters would not have been limited to providing about the President of the High Court presiding at the trial, but it would have referred in general to all Judges of that Court. In fact Article 156 refers

only to the President of the High Court because its only object was to ensure that at the trial the presiding Judge would be a neutral, non-Cypriot Judge.

(C) *Per A. Loizou, J.* (*after stating that it would be proper that the question of law 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*): 5

(1) In my opinion, the announced amnesty could be implemented as such solely by legislation, in furtherance of the principle that offences are created by Statute and by Statute 10 only their operation can be suspended. Our Constitution does not empower the executive to grant an amnesty. Therefore, the power is left with the legislature. Furthermore, I cannot trace any other powers in the Constitution, whatsoever, which may be invoked to implement an intention to grant a general amnesty, 15 nor can such a power be implied from the wording of Article 53 of the Constitution which expressly specifies the powers of mercy and suspension and remission of sentence which are obviously inapplicable to the present case and which are the only ones which the drafters of the Constitution chose to give to the Head 20 of the State and which contains out also the procedure regulating their exercise.

(2) The claim that the announced amnesty was effective by virtue of the Doctrine of Necessity and in view of the tragic situation in which the country found itself to be, cannot be accepted 25 as the situation could be met by a legislative enactment. The House of Representatives apart from the fact that, as shown by the Laws on the Statute Book, it was continuously functioning throughout the latter part of 1974 and 1975, in October 1975, it enacted the Coup d' Etat (Special Provisions) Law, which clearly 30 shows that it had the opportunity and could have legislated, if it had so thought, a law regarding amnesty.

(3) Taking the combined effect of Articles 41, 70 and 71 of the Constitution, the President of the Republic undoubtedly cannot also be a member of the House of Representatives and vice versa. 35 This is also reinforced by the marked separation of powers which is a characteristic of our Constitution.

(4) In the preamble of Law 57/75, reference is made to the "Coup d' etat Government" which is defined in section 2 of the Law, as meaning the person who, "during the coup d' etat 40

unconstitutionally and illegally assumed the office of the President of the Republic. ...." and "acts" are defined as including every act or decision of a legislative or administrative nature which, under section 4 of the Law, are declared as non-existing and devoid of substance. This Law was obviously enacted for the sake of the restoration of the lawful order which was disturbed as a result of the coup d' etat and not the exoneration of the accused or his collaborators from the consequences of their acts. Consequently, the accused lost automatically, his status as a Member of the House of Representatives since there was a real exercise of the duties of an office incompatible with the status of a member of the House of Representatives, and Article 83.2 did not apply in his case.

(5) (*After referring to the doctrine of judicial precedent*):

(a) I do not subscribe to the argument of counsel for the accused that the Assize Court had no jurisdiction to try the accused, in view of the provisions of Article 156 of the Constitution, inasmuch as the objective of Article 156 was to have a non-Cypriot Judge presiding over such an Assize Court with the other non-Cypriot Judge presiding in the Appeal Court in case of appeal, a situation which does not exist today.

(b) In matters where on account of imperative and inevitable necessity or exceptional circumstances, a particular provision of the Constitution becomes inoperative, and acts of constitutional effect have to be taken to meet the vacuum that has arisen on account thereof, the appropriate organ under the Constitution is vested with a discretion regarding the proper measures to be adopted for the purpose of meeting such a necessity. (See *Messaritou* v. *C.B.C.* (1972) 3 C.L.R. p. 100 at pp. 113-114).

In the instant case the pre-existing procedure regarding the trial of indictable offences in general was followed, taking cognizance of the fact that the communal element in the jurisdiction of the Courts no longer existed since the enactment of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (see, also, the case of *The Attorney-General of the Republic* v. *Mustafa Ibrahim and Others*, 1964 C.L.R. p. 195). This course, in my view, was duly warranted by the circumstances and came within the narrow limits of its discretion (see, also, *R.* v. *Taylor*, 34 Cr. App. R. 138 at p. 142).

Order accordingly.

Cases referred to:

Queen v. *Erodotou,* 19 C.L.R. 144;

The Republic v. *Liassis* (1973) 2 C.L.R. 283 at p. 288;

The Republic v. *Kalli* (*No.* 1) 1961 C.L.R. 266;

In re Charalambous and Another (1974) 2 C.L.R. 37 at p. 44; 5

United States v. *Klein,* 20 L. Ed. 519 at pp. 523 and 526;

Knote v. *United States,* 24 L. Ed. 442 at p. 443;

Pollock v. *Bridgeport Steamboat Company,* 29 L. Ed. 147 at p. 148;

Brown v. *Walker,* 40 L. Ed. 819 at pp. 822, 823; 10

Ex parte Grossman, 69 L. 527 at pp. 530–531;

M' Culloch v. *The State of Maryland,* 4 L. Ed. 579 at p. 601;

Prigg v. *The Commonwealth of Pennsylvania,* 10 L. Ed. 1060 at p. 1088;

South Carolina v. *United States,* 50 L. Ed. 261 at pp. 264–265; 15

International Shoe Company v. *Pinkus,* 73 L. Ed. 318 at p. 320;

United States v. *Classic,* 85 L. Ed. 1368 at p. 1378;

Lichter v. *United States,* 92 L. Ed. 1694 at p. 1724;

The Attorney-General of the Republic v. *Ibrahim,* 1964 C.L.R. 195; 20

Liasi and Others v. *The Attorney-General of the Republic* (1975) 3 C.L.R. 558;

Hoti Lal v. *Raj Bahadur AIR* (1959) Raj. 227;

Demetriades v. *The Republic* (1974) 3 C.L.R. 246;

Cassel and Co. Ltd. v. *Broome* [1972] 1 All E.R. 801 at pp. 835–836 H.L.; 25

U.S. v. *Wilson,* 7 Pet. 150; 8 L. Ed. 640 at pp. 643, 644;

Ex parte Wells, 15 L. Ed. 421 at p. 424, 425, 427;

Ex parte in the matter of A.H. Garland, 18 L. Ed. 366 at pp. 370–371; 30

United States v. *Padelford,* 19 L. Ed. 788 at p. 792;

Burdick v. *United States,* 59 L. Ed. 476 at p. 482;

Hay v. *Justices of the Tower Division of London* [1890] 24 Q.B.D. 561 at p. 564, 567, 568;

Vrahimis v. *The Republic* (1971) 3 C.L.R. 104; 35

Sofroniou and Others v. *The Municipality of Nicosia* (1976) 3 C.L.R. 124;

Hinds v. *The Queen* [1976] 1 All E.R. 353 at p. 359;

Liversidge v. *Anderson* [1942] A.C. 206 at p. 244 H.L.;
United States v. *Wiltberger*, 5 *L. Ed.* 37 at p. 42;
Messaritou v. *The C.B.C.* (1972) 3 C.L.R. 100 at pp. 113-114;
R. v. *Taylor*, 34 Cr. App. R. 138 at p. 142;
5 *Rex* v. *Gould*, 52 Cr. App. R. 152 at p. 153.

Question of Law Reserved.

Question of Law Reserved by the Assize Court of Nicosia (Demetriades, P.D.C., Boyiadjis, S.D.J. and Michaelides, D.J.) (Criminal Case No. 4563/76) upon the entering of special pleas
10 by the accused, under section 69 of the Criminal Procedure Law, Cap. 155, when charged but before pleading to an information containing various counts for offences against the State, contrary to sections 40 and 41 of the Criminal Code, Cap. 154, and directly connected with the coup d'etat of July 15, 1974.

15 *M. Christophides*, for the accused.

L. Loucaides, Deputy Attorney-General of the Republic, with *C. Kypridemos*, Counsel of the Republic, for the Republic.

Cur. adv. vult.

20 *1976, August 20.*

TRIANTAFYLLIDES, P. read the following decision of the Court. The Supreme Court, having considered the three questions of law reserved by the Nicosia Assizes in the present case, is unanimously of the following opinion:-

25 1. That, as no relevant legislation was subsequently enacted by the House of Representatives, the amnesty announced by the President of the Republic in his speech on December 7, 1974, does not have in law the effect, either under Article 53 of the Constitution or on the basis of the application in the present
30 instance of the "Doctrine of Necessity", of rendering inoperative the relevant provisions of the Criminal Code, Cap. 154, as regards the matters in respect of which the accused has been charged; the accused, therefore, cannot plead successfully, under section 69(1)(c) of the Criminal Procedure Law, Cap. 155, that
35 he has obtained a pardon for the offences with which he is charged.

2. That the accused having taken over the office of the President of the Republic as a result of the coup d' etat of July

15, 1974, his seat in the House of Representatives became ipso facto vacant and, consequently, no leave of the Supreme Court was required, under Article 83.2 of the Constitution, for his arrest and prosecution; and the Coup d' Etat (Special Provisions) Law, 1975 (Law 57/75) did not result in reviving his lost status as a Member of the House of Representatives. 5

3. That in accordance with the decision of the Supreme Court in the case of *The Republic* v. *Liassis*, (1973) 2 C.L.R. 283, from which there is no reason to depart, the Nicosia Assizes possess jurisdiction to try the accused in the present case. 10

The case is now remitted to the Assizes for further proceedings in the light of the above opinion.

The reasons for such opinion will be given later, after the commencement of the new judicial year.

Order accordingly. 15

1977 February, 3.

The following reasons for the decision of the Court on August, 20, 1976, were read:

TRIANTAFYLLIDES, P.: On August 2, 1976, an Assize Court in Nicosia reserved for the opinion of the Supreme Court, under 20 section 148 of the Criminal Procedure Law, Cap. 155, the following questions of law:-

" 1. Whether the President of the Republic has, under Article 53 of the Constitution or by virtue of the Law of Necessity, a constitutional right to grant amnesties for the 25 offences with which the accused is charged and, if so, whether the contents of the aforementioned extract from the speech of the President of the Republic, His Beatitude Archbishop Makarios the III, constitute such an amnesty and, if so, whether the accused has been pardoned under 30 s. 69 of Cap. 155 for the offences with which he is charged in the Information.

2. Whether having regard to the accused acting as the President of the Republic during the coup d' etat of the 15.7.74 and in view of the provisions of Law 57/75, he 35 has been disqualified as a Member of the House of Representatives and his seat has become vacant in which case the leave of the Supreme Court for the arrest and prosecution of the accused was not necessary under Article 83.2 of the Constitution. 40

3. Whether the judgment in the case of *The Republic* v. *Liassis*, (1973) 2 C.L.R. 283, is still good Law having regard to the events that have intervened in the country since that judgment was delivered".

5 The extract from the speech of His Beatitude Archbishop Makarios the President of the Republic, on December 7, 1974, which is referred to in the first of the above questions of law, is as follows:–

"Βαθύτατα λυποῦμαι, διότι ἀπό τινων ἐτῶν πάθη καὶ
10 μίση διαιροῦν τοὺς Ἕλληνας Κυπρίους. Καὶ αἱ ἀντιθέσεις ἔλαβον ἔκτασιν μέχρι πολιτικῶν δολοφονιῶν καὶ ἐνόπλων συγκρούσεων. Καὶ ἐνῷ ἡ Κύπρος κατεστρέφετο, Ἕλληνες Κύπριοι ἔστρεφον τὰ ὅπλα ἐναντίον ἀδελφῶν των. Δὲν θὰ ἀναφερθῶ εἰς τὰ αἴτια τοῦ διχασμοῦ διότι δὲν ἐπιθυμῶ
15 νὰ ἀναξέσω πληγὰς τοῦ παρελθόντος, τῶν ὁποίων θέλω τὴν ἐπούλωσιν. Καὶ διὰ τοῦτο δὲν ἔχω πρόθεσιν διώξεως ἐχθρῶν καὶ ἀντιπάλων ἢ προσαγωγῆς ἐνώπιον δικαστηρίου τῶν βαρυμένων μὲ πολιτικὰ ἀδικήματα ἢ μετασχόντων εἰς τὸ κατ' ἐμοῦ πραξικόπημα. Δίδω εἰς ὅλους ἄφεσιν ἁμαρτιῶν
20 καὶ ἀμνηστίαν ἐπὶ τῇ ἐλπίδι ὅτι θὰ ἐπέλθῃ ἡ ποθητὴ ὁμόνοια καὶ ἑνότης τοῦ λαοῦ μας. Ἐνώπιον τοῦ θυσιαστηρίου τῆς Κύπρου τὰ πάθη καὶ ἡ διχόνοια οὐδεμίαν ἔχουν θέσιν. Ἐθνικὴν ἐπιταγὴν ἀποτελεῖ ἡ ψυχικὴ ἑνότης τοῦ Κυπριακοῦ Ἑλληνισμοῦ. Καὶ πρὸς τὴν κατεύθυνσιν αὐτὴν ἔχομεν
25 καθῆκον ὅλοι νὰ συμβάλωμεν, Ἐκκλησία, Πολιτεία, κόμματα, ὀργανώσεις, τύπος, ἄτομα."

The English translation of the said extract (as set out in the reference to us, by the President of the Assize Court, of the questions of law reserved) reads as follows:–

30 "I am deeply grieved that for some years passion and hatred have been dividing Greek Cypriots. And conflict has led to political murders and armed clashes. And while Cyprus was being ruined, Greek Cypriots turned their arms against their brothers. I shall not refer to the
35 causes of conflict, for I do not wish to rake up old wounds which I want to see healed. And for this reason, it is not my intention to persecute my enemies and opponents or to bring to justice those involved in political offences or those who took part in the coup against me. I forgive
40 them all for their sins and grant them amnesty in the hope that the desired concord and unity among our people will

come about. In the face of the calamity of Cyprus, there is no room for passions and division. The spiritual unity of the Greek Cypriot people is a national dictate. And all of us, the Church, the State, parties, organizations, the Press and individuals, have a duty to contribute to this end".

Section 148 of Cap. 155, under which the above questions of law were reserved, reads as follows:-

"148(1) Any Court exercising criminal jurisdiction may, and upon application by the Attorney-General shall, at any stage of the proceedings, reserve a question of law arising during the trial of any person for the opinion of the Supreme Court.

(2) In every such case the President of the Assize Court or the trial Judge, as the case may be, shall make a record of the question reserved with the circumstances upon which the same has arisen and shall transmit a copy thereof to the Chief Registrar.

(3) The Supreme Court shall consider and determine the question reserved and may—

(a) if the Court has convicted the accused—

(i) confirm the conviction;

(ii) quash the conviction, in which case the accused shall be acquitted;

(iii) direct that the judgment of the Court shall be set aside and that, instead thereof, judgment shall be given by the Court as ought to have been given at the trial;

(b) if the Court has not delivered its judgment, remit the case to it with the opinion of the Supreme Court upon the question reserved".

The said questions of law were reserved after the accused, Sampson, who had been committed for trial, before an Assize Court in Nicosia, for offences against the State, contrary to sections 40 and 41 of the Criminal Code, Cap. 154, and directly connected with the coup d' etat, had, on July 21, 1976, before pleading to the counts contained in the information, entered the following special pleas, under section 69 of Cap. 155:-

"1. That he has obtained a pardon for the offences with which he is charged, in that the acts and/or offences which are described in the Information have been amnestied by the President of the Republic, His Beatitude Archbishop Makarios the III, in a speech that He on 7.12.74 delivered.

....

2.(a) That the accused is a Member of the House of Representatives, having been elected as such in 1970 for five years and that the term of office of the House of Representatives has been extended by Laws 29/75 and 25/76, the latter providing that the term of office of the present House shall continue in office till the House to be elected on 5.9.76 assumes office but in no event later than the 31.12.76.

(b) That even if the accused acted as President of the Republic during the coup d' etat of the 15.7.74; that in view of the provisions of Law 57/75 and that as the accused has neither died nor resigned in writing nor has he become disqualified by the other reasons provided in Article 71 of the Constitution, i.e. those provided by paragraphs (c) and (d) of this Article, he continues to be a Member of the House of Representatives.

As Article 83.2 of the Constitution provides that a Member of the House of Representatives cannot be arrested, prosecuted or imprisoned without the leave of the High Court (now read 'Supreme Court') so long as he continues to be a Representative and as such leave has not been granted, the Assize Court has no jurisdiction to try the accused.

3. That the Assize Court has no jurisdiction to try the accused in view of the provisions of Article 156 of the Constitution which require that a special Court be constituted to try the offences of the type the accused is charged with and that although the Supreme Court has held in the case of *The Republic* v. *Liassis*, (1973) 2 C.L.R. 283, that the provisions of Article 156 are totally inoperative, the position must be reconsidered in the light of the events that intervened since the judgment in the aforementioned case was delivered".

The Assize Court did not pronounce on the above special

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pleas, though it was definitely open to it to do so; and it proceeded to reserve them as questions of law, under section 148 of Cap. 155, without expressing its own opinion thereon. The Assize Court adopted such a course at a "stage of the proceedings" before it, in the sense of subsection (1) of section 148; the fact that the trial proper had not yet commenced, did not, in my opinion, exclude the applicability of subsection (1).

I should point out that it is highly desirable that in all cases in which a trial Court is faced with the possibility of having to resort to the procedure under subsection (1) of section 148, in circumstances in which subsection 3(b) of section 148 would be eventually applicable, the trial Court should express its own opinion on the particular question of law raised before it, prior to deciding whether or not to actually exercise its discretionary powers under subsection (1) of section 148; because, once the parties to the case know the decision of the trial Court on the question of law raised, they will be enabled to reconsider their position in the light of the reasoning contained in such decision; and, also, the trial Court will be assisted, in exercising its said discretionary powers, by any comments that may be made, by the parties, in relation to such reasoning.

I would not go, however, so far as to say that reserving a question of law under subsection (1) of section 148, without first having expressed its own opinion thereon, is a course which is never open to a trial Court, because, indeed, there do exist precedents when such a course was followed (see, for example, *Queen* v. *Erodotou*, 19 C.L.R. 144, and *The Republic* v. *Liassis*, (1973) 2 C.L.R. 283).

It has to be stressed, too, that the powers under section 148(1) should be exercised sparingly, and only in appropriate cases, so as to avoid interrupting the continuity of trials (see, *inter alia*, *The Republic* v. *Kalli* (*No*. 1), 1961 C.L.R. 266 and *In re Charalambous and another*, (1974) 2 C.L.R. 37); but, I do think that in the present case the relevant discretion of the Assize Court was exercised in a manner which was reasonably open to it in the circumstances of this very serious case.

In a Decision* given on August 20, 1976, the Supreme Court has answered, unanimously, as follows the three questions of law that were reserved by the Assize Court:-

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* Vide pp. 13-14 *ante*.

"1. That, as no relevant legislation was subsequently enacted by the House of Representatives, the amnesty announced by the President of the Republic in his speech on December 7, 1974, does not have in law the effect, either under Article 53 of the Constitution or on the basis of the application in the present instance of the 'doctrine of necessity', of rendering inoperative the relevant provisions of the Criminal Code, Cap. 154, as regards the matters in respect of which the accused has been charged; the accused, therefore, cannot plead successfully, under section 69(1)(c) of the Criminal Procedure Law, Cap. 155, that he has obtained a pardon for the offences with which he is charged.

2. That the accused having taken over the office of the President of the Republic as a result of the coup d' etat of July 15, 1974, his seat in the House of Representatives became ipso facto vacant and, consequently, no leave of the Supreme Court was required, under Article 83.2 of the Constitution, for his arrest and prosecution; and the Coup d' etat (Special Provisions) Law, 1975 (Law 57/75) did not result in reviving his lost status as a Member of the House of Representatives.

3. That in accordance with the decision of the Supreme Court in the case of *The Republic* v. *Liassis*, (1973) 2 C.L.R. 283, from which there is no reason to depart, the Nicosia Assizes possess jurisdiction to try the accused in the present case".

I shall now proceed to give my reasons for the above Decision:-

The *first question of law* related to the effect of the amnesty announced, as aforementioned, by the President of the Republic in his speech on December 7, 1974:

An amnesty ("ἀμνηστία" in Greek and "amnistie" in French) is an extraordinary measure taken in the public interest only when it is deemed that it is required for the benefit of the State and of society in general, and it is never resorted to for the sake of the persons to whom the amnesty relates. It suspends the operation of the criminal law in relation to the category of offences or offenders in respect of which it has been granted, and it is, therefore, a measure of a legislative nature, in the form of a Law or, if constitutionally possible, of a Royal or

Presidential Decree; it may be granted at any time after the commission of the offences concerned, that is before the institution of criminal proceedings, pending such proceedings or after conviction; and, as a rule, it is granted only in respect of crimes of a political nature. 5

On the other hand, the exercise of the prerogative of mercy or of the power to remit, suspend or commute a sentence after conviction ("χάρις" in Greek and "grace" in French) is a measure which merely affords relief to the person concerned from the consequences of his conviction and punishment for a 10 criminal offence.

In England the term "pardon" has been used, depending on the occasion, both in the wide sense of a pardon having the effect of an amnesty and in the narrow sense of a pardon having the effect of the exercise of the prerogative of mercy or of remission, 15 suspension or commutation of sentence (see, *inter alia*, Halsbury's Laws of England, 4th ed., vol. 8, pp. 606–609, paras. 949–954).

In other legal systems, however, such as those in force in countries of the European Continent (as in, *inter alia*, Greece 20 and France) the distinction between amnesty, on the one hand, and the exercise of the prerogative of mercy or the suspension, remission or commutation of sentence, on the other hand, is always kept clear-cut; and useful reference may be made in this connection to, *inter alia*, N.N. Σαριπόλου Σύστημα τοῦ 25 Συνταγματικοῦ Δικαίου τῆς 'Ελλάδος ἐν Συγκρίσει πρὸς τὰ τῶν Ξένων Κρατῶν, 4th ed., vol. B, pp. 522–560, Κυριακοπούλου 'Ελληνικὸν Συνταγματικὸν Δίκαιον, 4th ed., pp. 135–140, Σγουρίτσα Συνταγματικὸν Δίκαιον (1964), vol. B, part A, pp. 87–101, Τούση " 'Ο Θεσμὸς τῆς 'Αμνηστείας" 'Εφημερὶς τῶν 'Ελλήνων Νο- 30 μικῶν (1975), p. 737, Traité de Droit Pénal et de Criminologie by Bouzat and Pinatel (1963), vol. 1, pp. 669–676, 684–701.

In the Constitution of Cyprus there is not to be found any provision concerning the granting of an amnesty; but, as there is not to be found, either, any provision excluding such a course, 35 it is within the powers of the House of Representatives to enact legislation in respect of an amnesty. In our Constitution there exists only express provision regarding the exercise of the prerogative of mercy, in cases of persons condemned to death, and the exercise of the power to remit, suspend or commute 40

sentences; Article 53 of the Constitution provides as follows in this respect:-

"1. The President or the Vice-President of the Republic shall have the right to exercise the prerogative of mercy with regard to persons belonging to their respective Community who are condemned to death.

2. Where the person injured (βλαβὲν πρόσωπον-zarar goren kimse-magdur) and the offender are members of different Communities such prerogative of mercy shall be exercised by agreement between the President and the Vice-President of the Republic; in the event of disagreement between the two the vote for clemency shall prevail.

3. In case the prerogative of mercy is exercised under paragraph 1 or 2 of this Article the death sentence shall be commuted to life imprisonment.

4. The President and the Vice-President of the Republic shall, on the unanimous recommendation of the Attorney-General and the Deputy Attorney-General of the Republic, remit, suspend, or commute any sentence passed by a Court in the Republic in all other cases".

It is clear that the express wording of Article 53 relates only to persons convicted and sentenced to death or other lesser punishment.

The President of the Republic, as the Head of the State, under Article 36.1 of the Constitution, is entitled, especially in a country such as Cyprus, which is a Republic with a presidential regime (see Article 1 of the Constitution), to announce an amnesty, as it was done by way, actually, of a statement of intent ("δὲν ἔχω πρόθεσιν........προσαγωγῆς ἐνώπιον δικαστηρίου") in the aforementioned speech of the President of the Republic on December 7, 1974; and on reading the said speech as a whole and, in particular, its relevant part which I have quoted earlier on, and on taking judicial notice of the terrible and tragic events of the summer of 1974 (the coup d' etat on July 15, 1974, and the subsequent Turkish invasion of Cyprus) it becomes clear that when the President of the Republic made the said announcement on December 7, 1974, he was taking a step which seemed to be, at the time, advisable in the public interest.

That was not an amnesty with the legal effect of suspending

the operation of the Criminal Code, Cap. 154, as could only have been done by means of Law enacted by the House of Representatives.

Actually, the House of Representatives when it enacted, on October 30, 1975, the Coup d' Etat (Special Provisions) Law, 1975 (Law 57/75)—which was published on October 31, 1975—had occasion to refer to the amnesty announced by the President of the Republic on December 7, 1974; the House not only did not enact any Law in relation to such amnesty, but it adopted a Resolution expressing, among other things, its strong conviction that it was necessary to prosecute, under the law, the main culprits of the coup d' etat, and especially those of whom who continued to be unrepentant.

It is useful to point out, at this stage, that when, after the Civil War in the United States of America, President Lincoln issued a proclamation, on December 8, 1863, offering a full pardon to those who had been engaged in the rebellion, he made such pardon conditional upon the taking and keeping inviolate by them of a prescribed oath, by means of which they promised that they would "thenceforth support the Constitution of the United States and the union of the states thereunder, and would also abide by and support all acts of Congress and all proclamations of the President in reference to slaves, unless the same should be modified or rendered void by judicial decision"; and, on the same day, in a message transmitted to Congress, President Lincoln stated: " 'Laws and proclamations were enacted and put forth for the purpose of aiding in the suppression of the Rebellion. To give them their fullest effect, there had to be a pledge for their maintenance. In my judgment they have aided, and will further aid, the cause for which they were intended. To now abandon them would not only be to relinquish a lever of power, but would also be a cruel and astounding breach of faith........... For these and other reasons, it is thought best that support of these measures shall be included in the oath, and it is believed the Executive may lawfully claim it in return for pardon and restoration of forfeited rights, which he has clear constitutional power to withhold altogether or grant upon the terms which he shall deem wisest for the public interests' ". (See the report of the case of *United States* v. *Klein*, 20 L. Ed. 519, at p. 523).

In the course of his submission before us counsel for the accused has endeavoured to persuade us that we should construe

Article 53 of our Constitution, together with Articles 1 and 36 of the Constitution and in the light of what he described as "the inherent powers" of the President in a State with a presidential regime like Cyprus, so as to hold that the amnesty announced by the President of the Republic, on December 7, 1974, had, by itself, the legal effect of suspending the operation of the Criminal Code as regards offences such as those with which the accused has been charged; and he referred us, in this respect, to the corresponding constitutional situation in the U.S.A.:

Article II(2) of the U.S.A. Constitution provides, *inter alia*, that the President "shall have Power to Grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment".

In Mason and Beaney on American Constitutional Law, 3rd ed., p. 59, it is stated that:-

> "The President is empowered to grant 'reprieves' (a suspension of legally imposed penalties) and 'pardons' (a remission of sentence)..................... the Supreme Court, taking a generous view of the pardoning power, held that the President's power in this field was as great as that of the English kings..............".

It is useful to examine how the Supreme Court of the U.S.A. has approached the above provision in the American Constitution:

In *Ex parte Garland*, 18 L. Ed. 366, Mr. Justice Field said (at pp. 370-371):-

> "The Constitution provides that the President 'shall have power to grant reprieves and pardons for offenses against the United States except in cases of impeachment'. Art. II s. 2.
>
> The power thus conferred is unlimited, with the exception stated. It extends to every offense known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment. This power of the President is not subject to legislative control. Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders. The benign prerogative of mercy reposed in him cannot be fettered by any legislative restrictions.

Such being the case, the inquiry arises as to the effect and operation of a pardon, and on this point all the authorities concur. A pardon reaches both the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense. If granted before conviction, it prevents any of the penalties and disabilities, consequent upon conviction, from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity.

There is only this limitation to its operation; it does not restore offices forfeited, or property or interests vested in others in consequence of the conviction and judgment. 4 Bl. Com. 402; 6 Bac. Abr. tit. Pardon; Hawk. book 2, ch. 37, ss. 34, 54".

In the *Klein* case, *supra*, Chief Justice Chase stated (at p. 526):-

" It is the intention of the Constitution that each of the great co-ordinate departments of the Government—the legislative, the executive, and the judicial—shall be, in its sphere, independent of the others. To the Executive alone is intrusted the power of pardon; and it is granted without limit. Pardon includes amnesty. It blots out the offense pardoned and removes all its penal consequences. It may be granted on conditions.

....

Now, it is clear that the legislature cannot change the effect of such a pardon any more than the Executive can change a law".

In *Knote* v. *United States*, 24 L. Ed. 442, Mr. Justice Field stated (at p. 443):-

" Some distinction has been made, or attempted to be made, between pardon and amnesty. It is sometimes said that the latter operates as an extinction of the offense of which it is the object, causing it to be forgotten, so far as the public interests are concerned, whilst the former only operates to remove the penalties of the offense. This distinction is not, however, recognized in our law. The

Constitution does not use the word 'amnesty'; and, except that the term is generally employed where pardon is extended to whole classes or communities, instead of individuals, the distinction between them is one rather of
5 philological interest than of legal importance".

In *Pollock* v. *Bridgeport Steamboat Company*, 29 L. Ed. 147, Mr. Justice Harlan said (at p. 148):-

"It may be conceded that, except in cases of impeachment and where fines are imposed by a co-ordinate department
10 of the government for contempt of its authority, the President, under the general unqualified grant of power to pardon offenses against the United States, may remit fines, penalties and forfeitures of every description arising under the laws of Congress; and, equally, that his constitu-
15 tional power in these respects cannot be interrupted, abridged or limited by any legislative enactment. But is that power exclusive, in the sense that no other officer can remit forfeitures or penalties incurred for the violation of the laws of the United States? This question cannot be
20 answered in the affirmative without adjudging that the practice in reference to remissions by the Secretary of the Treasury and other officers, which has been observed and acquiesced in for nearly a century, is forbidden by the Constitution. That practice commenced very shortly after
25 the adoption of that instrument, and was perhaps suggested by legislation in England, which, without interfering with, abridging or restricting the power of pardon belonging to the Crown, invested certain subordinate officers with authority to remit penalties and forfeitures arising from
30 violations of the revenue and customs laws of that country. Stat. 27 Geo. III., chap. 32. See also Stat. 51 Geo. III., chap. 96, and 54 Geo. III., chap. 171".

In *Brown* v. *Walker*, 40 L. Ed. 819, 822, 823, the above dicta in the cases of *Garland*, *Knote* and *Pollock* were referred to with
35 approval.

In *Ex parte Grossman*, 69 L. Ed. 527, Chief Justice Taft stated the following (at pp. 530-531) regarding the interpretation of the relevant constitutional provision in the U.S.A.:-

"The language of the Constitution cannot be interpreted
40 safely except by reference to the common law and to British

institutions as they were when the instrument was framed and adopted. The statesmen and lawyers of the Convention, who submitted it to the ratification of the Convention of the thirteen states, were born and brought up in the atmosphere of the common law, and thought and spoke in its vocabulary. They were familiar with other forms of government, recent and ancient, and indicated in their discussions earnest study and consideration of many of them, but when they came to put their conclusions into the form of fundamental law in a compact draft, they expressed them in terms of the common law, confident that they could be shortly and easily understood.

In a case presenting the question whether a pardon should be pleaded in bar to be effective, Chief Justice Marshall said of the power of pardon (*United States* v. *Wilson*, 7 Pet. 150, 160, 8 L. Ed. 640, 643):

'As this power had been exercised from time immemorial by the executive of that nation whose language is our language, and to whose judicial institutions ours bear a close resemblance, we adopt their principles respecting the operation and effect of a pardon, and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it'.

In *Ex parte Wells*, 18 How. 307, 311, 15 L. ed. 421, 424, the question was whether the President under his power to pardon could commute a death sentence to life imprisonment by granting a pardon of the capital punishment on condition that the convict be imprisoned during his natural life. This Court, speaking through Mr. Justice Wayne, after quoting the above language of the chief justice, said:

'We still think so, and that the language used in the Constitution, conferring the power to grant reprieves and pardons, must be construed with reference to its meaning at the time of its adoption. At the time of our separation from Great Britain, that power had been exercised by the King, as chief executive. Prior to the Revolution, the colonies, being in effect under the laws of England, were accustomed to the exercise of it in the various forms, as they may be found in the English law books. They were, of course, to be applied as occasions occurred, and they

constituted a part of the jurisprudence of Anglo–America. At the time of the adoption of the Constitution, American statesmen were conversant with the laws of England and familiar with the prerogatives exercised by the Crown. Hence, when the words to grant pardons were used in the Constitution, they conveyed to the mind the authority exercised by the English Crown, or by its representatives in the colonies. At that time both Englishmen and Americans attached the same meaning to the word 'pardon'. In the convention which framed the Constitution, no effort was made to define or change its meaning, although it was limited in cases of impeachment' ".

The above review of American case law illustrates the evolution of the approach in the U.S.A. to the pardoning power of the President; and it is obvious that such approach was based on the very wide terms in which the relevant constitutional provision is framed, and, also, that it has been considerably influenced by the notion of pardon in English law. On the other hand, the very specific and restrictive provisions of our Article 53 make the corresponding constitutional situation here altogether different from that in the U.S.A.

We were invited, also, by counsel for the accused to hold that the power of the President of the Republic in Cyprus to grant an amnesty, with all its legal consequences, has to be *implied* because of the existence of the powers conferred on the President by means of Article 53 of the Constitution.

In dealing with this proposition it is useful to refer, again, to some relevant case law of the U.S.A. Supreme Court concerning the mode of construing a Constitution:

In *M'Culloch* v. *The State of Maryland*, 4 L. Ed. 579, Chief Justice Marshall said (at p. 601):-

"A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of a prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves".

In *Prigg* v. *The Commonwealth of Pennsylvania*, 10 L. Ed. 1060, Mr. Justice Story stated (at p. 1088):-

> " How, then, are we to interpret the language of the clause? The true answer is, in such a manner, as, consistently with the words, shall fully and completely effectuate the whole objects of it. If by one mode of interpretation the right must become shadowy and unsubstantial, and without any remedial power adequate to the end, and by another mode it will attain its just end and secure its manifest purpose, it would seem, upon principles of reasoning, absolutely irresistible, that the latter ought to prevail. No Court of justice can be authorized so to construe any clause of the Constitution as to defeat its obvious ends, when another construction, equally accordant with the words and sense thereof, will enforce and protect them".

In *South Carolina* v. *United States*, 50 L. Ed. 261, Mr. Justice Brewer said (at pp. 264–265):-

> " The Constitution is a written instrument. As such its meaning does not alter. That which it meant when adopted, it means now. Being a grant of powers to a government, its language is general; and, as changes come in social and political life, it embraces in its grasp all new conditions which are within the scope of the powers in terms conferred. In other words, while the powers granted do not change, they apply from generation to generation all things to which they are in their nature applicable. This in no manner abridges the fact of its changeless nature and meaning. Those things which are within its grants of power, as those grants were understood when made, are still within them; and those things not within them remain still excluded.
>
> ....
>
> But it is undoubtedly true that that which is implied is as much a part of the Constitution as that which is expressed".

The proposition that that which is clearly implied is of equal force as that which is expressed was affirmed, once again, in *International Shoe Company* v. *Pinkus*, 73 L. Ed. 318, 320.

In *United States* v. *Classic*, 85 L. Ed. 1368, Mr. Justice Stone said (at p. 1378):-

> " But in determining whether a provision of the Constitution applies to a new subject matter, it is of little significance

that it is one with which the framers were not familiar. For in setting up an enduring framework of government they undertook to carry out for the indefinite future and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses. Hence we read its words, not as we read legislative codes which are subject to continuous revision with the changing course of events, but as the revelation of the great purposes which were intended to be achieved by the Constitution as a continuing instrument of government.

....

If we remember that 'it is a Constitution we are expounding', we cannot rightly prefer, of the possible meanings of its words, that which will defeat rather than effectuate the constitutional purpose".

In *Lichter* v. *United States*, 92 L. Ed. 1694, the Supreme Court had to deal with the extent of the war powers of the Congress and of the President, and Mr. Justice Burton said the following in this respect (at p. 1724):–

"The war powers of Congress and the President are only those which are to be derived from the Constitution but, in the light of the language just quoted, the primary implication of a war power is that it shall be an effective power to wage the war successfully. Thus, while the constitutional structure and controls of our Government are our guides equally in war and in peace, they must be read with the realistic purposes of the entire instrument fully in mind".

Looking, in the light of all the foregoing, at the provisions of Article 53 of our Constitution as a whole, I find them to be so clear, unambiguous and specific, and so limited to particular matters, that I can see no room for holding that they confer, expressly or by implication, either when read alone or in conjunction with any other Article of the Constitution, the power on the President of our Republic to grant an amnesty with its full legal consequences, including suspension of the operation of the Criminal Code, Cap. 154.

In Basu's Commentary on the Constitution of India, 5th ed., vol. 2, p. 401, there is to be found a reference to the constitutional provisions in France and the Federal Republic of Germany regarding the power of pardon. The following are stated in this respect:–

"(D) Fifth French Republic.—In the Constitution of 1958, the pardoning power of the President is not limited in any way. Art. 17 simply says—

'The President of the Republic shall have the right of pardon'. 5

(E) West Germany.—Art. 60(2)-(3) of the West German Constitution, 1949 explain the scope of the pardoning power of the President—

'He exercises the power of pardon on behalf of the Federation in individual cases. He may delegate these powers to 10 other authorities'.

Hence, the President has no power to declare a general amnesty under the above power".

It is significant to note that the corresponding provision in the Constitution of the Federal Republic of Germany is treated 15 as not empowering the President to declare a general amnesty, because of the expression therein "in individual cases"; and though this expression is not to be found as such in Article 53 of our Constitution it is abundantly clear from its wording that all its provisions can only be applied to individual cases only; 20 therefore, for this reason, too, I am strengthened in my already expressed view that it is not possible to grant an amnesty under Article 53 of our Constitution.

It has been, further, argued that the announcement of an amnesty by the President of the Republic on December 7, 1974, 25 should be treated as an amnesty suspending the operation of the Criminal Code, Cap. 154, by virtue of the application of the "Law of Necessity" (see, *inter alia*, *The Attorney-General of the Republic* v. *Ibrahim and others*, 1964 C.L.R. 195), in view of the very difficult for our country times in which the President of the 30 Republic decided to announce such amnesty. No doubt they were, indeed, both tragic and difficult times, but even during those times and, in particular, on or about December 7, 1974, it was possible for the House of Representatives to meet and enact the necessary legislation for the purpose of giving full 35 legal effect to the amnesty announced by the President of the Republic; therefore, it cannot be held that the announcement, by the President of the Republic of an amnesty, without the enactment of a relevant law of the House of Representatives, should be treated, by virtue of the "Law of Necessity", as having 40

by itself the effect which a Law of the House of Representatives, enacted for the purpose, would have had.

Whether, and to what extent, the amnesty announced on December 7, 1974, might provide a guideline, by way of a policy, for the exercise, in individual cases only, of the powers of the President of the Republic under Article 53 of the Constitution, or of the Attorney-General of the Republic under Article 113.2 of the Constitution, is a matter which is not in issue in the present proceedings and regarding which I do not, therefore, need to express an opinion.

The accused in the present case entered a plea of pardon under section 69(1)(c) of the Criminal Procedure Law, Cap. 155.

The notion of pardon was introduced into the legal system of Cyprus (see clause XIX of the Letters Patent of March 10, 1925) from the English legal system, as in the U.S.A.; and at the time when there was enacted, in 1948, as Law 40/48, our now in force Criminal Procedure Law, Cap. 155, Cyprus was still a British Colony.

Section 69 of Cap. 155 reads as follows:-

"69.(1) The accused may, before pleading to the charge or information, plead—

(a) that the Court before which he is called upon to plead has not and that some other Court has jurisdiction over him or over the offence with which he is charged, and, if the plea is sustained, the Court shall send the case to be tried before the Court in the Colony which has jurisdiction over the offender or over the offence;

(b) that he has been previously convicted or acquitted, as the case may be, on the same facts for the same offence;

(c) that he has obtained a pardon for his offence.

(2) If either of the pleas in paragraph (b) or (c) of subsection (1) of this section is pleaded and denied to be true in fact, the Court shall try whether such plea is true in fact or not.

If the Court holds that the facts alleged by the accused do not prove the plea, or if they find that it is false in fact, the accused shall be required to plead to the charge or information".

Section 69, above, is substantially the same as section 67 of the Criminal Procedure Law, Cap. 14, in the 1949 Revised Edition of the Laws of Cyprus, which was initially section 67 of Law 40/48 (and which was preceded by section 71 of the Cyprus Courts of Justice Order, 1927, and by section 153 of the Cyprus Courts of Justice Order, 1882).

In view of the non-enactment by the House of Representatives of any relevant legislation giving the requisite legal effect to the amnesty announced by the President of the Republic on December 7, 1974, the relevant provisions of the Criminal Code, Cap. 154, were not rendered inoperative as regards the matters in respect of which the accused has been charged and, consequently, he could not plead successfully, under section 69(1)(c) of Cap. 155, that he has obtained a pardon for the offences concerned; consequently, his trial has had to continue according to law.

I pass on, next, to the reasons for which it was held, in relation to the *second question of law*, that as the accused took over the office of "President of the Republic" as a result of the coup d' etat on July 15, 1974, his seat in the House of Representatives became vacant, and, therefore, there was not required the leave of the Supreme Court, under Article 83.2 of the Constitution, for his arrest and prosecution in the present instance.

It is useful, at this stage, to refer to certain undisputed facts which can be judicially noticed, and which have, also, been set out in an affidavit sworn by Vera Sampson, the wife of the accused, on July 28, 1976: The accused became in 1970 a Member of the House of Representatives, and, at the time of the coup d' etat, he was still such a Member, because the term of office of the House had been extended and had not yet lapsed. The accused took over the office of "President of the Republic" as a result of the coup d' etat on July 15, 1974, and did not relinquish it until July 23, 1974.

Articles 70 and 71 of our Constitution read as follows:-

> " 70. The office of a Representative shall be incompatible with that of a Minister or of a member of a Communal Chamber or of a member of any municipal council including a Mayor or of a member of the armed or security forces of the Republic or with a public or municipal office or, in the case of a Representative elected by the Turkish Community, of a religious functionary.

For the purposes of this Article 'public office' means any office of profit in the service of the Republic or of a Communal Chamber the emoluments of which are under the control either of the Republic or of a Communal Chamber, and includes any office in any public corporation or public utility body".

71. The seat of a Representative shall become vacant—

(a) upon his death;

(b) upon his written resignation;

(c) upon the occurrence of any of the circumstances referred to in paragraph (c) or (d) of Article 64 or if he ceases to be a citizen of the Republic;

(d) upon his becoming the holder of an office mentioned in Article 70".

It is correct that in the above Articles there is not to be found an express provision establishing the incompatibility of the office of a Member of the House of Representatives with that of the President of the Republic; nor is it provided therein that the seat of a Representative shall become vacant upon such Representative becoming the President of the Republic.

On the other hand, that the President of the Republic cannot be, also, at the same time, a Member of the House of Representatives, and that, consequently, by inevitable implication, a Member of the House of Representatives cannot be, also, at the same time, President of the Republic, is clearly derived from Article 41 of the Constitution, which reads as follows:-

"41.(1) The office of the President and of the Vice-President of the Republic shall be incompatible with that of a Minister or of a Representative or of a member of a Communal Chamber or of a member of any municipal council including a Mayor or of a member of the armed or security forces of the Republic or with a public or municipal office.

For the purposes of this Article 'public office' means any office of profit in the public service of the Republic or of a Communal Chamber, the emoluments of which are under the control either of the Republic or of a

Communal Chamber, and includes any office in any public corporation or public utility body.

(2) The President and the Vice-President of the Republic shall not, during their term of office, engage either directly or indirectly, either for their own account or for the account of any other person, in the exercise of any profit or non-profit making business or profession". 5

It has not been seriously disputed that, due to the combined effect of Articles 41, 70 and 71 of the Constitution, nobody can hold the office of the President of the Republic and remain, at 10 the same time, a Member of the House of Representatives, if he becomes the President of the Republic in accordance with the Constitution. It has been, however, contended, on behalf of the accused, that since he took over the office of "President of the Republic", for eight days, unconstitutionally and unlawfully, 15 as a result of the coup d' etat on July 15, 1974, he did not lose, in such circumstances, his status as a Member of the House of Representatives; and, in this respect, reference has been made, also, to the provisions of the Coup d' Etat (Special Provisions) Law, 1975 (Law 57/75), and to the judgment of Mr. Justice A. 20 Loizou in the case of *Aristides Liasi and Others* v. *The Attorney-General of the Republic and another*, (1975) 3 C.L.R. 558, where it was held that the situation brought about in July 1974 by the coup d' etat was not legitimized in any way whatsoever.

Section 3 of Law 57/75 provides that the coup d' etat, and 25 the "Government" which was set up as a result of it, have no existence in law at all; and, by means of a definition in section 2 of the same Law, the person who took over unconstitutionally the office of "President of the Republic" has been designated as being included in the "Government" which was set up as a 30 result of the coup d' etat; also, section 4 of such Law provides that any act done by the said "Government" in purported exercise of its powers and duties is non-existent and devoid of any substance.

In my opinion the purpose for which Law 57/75 was enacted 35 was to confirm that, as was already clear on the basis of relevant legal principles, the coup d' etat of July 15, 1974, and the "Government" which was set up as a result of it, and which, as rightly stated both in the preamble to Law 57/75 and in the *Aristides Liasi* case, *supra*, had no popular support at all and, 40 consequently, collapsed, have not brought about, in any way,

any legal effects whatsoever. In my view, the notion of benefiting in the least, either directly or indirectly, by virtue of the operation of the provisions of Law 57/75, any member of the "Government" which was set up as a result of the coup d' etat, 5 such as the accused in the present case, is entirely incompatible with the object and provisions of such Law.

So, I cannot accept that either Law 57/75, or the approach adopted in the *Aristides Liasi* case, *supra*, can be justifiably relied on in support of the contention of counsel for the accused 10 that, because the taking over by the accused of the office of "President of the Republic" has been devoid of any legal effect, he has not lost, as a result of such taking over, his status as a Member of the House of Representatives. In my view the reason for which the accused, who was Member of the House of 15 Representatives, lost his status as a Member of the House on taking over the office of "President of the Republic" was the very fact itself of such taking over; because, since a Member of the House of Representatives who becomes lawfully the President of the Republic ceases to be a Member of the House, 20 by virtue of the combined effect of Articles 41, 70 and 71 of the Constitution, it follows a fortiori that somebody who, in breach of his oath to the Constitution as a Member of the House of Representatives, takes over the office of "President of the Republic" unconstitutionally, as a result of a coup d' etat, 25 ceases ipso facto to be a Member of the House of Representatives; and one cannot expect to find a provision to that effect in the Constitution, because there are contained therein, in this respect, provisions envisaging only constitutional and lawful happenings, and not, also, instances of unconstitutional and 30 unlawful usurpation of power as a result of a coup d' etat.

My opinion that the very fact of the taking over unconstitutionally of the office of "President of the Republic" by a Member of the House of Representatives results in the extinction of his status as a Member of the House is strengthened by the view 35 taken in India in the case of *Hoti Lal* v. *Raj Bahadur*, AIR (1959) Raj. 227; it was held therein that where a person had been performing the duties of an office of profit under the Government, which disqualified him from being nominated for election as a Member of Parliament, it did not matter whether or not he 40 had been holding such office validly, so long as he had been actually holding such office at the material time; Wanohoo C.J. said, *inter alia*, the following:–

"The disqualification arises from the fact of holding an

office of profit under the Government of India or the Government of a State even if there is some defect, legal or otherwise, in the order making the appointment".

In the light of all the foregoing I have no doubt at all that the seat of the accused in the house of Representatives became ipso facto vacant when he took over the office of "President of the Republic" on July 15, 1974, and, therefore, no leave of the Supreme Court was required, under Article 83.2 of the Constitution, for his arrest and prosecution in the present case.

In relation, lastly, to the *third question of law*, we have held that the Nicosia Assizes possessed jurisdiction to try the accused on counts charging him with offences against the constitutional order and the security of the Republic. The contention of his counsel to the contrary was based on Article 156 of the Constitution, which reads as follows:–

" The following offences in the first instance shall be tried by a Court composed of such Judges belonging to both Communities as the High Court shall determine presided over by the President of the High Court:–

(a) treason and other offences against the security of the Republic;

(b) offences against the Constitution and the constitutional order:

Provided that in the appeal from any decision of such Court the High Court shall be presided over by the President of the Supreme Constitutional Court in the place of the President of the High Court and in such a case the President of the Supreme Constitutional Court shall have all the powers vested in the President of the High Court".

In *The Republic* v. *Andreas Liassis*, (1973) 2 C.L.R. 283, we said, *inter alia* (at p. 288) that:–

" In our opinion Article 156 was rendered totally inoperative by the exceptional events which preceded, and eventually led to, the enactment of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64), and which are described in the judgments delivered in the case of *The Attorney-General* v. *Ibrahim*, 1964 C.L.R. 195.

In the judgments delivered in the *Ibrahim* case it was

stated, *inter alia*, that the posts of the President of the Supreme Constitutional Court and of the President of the High Court had become vacant due to the aforesaid events, before the enactment of Law 33/64; and we take judicial notice that the position continues in this respect, to be now as it was then. So, apart from the impossibility of having a Court composed, under Article 156, of Judges belonging to both 'Communities', there does not exist in office a President of the High Court, who would have to preside over such Court, nor does there exist in office a President of the Supreme Constitutional Court who would have to preside at the appeal from such Court".

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I see no reason to depart from the above view; and as the exclusionary provision in section 20(1) of the Courts of Justice Law, 1960 (Law 14/60), which is based on Article 156, was rendered inoperative, too, when Article 156 became inoperative (see the *Andreas Liassis* case, *supra*, at p. 288), it follows that the Nicosia Assizes possessed jurisdiction under the said section to try the accused in the present case.

It is true that on this occasion there was put forward before us an argument which does not appear to have been advanced in the *Andreas Liassis* case, namely that one of the objects of Article 156 is to ensure that at the trial for an offence specified in such Article the Assize Court is to be presided over by a judicial officer of the highest rank, and that, as such object could still be achieved under present circumstances, Article 156 has not, to that extent, been rendered inoperative. I do not accept that this is so: Had Article 156 aimed at ensuring an object such as the one alleged by counsel for the accused then it would not have been limited to providing about the President of the High Court presiding at the trial, but it would have referred, in this respect, in general to all Judges of the High Court; it referred, however, only to the President of the High Court because its only object was to ensure that at the trial there would preside a neutral, non-Cypriot, Judge.

The foregoing are my reasons for the opinion which we have expressed unanimously on August 20, 1976, on the three questions of law which were reserved for our opinion, by the Nicosia Assizes, under section 148 of Cap. 155.

STAVRINIDES, J.: Reasons for the unanimous opinion of the Court delivered by His Honour the President on August 20 last,

although not fully stated therein, may fairly be deduced from its context. Judgments giving detailed reasons for that opinion have since been prepared by three of my brethren, and in the circumstances I consider it unnecessary to add anything on the subject myself. 5

L. LOIZOU, J.: I agree with the reasons given by the President of the Court for the unanimous opinion of this Court on the three questions of law reserved under the provisions of s. 148(1) of the Criminal Procedure Law Cap. 155 by the Assize Court sitting at Nicosia in Criminal Case No. 4563/76 and I feel that 10 there is nothing that I can usefully add.

HADJIANASTASSIOU, J.: Having considered and answered the three questions of law reserved by the Nicosia Assizes under the provisions of s. 148(1) of the Criminal Procedure Law, Cap. 155, and having returned the case to that Court to hear it and 15 decide on it in the light of our own opinion, I feel that I am bound to give my own views and reasons for agreeing with the opinion of this Court delivered on August 20, 1976.

Having heard full argument which we have had in this case, I am convinced that it would be a mistake in simply concurring 20 with the first judgment in a case which has been heard by the Full Bench of the Supreme Court.

I take this course because with the passage of time, and from personal experience, I have come more and more firmly to the conclusion that it is never wise to have only one judgment in a 25 Court of final instance dealing with an important question of law. My main reason is that experience has shown that those who have to apply the decision to other cases and still more those who wish to criticize it, seem to find it difficult to avoid treating sentences and phrases in a single judgment as if they were provi- 30 sions in an Act of the House of Representatives. They do not seem to realise that it is not the function of the Judges of this Court, or indeed of any Judges to frame definitions or to lay down hard and fast rules. It is their function to enunciate principles and much that they say is intended to be illustrative 35 or explanatory and not to be definitive. Indeed, when there are two or more judgments these must be read together and then it is generally much easier to see what are the principles involved and what are merely illustrations of it. See *Demetrios Demetriades* v. *The Republic*, (1974) 3 C.L.R. 246, where the observa- 40

tions made in *Cassell & Co. Ltd.* v. *Broome* [1972] 1 All E.R. H.L. 801 at pp. 835-836 by Lord Reid were adopted and followed by me.

With these thoughts in mind, I would state that the case
5 before us is the first one of its nature to reach this Court after the recent tragedy of Cyprus. The accused, who admitted that he had become the President of the Republic after the well-known events that led to the coup d'etat and the Turkish invasion on July 21, 1976, when charged with the offences
10 connected with the preparation of war or war-like undertaking, the use of armed force against the Government of the Republic and its President, and the procurement of alteration in the Government, under ss. 40 and 41 of the Criminal Code, Cap. 154, before pleading to the information, he pleaded (a) that he
15 had obtained a pardon for those offences by the President of the Republic, His Beatitude Archbishop Makarios III; (b) that being a Member of the House of Representatives since the year 1970, he continued to remain in office until December 31, 1976; and (c) that the Nicosia Assizes had no jurisdiction to try him,
20 in view of the provisions of Article 156 of the Constitution which require a special Court to be constituted.

In pleading these special pleas the accused relied on the procedural section 69(1)(a), (b) and (c) of the Criminal Procedure Law, Cap. 155, which says that:

25 "The accused may, before pleading to the charge or information, plead—

(a) that the Court before which he is called upon to plead has not and that some other Court has, jurisdiction over him or over the offence with which he is charged,
30 and, if the plea is sustained, the Court shall send the case to be tried before the Court in the Colony (now the Republic of Cyprus) which has jurisdiction over the offender or over the offence;

(b) that he has been previously convicted or acquitted, as
35 the case may be, on the same facts for the same offence;

(c) that he has obtained a pardon for his offence."

Then, under sub-section 2 we read that:-

"If either the pleas in paragraph (b) or (c) of sub-section (1) of this section is pleaded and denied to be true in fact,
40 the Court shall try whether such plea is true in fact or not.

If the Court holds that the facts alleged by the accused do not prove the plea, or if they find that it is false in fact, the accused shall be required to plead to the charge or information."

Now, what are the facts for which the accused alleges that he has obtained a pardon for those offences? The facts upon which counsel relied for the defence are contained in a speech of the President of the Republic on His return to Cyprus, after he had been forced by the insurgents or the rebels to leave and stay away from Cyprus for a period of about five months. Speaking from the balcony of the Archbishopric on December 7, 1974 to the hundreds of thousands of people who had gathered there from all parts of Cyprus to give him a hero's welcome, the President expressed his intention not to prosecute enemies and opponents and granted them forgiveness of their transgressions as well as amnesty. In His address to the people, His Beatitude, speaking in his double capacity as Archbishop and President, called for unity and oblivion, and having in mind the salvation of Cyprus, he continued in this impressive language:-

" Βαθύτατα λυποῦμαι, διότι ἀπὸ τινων ἐτῶν πάθη καὶ μίση διαιροῦν τοὺς Ἕλληνες Κυπρίους. Καὶ αἱ ἀντιθέσεις ἔλαβον ἔκτασιν μέχρι πολιτικῶν δολοφονιῶν καὶ ἐνόπλων συγκρούσεων. Καὶ ἐνῶ ἡ Κύπρος κατεστρέφετο, Ἕλληνες Κύπριοι ἔστρεφον τὰ ὅπλα ἐναντίον τῶν ἀδελφῶν των. Δὲν θὰ ἀναφερθῶ εἰς τὰ αἴτια τοῦ διχασμοῦ διότι δὲν ἐπιθυμῶ νὰ ἀναξέσω πληγὰς τοῦ παρελθόντος, τῶν ὁποίων θέλω τὴν ἐπούλωσιν. Καὶ διὰ τοῦτο δὲν ἔχω πρόθεσιν διώξεως ἐχθρῶν καὶ ἀντιπάλων ἢ προσαγωγῆς ἐνώπιον δικαστηρίου τῶν βαρυνομένων μὲ τὰ πολιτικὰ ἀδικήματα ἢ μετασχόντων εἰς τὸ κατ' ἐμοῦ πραξικόπημα. Δίδω εἰς ὅλους ἄφεσιν ἁμαρτιῶν καὶ ἀμνηστίαν ἐπὶ τῇ ἐλπίδι ὅτι θὰ ἐπέλθη ἑνότης τοῦ λαοῦ μας. Ἐνώπιον τοῦ θυσιαστηρίου τῆς Κύπρου τὰ πάθη καὶ ἡ διχόνοια οὐδεμίαν ἔχουν θέσιν.

Ἐθνικὴν ἐπιταγὴν ἀποτελεῖ ἡ ψυχικὴ ἑνότης τοῦ Κυπριακοῦ Ἑλληνισμοῦ καὶ πρὸς τὴν κατεύθυνσιν αὐτὴν ἔχομεν καθῆκον ὅλοι νὰ συμβάλωμεν. Ἐκκλησία, Πολιτεία, Κόμματα, Ὀργανώσεις, Τύπος καὶ ἄτομα."

Translated into English the above extract reads as follows:-

" I am deeply grieved that for some years passion and hatred have been dividing Greek Cypriots. And conflict

has led to political murders and armed clashes. And while Cyprus was being ruined, Greek Cypriots turned their arms against their brothers. I shall not refer to the causes of conflict, for I do not wish to rake up old wounds which I want to see healed. And for this reason, it is not my intention to prosecute my enemies and opponents or to bring to justice those involved in political offences or those who took part in the coup against me. I forgive them all for their transgressions and grant them amnesty in the hope that the desired unity among our people will be achieved. In the face of the calamity of Cyprus, there is no room for passions and discord. The spiritual unity of the Greek Cypriot people is a national dictate. And all of us, the Church, the State, Parties, Organizations, the Press and individuals, have a duty to contribute to this end."

The first question is whether the amnesty announced by the President of the Republic has in law the effect put forward by the accused in his plea. Counsel for the accused, in a full argument, tried to convince this Court that his client had obtained a pardon, because from the whole tenor of the speech of the President, one inevitably would reach the conclusion that, because of the tragedy of Cyprus, the President having in mind its salvation, decided not to bring to justice those involved in political offences as well as those who had taken part in the coup against him. In forgiving them all for their transgressions, counsel added, and in granting them amnesty in the hope that the desired unity would prevail among the people, the President, being the Head of the State, was acting under the provisions of the law, or of Article 53 of the Constitution and under the Doctrine of Necessity. The President's announcement in those critical times of granting amnesty to all, counsel contended, had the legal effect—and this can be implied and read into the Constitution because of his powers—of rendering inoperative the relevant provisions of the Criminal Code Cap. 154; and in so far as the offences are concerned, the accused is placed beyond the reach of punishment; because in effect the pardon relieved him from all penalties attached to his offences.

In support of his argument counsel referred to a number of Greek and foreign textbooks on the historic evolution and legal effect of the term "amnesty" in Greece, England, France, India and the United States of America. Counsel further relies on the case of *U.S.* v. *Klein* (1872) 13 Wall.128; or 20 L. Ed. 519.

where the Court lays down that the pardoning power of the President of the United States is not subject to legislative control and can be granted after the offence has been committed, either before or after trial or conviction, and that this power may not be limited by Congress either as to persons or as to the effect of pardon.

On the other hand, counsel on behalf of the Republic of Cyprus resisted the contentions of counsel for the accused and contended that the Court in interpreting correctly the speech of the President of the Republic should have no difficulty in reaching the conclusion that it was an announcement of policy not to prosecute the rebels for the purpose of oblivion and forgiveness to all, on condition however that they would also respond to such forgiveness and show by their deeds their good will to help or contribute in achieving the desired unity of all Greek-Cypriots. It was, therefore, counsel says, unthinkable for any rebel to continue to believe that he could behave in such a way by provoking with his attitude or deeds in a way not promoting the desired unity of our people, and yet at the same time to expect that he would continue getting the benefit of the announcement of forgiveness.

Counsel further argued that (a) the policy not to prosecute in the public interest, was respected and put into effect by the appropriate State organs, yet the accused, fully realizing that the policy of amnesty was conditional, continued acting in such a way that it was unthinkable for the State organs to continue affording him the benefit of the announcement of forgiveness; (b) the accused has not been validly granted amnesty for the offences for which he has been prosecuted and was not absolved from the penalties because the President's announcement of forgiveness did not render inoperative the provisions of the Criminal Code regarding the offences committed by the accused; in addition, his plea that he was pardoned is not supported because this presupposes that there was a specific constitutional or legislative provision whereas no such provision exists regarding the granting of amnesty.

Then counsel urged upon this Court to accept the view that the act of the President in announcing the amnesty of the offences committed by the rebels was not of a legislative nature because his powers are defined by the Constitution and cannot be implied; and because the power to pass an Act of amnesty belongs to the House of Representatives—the only body which

has the power to suspend the relevant provisions of the Criminal Code. In support of his stand, counsel referred to a number of textbooks and authorities.

What is then the meaning and effect of amnesty? Writing in
5 the year 1923, on the System of Constitutional Law of Greece In Comparison to that of Foreign States, 2nd edn. Vol. B. at pp. 378–379, Professor N.N. Saripolos observed that:–

"'Η ἀμνηστία ἀποτελεῖ ὁριστικὴν ἀναστολήν, μετ' ἀναδρομικῆς δυνάμεως, τοῦ νόμου, καθ' ὅσον ἀφορᾶ εἰς τὰς
10 ὑπ' αὐτῆς ὁριζομένας ἀξιοποίνους πράξεις, ὧν αἴρει τὸ ἀξιόποινον, καὶ καταργεῖ πάσας τὰς τυχὸν παραχθείσας συνεπείας τοῦ ποινικοῦ νόμου, καθ' ὅσον ἀφορᾶ εἰς τὰς ὑπ' αὐτῆς ὁριζομένας πράξεις. Ὥστε ἐὰν δὲν ὑπῆρχεν ἡ ἐξαιρετικὴ περὶ ἀμνηστίας διάταξις τοῦ ἄρθρου 39, ἐδαφ. 2, τοῦ συντάγ-
15 ματος, μόνον διὰ νόμου (ἢ διὰ Διατάγματος, ἐκδιδομένου δυνάμει εἰδικῆς 'νομοθετικῆς ἐξουσιοδοτήσεως') θὰ ἦτο δυνατὸν νὰ χορηγηθῆ ἀμνηστία, οὐδέποτε δὲ δι' ἁπλοῦ Διατάγματος, καθόσον κατὰ τὸν γενικὸν κανόνα τοῦ ἄρθρου 35, ἐδάφ. 2, τοῦ συντάγματος, 'ὁ Βασιλεὺς ..... οὐδέποτε
20 δύναται ν' ἀναστείλῃ τὴν ἐνέργειαν, οὐδὲ νὰ ἐξαιρέσῃ τινὰ τῆς ἐκτελέσεως τοῦ νόμου'. 'Αλλὰ τὸ ἄρθρον 39 τοῦ συντάγματος ἐπιτρέπει τὴν ὑπὸ τοῦ Βασιλέως ἀπονομὴν ἀμνηστίας, προκειμένου περὶ πολιτικῶν ἐγκλημάτων: ''Ο Βασιλεὺς ἔχει τὸ δικαίωμα νὰ χορηγῇ ἀμνηστίαν μόνον ἐπὶ πολιτικῶν
25 ἐγκλημάτων ἐπὶ τῇ εὐθύνῃ τοῦ ὑπουργείου'. Ὥστε προκειμένου περὶ πολιτικῶν ἐγκλημάτων, ὁ Βασιλεὺς δύναται τῇ εὐθύνῃ τοῦ ὑπουργείου, οὐχὶ τῇ προσυπογραφῇ καὶ εὐθύνῃ τοῦ ὑπουργοῦ τῆς δικαιοσύνης μόνον, νὰ χορηγῇ ἀμνηστίαν" ("Ἴδε Κ. Γιωργοπούλου "'Επίτομον Συνταγματικὸν Δί-
30 καιον" σελίδες 537, 538, 539).

And in English it reads:–

"Amnesty constitutes the final suspension, with retrospective effect, of the law, in so far as it relates to the punishable acts specified by it, the punishable nature of which it
35 removes and abolishes all the consequences which might have been derived from the criminal law, in so far as it relates to the acts specified by it. Therefore, had the exceptional provision of Article 39(2) of the Constitution for amnesty not existed, only by law (or by Order, issued in
40 accordance with special 'legislative authorization') could amnesty have been granted and this never simply by an Order, because, in accordance with the general rule of

Article 35(2) of the Constitution the 'King.... cannot suspend the operation nor exempt any person from the execution of the law'. But Article 39 of the Constitution permits the granting of amnesty by the King in relation to political crimes; 'The King has power to grant amnesty only for political crimes on the responsibility of the ministry'. Therefore, with regard to political crimes, the King may grant an amnesty on the responsibility of the Ministry, not only on the counter–signature and responsibility of the Minister of Justice alone."

According to Basu's Commentary on the Constitution of India, 5th edn., Vol. 2, which deals with the Constitutional provisions both in India and in the United States under the heading "Pardon and Amnesty" at pp. 406, 407:-

"The 'pardoning power' should be distinguished from 'amnesty'. While a pardon remits the punishment imposed by a Court upon an offender, amnesty overlooks the offence and absolves the offender from penalty. While pardon is addressed to ordinary crimes, or infractions of the peace of the State, amnesty is generally confined to 'political offences' or offences against the sovereignty of the State, and is exercised in favour of classes or groups of people[1,2] In short, amnesty is in the nature of forgiveness offered in advance of trial, to a group of people who have engaged in rebellion or like offences against the State itself.

(A) In the United States, though the power to pass an Act of Amnesty belongs to Congress[3], the President too, has sometimes declared amnesty by Proclamation[4], by virtue of his power to grant a 'pardon' before trial.

'Amnesty' is thus regarded as a species of 'pardon' within the meaning of Art. II, sec. 2, and it has been held that where the President issues an amnesty in exercise of his pardoning power, the Legislature cannot interfere with the effects of such amnesty: 'the legislature cannot change the effect of such a pardon any more than the executive can change the law'[5]".

1. *Burdick* v. *U.S.*, (1915) 236 U.S. 79.
2. *Chennagadu, in re*, I.L.R. (1955) Mad. 92 (105).
3. *The Laura*, (1885) 114 U.S. 411.
4. *Ogg and Ray*, Introduction to American Government p. 368; *U.S.* v. *Klein*, (1872) 3 Wall. 128 (148).
5. *U.S.* v. *Klein*, (1872) 13 Wall. 128.

Then the learned author, dealing with the position in India, says:-

"(B) But our Constitution does not empower the Executive to grant a general amnesty. It is thus left to Parliament."

Writing further on the effects of pardon, he says at pp. 407-408:-

" A pardon may be either full, limited or conditional.

(i) A full pardon wipes out the offence in the eye of law and rescinds the sentence as well as the conviction[1] and frees the convicted person from serving any uncompleted term of imprisonment or from paying any unpaid fine.

It restores the offender to that legal condition in which he would have been had the crime not been committed[1-3]. It does not, however, affect rights acquired by the Government or a third party under judicial proceedings prior to the pardon nor does it enable the offender to claim compensation from the Government for what he has already suffered[3]".

A further contemporaneous exposition of these principles as stated by Mr. A. Hamilton in Federalist, No. 74, on the pardoning power of the President of the United States, vested in him by Article II, section 2, is:-

" Humanity and good policy conspire to dictate that the benign prerogative of pardoning should be as little as possible fettered or embarrassed. The Criminal Code of every country partakes so much of necessary severity; that without an easy access to exceptions in favour of unfortunate guilt, justice would wear a countenance too sanguinary and cruel. As the sense of responsibility is always the strongest in proportion as it is undivided, it may be inferred that a single man would be most ready to attend to the force of those motives which might plead for a mitigation of the rigor of the law, and least apt to yield to considerations which were calculated to shelter a fit object of its vengeance."

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1. *Ex parte* Garland (1866) 4 Wall. 333.
2. *Hay* v. *Justices of London*, (1890) 24 Q.B.D. 561.
3. *Knote* v. *U.S.* (1877) 95 U.S. 140.

Then the distinguished writer proceeds to show that while there are objections to giving to the President the power to pardon the crime of treason, in like manner there are persons in favour of it, outweighing those objections. On this Mr. Hamilton says:- 5

" In seasons of insurrection or rebellion, there are often critical moments when a well timed offer of pardon to the insurgents or rebels may restore the tranquillity of the commonwealth and which, if suffered to pass unimproved, it may never be possible afterwards to recall. The dilatory 10 process of convening the legislature or one of its branches for the purpose of obtaining its sanction, would frequently be the occasion of letting slip the golden opportunity. The loss of a week, a day, an hour, may sometimes be fatal."

These are indeed impressive and very wise statements, and 15 certainly support the argument that in critical moments of a nation it is only the President who must grant a pardon.

In all humility, having read the speech of the President a number of times, and having given this matter anxious and careful consideration, I have reached the conclusion, and I have 20 no doubt in my mind that at that historic moment when he was delivering his eloquent speech the President had one and only pre-occupation in his mind—the salvation of Cyprus. He was determined to convince everyone that his only aspiration at that moment was to think of the present situation and to forget the 25 past, his only wish was to see that he would do his best to unite his people; and to give them faith as well as courage to fight the only enemy, the invading forces of Attila which turned our beautiful island into ruins and made the people refugees in their own country. 30

I would further add that the President's clear and unambiguous words in his memorable speech leave no doubt at all in my mind that the President was telling the people that he was deeply grieved that Greek-Cypriots had turned their arms against their brothers and, bypassing his own sufferings and with 35 a sense of great responsibility in those critical moments of Cyprus, he had chosen that well-timed and golden opportunity to make an unconditional offer of amnesty and used this impressive language:-

" I forgive them all for their transgressions and grant them 40

amnesty.... in the face of the calamity of Cyprus there is no room for passions and discord."

These were the words of a real leader and I deprecate any effort or any attempt to minimize or in any way undermine or distort their effect. What is important however, is that the President seemed to have grasped fully the operation and the effect of pardon at that moment. He knew that humanity and good policy conspire to dictate that the benign prerogative of pardoning should be as little as possible fettered or embarrassed. And fully realizing the immense importance of his task, he lost no time at all in trying to restore the tranquillity of his people. And I have no doubt that his decision is consistent with the best exposition of the law as presented by great men of learning, like the late Professor N.N. Saripolos and the writer Mr. A. Hamilton who stressed that:

"In seasons of insurrection or rebellion, the loss of a week, a day, an hour, may sometimes be fatal."

Now I turn to England, where pardon is a word familiar in common law proceedings, and where it applies to the ordinary intercourse of men with the meaning of remission and forgiveness. According to Bacon, the power of pardoning is irreparably incident to the Crown and is a high prerogative of the King. Comyns, in his Digest says:–

"A King, by his prerogative, may grant his pardon to all offenders attainted or convicted of a crime; and that statutes do not restrain the King's prerogative, but they are a caution for using it well."

With this in mind, I shall deal with some of the cases referred to in these proceedings, and it is necessary to state that the Constitution of the United States, in express terms, vests the executive authority of the Government in the President; and it also specifically gives him "the power to grant, reprieve and pardon for offences against the United States."

Marshall, C.J., in *U.S.* v. *Wilson*, 7 Pet. 150; 8 L. Ed. 640, speaking of the pardoning power, says at pp. 643, 644:–

"As this power had been exercised from time immemorial by the executive of that nation, (England) whose language is our language, and to whose judicial institutions ours bear a close resemblance, we adopt their principles respecting

the operation and effect of a pardon, and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it."

This statement was adopted and followed by Mr. Justice Wayne in *Ex parte Wells*, 15 L. Ed. 421, at p. 424, who observes:– 5

"We still think so, and that the language used in the Constitution conferring the power to grant reprieves and pardon, must be construed with reference to its meaning at the time of its adoption .... At that time, both Englishmen and Americans attached the same meaning to the word 'pardon'. In the convention which framed the Constitution, no effort was made to define or change its meaning, although it was limited in cases of impeachment. We must then give the word the same meaning as prevailed here and in England at the time it found a place in the Constitution. This is in conformity with the principles laid down by this Court in *Cathcart* v. *Robinson*, 5 Pet. 264, 280." 10 15

Then the learned Justice, having warned himself of the difficulties in considering words in the Constitution, goes on at p. 425:– 20

"The power as given is not to reprieve and pardon, but that the President shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment (cf. the wording of our Article 53). The difference between the real language and that used in the argument is material. The first conveys only the idea of an absolute power as to the purpose or object for which it is given. The real language of the Constitution is general; that is, common to the class of pardons, or extending the power to pardon, to all kinds of pardons known in the law as such, whatever may be their denomination. We have shown that a conditional pardon is one of them. A single remark from the power to grant reprieves will illustrate the point. That is not only to be used to delay a judicial sentence when the President shall think the merits of the case or some cause connected with the offender, may require it but it extends also to cases ex necessitate legis, as where a female after conviction is found to be enceinte, or where a a convict becomes insane, or is alleged to be so.............. 25 30 35 40

In this view of the Constitution, by giving to its words

their proper meaning, the power to pardon conditionally is not one of inference at all, but one conferred in terms."

In a dissenting judgment, Mr. Justice McLean said that the President has no powers which are not given to him by the Constitution and laws of the country, and dealing with the word pardon he comments at p. 427:-

"The meaning of the word 'pardon', as used in the Constitution, has never come before this Court for decision.............

It is argued by the Attorney-General, that the word 'pardon' was used in the Constitution, in reference to the construction given to it in England, from whence was derived our system of laws and practice; and that the powers exercised by the British Sovereign under the term 'pardon' is a construction necessarily adopted with the term. If this view be a sound one, it has the merit of novelty. The executive office in England and that of this country is so widely different, that doubts may be entertained whether it would be safe for a republican Chief Magistrate, who is the creature of the laws, to be influenced by the exercise of any leading power of the British Sovereign. Their respective powers are as different in their origin as in their exercise. A safer rule of construction will be found in the nature and principles of our own government. Whilst the prerogatives of the Crown are great, and occasionally, in English history, have been more than a match for the Parliament, the President has no powers which are not given him by the Constitution and laws of the country; and all his acts beyond these limits are null and void.

There is another consideration of paramount importance in regard to this question. We have under the federal government no common law offences, nor common law powers to punish in our Courts; and the same may be said of our Chief Magistrate. It would be strange indeed if our highest criminal Courts should disclaim all common law powers in the punishment of offences, whilst our President should claim and exercise such powers in pardoning convicts."

It is to be added that Mr. Justice Curtis also dissented and

delivered a separate judgment with which Mr. Justice Campbell concurred. Cf. *Ex Parte Grossman*, 69 L. Ed. 527.

In *ex parte in the Matter of A.H. Garland*, 18 L. Ed., 366, Mr. Justice Field, delivering the opinion of the Court on the pardoning power of the President, said at pp. 370–371:– 5

> "The power thus conferred is unlimited, with the exception stated. In extends to every offense known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment. This power of the 10 President is not subject to legislative control. Congress can neither limit the effect of his pardon nor exclude from its exercise any class of effenders. The benign prerogative of mercy reposed in him cannot be fettered by any legislative restrictions." 15

Then, speaking of the effect of pardon, the learned Justice says:–

> "A pardon reaches both the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of 20 existence the guilt, so that in the eye of the law the effender is as innocent as if he had never committed the offense. If granted before conviction, it prevents any of the penalties and disabilities, consequent upon conviction, from attaching; if granted after conviction, it removes the 25 penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity."

And he concludes:

> "The pardon produced by the petitioner is a full pardon 30 'for all offenses by him committed, arising from participation, direct or implied, in the Rebellion', and is subject to certain conditions which have been complied with. The effect of this pardon is to relieve the petitioner from all penalties and disabilities attached to the offense of treason, 35 committed by his participation in the Rebellion. So far as that offense is concerned, he is thus placed beyond the reach of punishment of any kind. But to exclude him, by reason of that offense, from continuing in the enjoyment of a previously acquired right, is to enforce a punishment 40

for that offense notwithstanding the pardon.... It is not within the constitutional power of Congress thus to inflict punishment beyond the reach of executive clemency."

In the *United States* v. *Padelford*, 19 L. Ed. 788, Chase, C.J. delivering the opinion of the Court on the very same point of pardon, said at p. 792:-

"The sufficient answer to it is that after the pardon no offense connected with the rebellion can be imputed to him. If, in other respects, the petitioner made the proof which, under the Act, entitled him to a decree for the proceeds of his property, the law makes the proof of pardon a complete substitute for proof that he gave no aid or comfort to the rebellion. A different construction would, as it seems to us, defeat the manifest intent of the Proclamation and of the Act of Congress which authorised it."

In the *United States* v. *Klein*, 20 *L. Ed.* 519, the abovenamed Chief Justice, dealing with the offence of treason committed by the appellant by his participation in the rebellion, said at p. 526:-

"It is the intention of the Constitution that each of the great co-ordinate departments of the government—the legislative, the executive, and the judicial—shall be, in its sphere, independent of the others. To the Executive alone is intrusted the power of pardon; and it is granted without limit. Pardon includes amnesty. It blots out the offense pardoned and removes all its penal consequences. It may be granted on conditions. In these particular pardons, that no doubt might exist as to their character, restoration of property was expressly pledged; and the pardon was granted on condition that the person who availed himself of it should take and keep a prescribed oath.

Now, it is clear that the legislature cannot change the effect of such a pardon any more than the Executive can change a law. Yet this is attempted by the provision under consideration. The Court is required to receive special pardons as evidence of guilt, and to treat them as null and void. It is required to disregard pardons granted by proclamation on condition, though the condition has been fulfilled, and to deny them their legal effect. This certainly impairs the executive authority, and directs the Court to be instrumental to that end.

We think it unnecessary to enlarge.......

We repeat that it is impossible to believe that this provision was not inserted in the appropriation bill through inadvertence; and that we shall not best fulfil the deliberate will of the legislature by denying the motion to dismiss and affirming the judgment of the Court of Claims; which is accordingly done."

In *Brown* v. *Walker*, 40 L. Ed. 819, it was laid down that the constitutional power of the President to grant pardons does not take from Congress the power to pass acts of general amnesty, such as the Act of February 11, 1893. Mr. Justice Brown, delivering the opinion of the Court, said at p. 822:-

"The act of Congress in question, securing to witnesses immunity from prosecution, is virtually an act of general amnesty, and belongs to a class of legislation which is not uncommon either in England (2 Taylor, Ev. S. 1455, where a large number of similar acts are collated) or in this country. Although the Constitution vests in the President 'power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment,' this power has never been held to take from Congress the power to pass acts of general amnesty, and is ordinarily exercised only in cases of individuals after conviction, although, as was said by this Court in *Ex parte Garland,* 71 U.S. 4 Wall. 333, 380 (18: 366, 371), 'it extends to every offense known to the law, and may be exercised at any time after its commission either before legal proceedings are taken, or during their pendency, or after conviction and judgment."

Later on, dealing with the distinction between amnesty and pardon, he continued in these terms at pp. 822 and 823:-

"The distinction between amnesty and pardon is of no practical importance. It was said in *Knote* v. *United States,* 95 U.S. 149, 152 (24. 442, 443): 'The Constitution does not use the word 'amnesty', and, except that the term is generally applied where pardon is extended to whole classes or communities, instead of individuals, the distinction between them is one rather of philological interest than of legal importance'. Amnesty is defined by the lexicographers to be an act of the sovereign power granting

oblivion, or a general pardon for a past offense, and is rarely, if ever, exercised in favour of single individuals, and is usually exerted in behalf of certain classes of persons, who are subject to trial, but have not yet been convicted.

5 While the decisions of the English Courts construing such acts are of little value here, in view of the omnipotence of Parliament, such decisions as have been made under similar acts in this country are, with one or two exceptions, we believe, unanimous in favour of their constitutionality."

10 Finally, in *Burdick* v. *United States*, 59 L. Ed. 476, Mr. Justice McKenna, having reviewed the authorities quoted and having observed that a pardon from the President, to be effective, must be accepted by the person to whom it is tendered, delivered the opinion of the Court, and in drawing the differences between 15 legislative immunity and pardon, said the following at p. 482:-

"This brings us to the differences between legislative immunity and a pardon. They are substantial. The latter carries an imputation of guilt; acceptance a confession of it. The former has no such imputation or confession. It is 20 tantamount to the silence of the witness. It is noncommittal. It is the unobtrusive act of the law given protection against a sinister use of his testimony, not like a pardon, requiring him to confess his guilt in order to avoid a conviction of it."

25 Then he goes on with these observations:-

"It is of little service to assert or deny an analogy between amnesty and pardon. Mr. Justice Field, in *Knote* v. *United States*, 95 U.S. 149, 153, 24 L. ed. 442, 443, said that 'the distinction between them is one rather of philological 30 interest than of legal importance.' This is so as to their ultimate effect, but there are incidental differences of importance. They are of different character and have different purposes. The one overlooks offense; the other remits punishment. The first is usually addressed to crimes 35 against the sovereignty of the state, to political offenses, forgiveness being deemed more expedient for the public welfare than prosecution and punishment. The second condones infractions of the peace of the state. Amnesty is usually general, addressed to classes or even communities 40 —a legislative act, or under legislation, constitutional or statutory,—the act of the supreme magistrate. There may

or may not be distinct acts of acceptance. If other rights are dependent upon it and are asserted, there is affirmative evidence of acceptance. Examples are afforded in *United States* v. *Klein*, 13 Wall. 128, 20 L. ed. 519; *Armstrong's Foundry*, 6 Wall. 766, 18 L. ed. 882; *Carlisle* v. *United States*, 16 Wall. 147, 21 L. ed. 426. See also *Knote* v. *United* States, *supra*. If there be no other rights, its only purpose is to stay the movement of the law. Its function is exercised when it overlooks the offense and the offender, leaving both in oblivion."

With respect, this is a most admirable and valuable analysis of the law between amnesty and pardon.

I think I would further add that with regard to pardons and reprieves, the position in England remains that the right of pardon is, moreover, confined to offences of a public nature where the Crown is prosecutor and has some vested interest either in fact or by implication; and where any right or benefit is vested in a subject by statute or otherwise, the Crown by a a pardon, cannot affect it or take it away. In general, pardon may be granted either before or after conviction, but if granted before conviction it must be specially pleaded: see Halsbury's Laws of England, 4th edn. V. 8 at p. 606 et seq. The Crown may exercise the prerogative right of granting a reprieve and may remit penalties.

In *Hay* v. *Justices of the Tower Division of London* [1890] 24 Q.B.D. 561, Pollock, B. dealing with the question of pardon which was granted to the accused after conviction, posed this question at p. 564:-

> " The general question of law next to be considered is, what was the effect of the pardon which John Hay obtained? By the prerogative of the Crown the pardon extends far beyond the mere discharge of the prisoner from any further imprisonment. It is a purging of the offence. The King's pardon, says Hale, 'takes away poenam et culpam': 2 P.C. 278. This points to the character, condition, and status of the convict. Again, in 2 Hawkins' P.C., s. 48, the author says that pardon 'does so far clear the party from the infamy and all other consequences of his crime, that he may not only have an action for a scandal in calling him traitor or felon after the time of the pardon, but may also be a good witness.....' So in another text-book of

authority, 1 Chitty's Criminal Law, 775, it is said that 'the effect of a pardon like that of the allowance of clergy, is not merely to prevent the infliction of the punishment denounced by the sentence, but to give to the defendant a new capacity, credit, and character.' Nothing could be more clear. These are only text-books; but let us turn to the authority of *Cuddington* v. *Wilkins* (1 Hob. 67, 81) where the plaintiff brought an action against the defendant for calling him a thief. The defendant justified, the plaintiff pleaded a general pardon and on demurrer it was 'adjudged for the plaintiff, for the whole Court were of opinion, that though he were a thief once, yet when the pardon came, it took away not only poenam, but reatum, for felony is Contra Coronam et dignitatem Regis', and it goes on to say that 'when the King has discharged it and pardoned him of it he hath cleared the person of the crime and infamy......' It was forcibly argued that this does not shew that to all intents and purposes the pardon is to be an absolute purgation of everything. That is quite true; but in Sir *John Bennet* v. *Dr. Easedale* (Cro. Car. 55) the case was extremely clear on both points. Sir John Bennet had been removed from the office of Chancellor of the Archbishop of York and brought an assize for that office, and the defendant endeavoured to obtain an injunction to stay that suit, because Sir John Bennet had lately been found guilty in the Star Chamber of bribery and other misdemeanours in his office, and had been fined 20,000l. and censured to be imprisoned and made incapable of any office of judicature. He produced a pardon; and it was resolved by the Judges 'that this pardon hath taken away all force of the sentence in the Star Chamber, except for the fine of 20,000l., and all inabilities are discharged thereby, and that the sentence never took from him the office but the execution thereof, nor gave authority to place others.' That is to say, in respect of the sentence itself—whether he was punishable or not—he must question it further; but his character, position, and credit were consequential disabilities, which were removed. So, both on the language of the Act itself and on principle, it is thoroughly established that the decision of the quarter sessions was perfectly right."

Hawkins, J., delivering a separate judgment, having agreed with the conclusions reached by Pollock B., that once the crime

of which a man has been convicted is pardoned, he is absolved not only from the punishment inflicted on him by the Judge who pronounced sentence, but from all penal consequences, said at pp. 567, 568:-

> " It has been argued that the Queen's pardon may be granted for other reasons than innocence, that a notorious thief may have received the Queen's pardon in consideration of his having informed and given evidence against his accomplices. I do not know how that may be. Perhaps if he had been convicted, and suffered part of his sentence, and shewn contrition, some remission of his sentence rather than a Queen's pardon would be granted. Having regard to the whole matter and the argument in the present case, I have come to the conclusion that the effect of the Queen's pardon operating on the crime of which the alleged offender had been convicted was to absolve him not only from the actual punishment imposed by the Judge, but from all other penal consequences to which I have referred."

As I have said earlier, the accused, when called upon to plead, entered a special plea, although in the strict sense of the word, once that plea does not constitute an answer to the charge, it is a preliminary objection to it only. This indeed is in accordance with the practice prevailing also in the United States and in England, in so far as the authorities indicate with regard to this point. The further question, however, is whether we are prepared in this Court, in solving the problem with regard to the powers of the President of the Republic of Cyprus, to adopt and follow what was said by Marshall, C.J. in *U.S.* v. *Wilson* (*supra*) on the pardoning power of the President.

We have been invited by counsel on behalf of the accused to adopt and follow the English principles respecting the operation and effect of the pardon, because these principles were also known in Cyprus during the colonial days as they were also applied in the United States.

Now on this question, looking into the Cyprus Courts of Justice Order 1882, which is to be found in the Statute Laws of Cyprus 1878–1923 at p. 162, one finds the rules prescribing the manner in which the pardon is to be used by any person who would avail himself of it. Section 153 is in these terms:

> " It shall be lawful for any person against whom an information is filed to plead that the Court has not, and that some

other Court has jurisdiction over the offence with which he is charged, or over him, and if judgment is given in favour of the accused upon such a plea, the Court shall send the information to be tried before the Court which has jurisdiction over the offence or over the offender.

It shall also be lawful for the accused to plead:–

(1) That he has been previously convicted or acquitted, as the case may be, of the same offence; or,

(2) That he has obtained the Queen's pardon for his offence.

If either of the two last mentioned pleas are pleaded in any case and denied to be true in fact, the Court shall try whether such plea is true in fact or not.

If the Court holds that the facts alleged by the accused do not prove the plea, or if they find that it is false in fact, the accused shall be required to plead to the information."

In the Cyprus Gazette (Extraordinary No. 1) dated 1st May, 1925, one can see at p. 227, that by Letters Patent passed under the Great Seal of the United Kingdom constituting the Office of Governor and Commander-in–Chief of the Colony of Cyprus, and providing for the Covernment thereof, George V The King of the United Kingdom, authorised the Governor of Cyprus to grant pardons, and at p. 231 of the Gazette we read:–

"XIX. When any crime or offence has been committed within the Colony, or for which the offender may be tried therein, the Governor may, as he shall see occasion, in Our name and on Our behalf, grant a pardon to any accomplice in such crime or offence who shall give such information as shall lead to the conviction of the principal offender, or of any one of such offenders, if more than one, and further may grant to any offender convicted in any Court, or before any Judge or Magistrate, within the Colony, a pardon, either free or subject to lawful conditions, or any remission of the sentence passed on such offender, or any respite of the execution of such sentence, for such period as the Governor thinks fit, and may remit any fines, penalties or forfeitures due or accrued to Us."

Then the Cyprus Gazette dated 27th August, 1927, at p. 443, introduced the special pleas for the benefit of the accused and

which is more or less identical with our present section 69 of the Criminal Procedure Law Cap. 155, but with this exception, that paragraph (c) of Cap. 155 reads that "he has obtained a pardon for his offence" whilst in the said Gazette it reads that "he has obtained the King's pardon for his offences." 5

Having dealt with the operation and the effect of pardon and having analysed the law in each one of the cases quoted, I would not hesitate to say how much I owe in the preparation of this case to the Judges of the Supreme Court and to certain writings of some writers on this topic. But it is important to remember 10 at the outset that Article 179 is framed in a mandatory language and says that "This Constitution shall be the supreme law of the Republic". And I am bound to adhere to this Constitutional principle in trying to answer or solve the problem before me.

It is said in a number of cases that our Government is founded 15 upon the written constitution and that the draftsmen based themselves on the Zurich and London agreements. But our Constitution has not emanated from the free will of the people of Cyprus (as in the United States) because they had no opportunity either directly or indirectly to express an opinion thereon. 20 The Constitution has been imposed upon the people in violation of the principle that the people have an original right to establish for their future Government such principles, as in their opinion would be most conducive to their happiness. I am positive that some of our difficulties and troubles have arisen 25 mostly because the Constitution has been imposed upon the people of Cyprus (see the *Attorney-General of the Republic* v. *Mustafa Ibrahim*, 1964 C.L.R. 195).

It is of course true that the Constitution established the presidential system; it is based on the doctrine of separation of 30 powers; and it depends upon the creation of three independent organs of Government, i.e. legislative, executive and judicial, each of which is essentially independent from the other two. But once again, the Constitutional drafters, in violation of the true democratic principle, attached greater importance on the 35 bicommunal basis and the very foundation of Constitutional Government was subject to enumerated powers of strict restraints of checks and balances. I, therefore, find myself in agree- with what has been said by Chief Justice Marshall in *McCulloch* v. *Maryland*, 4 L. Ed. 579 when he was dealing with the construction of the Constitution of the United States. At p. 601 he 40 stated:-

"This Government is acknowledged by all to be one of enumerated powers. The principle, that it can exercise only the powers granted to it, would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge. That principle is now universally admitted. But the question respecting the extent of the powers actually granted, is perpetually arising, and will probably continue to arise, as long as our system shall exist."

Once it is accepted that our Government is also one of enumerated powers, I think I ought to state that the judicial function is that of interpretation and it does not include the power of amendment under the guise of interpretation, though it has happened in some cases: (*Vrahimis* v. *The Republic*, (1971) 3 C.L.R. p. 104). In considering, therefore, the problem before us, we must never forget that it is a Constitution we are expounding. In seeking to apply to the interpretation of the Constitution of Cyprus, I have sought to see what has been said in particular cases about other constitutions. Care must be taken to distinguish between judicial reasoning which depended on the express words used in the particular Constitution, and reasoning which depended on what, though not expressed, is nonetheless a necessary implication from the subject matter and structure of the Constitution and the circumstances under which it has been made. Such caution is particularly necessary not only in the case of our Constitution, but also in cases dealing with a federal Constitution: see *Sofroniou & Others* v. *The Municipality of Nicosia*, (1976) 3 C.L.R. 124, where I adopted and followed the reasoning of *Hinds* v. *The Queen*, [1976] 1 All E.R. 353 at p. 359.

It is to be added that the executive power of the Government is ensured to the President and Vice-President of the Republic (Article 46) and I turn to Article 53 which specifically gives the President and the Vice-President of the Republic the right "to exercise the prerogative of mercy with regard to persons belonging to their respective Community who are condemned to death". In speaking of this right, paragraph 2 lays down what happens in the event of disagreement between the President and the Vice-President of the Republic, and is drafted in these terms:-

"Where the person injured (βλαβὲν πρόσωπον—zarar

goren kimse magdur) and the offender are members of different Communities such prerogative of mercy shall be exercised by agreement between the President and the Vice-President of the Republic; in the event of disagreement between the two the vote for clemency shall prevail." 5

Paragraph 3 reads:-

"3. In case the prerogative of mercy is exercised under paragraph 1 or 2 of this Article the death sentence shall be commuted to life imprisonment."

Under Article 48 of the Constitution, "The executive power 10 exercised by the President of the Republic consists of the following matters, that is to say:...... (m) the prerogative of mercy in capital cases as in Article 53 provided"; and in Article 49 "The executive power exercised by the Vice-President of the Republic consists of the following matters, that is to say:.... 15 (m) the prerogative of mercy in capital cases as in Article 53 provided."

The principle that the President can exercise only the powers granted to him is now universally admitted, as it has been said in *McCulloch* v. *Maryland* (*supra*), and I do not think it is neces- 20 sary to add any further observation. But it seems to me that the express words used in Article 53 make it clear that it was intended to grant the prerogative of mercy in capital cases to the President or Vice-President after a person was tried by a Court and condemned to death. Even if there was the slightest doubt 25 about it, I think, reading paragraph 4 of Article 53 makes it even clearer that after the conviction of a person by a Court of law the President and the Vice-President shall remit, suspend, or commute any sentence passed by a Court in the Republic in all other cases, on the unanimous recommendation of the Attorney- 30 General and the Deputy Attorney-General of the Republic. It is to be noted that the Constitution of Cyprus does not use the word "amnesty", although it is the most detailed one.

In view of the principle of enumerated powers and in the light of the clear and unambiguous wording of Article 53 and the rest 35 of the Articles dealing with the executive power, I have decided that the argument of counsel for the accused that one may draw the conclusion or that it is a necessary implication from the constitutional power of the President, that he has the right to validly grant amnesty to the accused, is a wrong one, because, in 40

my opinion, no such implication can be drawn from the wording of Article 53.

Furthermore, I am not prepared to adopt the English and American principles regarding the operation and effect of 5 pardon, nor am I inclined to follow the observations made by Chief Justice Marshall in *U.S.* v. *Wilson* (*supra*), because the constitutional drafter of Cyprus, in spite of the provisions of s. 69 of our Criminal Procedure Law, Cap. 155, made no reference at all, nor thought it necessary to include the right of 10 pardon in the Constitution—though fully aware of its meaning and effect.

For the reasons I have advanced, I find myself in agreement with counsel for the Republic that the accused has not been validly granted amnesty for the offences for which he has been 15 prosecuted once our Constitution makes no provision for amnesty, and was not absolved from the penalties because the provisions of the Criminal Code were not rendered inoperative or suspended in his case. I would, therefore, dismiss these contentions of counsel for the accused.

20 Now, regarding the next argument of counsel for the accused, the question is whether the Doctrine of Necessity is applicable. It is said that Judges must support the Constitution, and they must support also the legitimate authority of those lawfully entrusted with the exercise of it. On the other hand, they must 25 curb abuse of power and they must protect the individual from oppression in the use of it. In this task the Judges have very great responsibilities. In supporting the Constitution they are the ones to interpret it and say what it means. To quote a famous statement by Chief Justice Hughes when speaking of the 30 American Constitution, "We are under a Constitution, but the Constitution is what the Judges say it is, and the judiciary is the safeguard of our liberty and of our property under the Constitution."

The position was also stated in memorable words by Lord 35 Atkin in *Liversidge* v. *Anderson*, [1942] A.C. H.L., 206, a case during the war, when England detained persons believed to be of hostile associations. At p. 244 he said:–

> " It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are 40 now fighting, that the Judges are no respecters of persons

and stand between the subject and any attempted encroachments on his liberty by the executive, alert to see that any coercive action is justified in law."

It is true that Lord Atkin did not add, but it is implied in my view by what he said, that if the coercive action is justified by law, the Judges are bound to enforce it.

It has been the misfortune of the Republic of Cyprus for some time in the past to have a group of people who undoubtedly, by their unlawful acts and deeds have shown their disregard for the democratic principles and the right of the people to have a Government of their own choice. Instead of safeguarding our country, they found themselves preaching or inciting others to overthrow our democratic institutions of freedom, liberty and justice, and by means of the coup they have certainly succeeded, and we are now fighting once again to restore those institutions.

With these observations, I would endorse and follow the statements made in the *Attorney-General of the Republic* v. *Mustafa Ibrahim and Others* (*supra*), that having regard to the provisions of our Constitution, including Articles 179, 182, and 183, they include the Doctrine of Necessity in exceptional circumstances. This Doctrine is mainly based on the maxim "salus populi est suprema lex", and judicial decisions in various countries have acknowledged that in abnormal conditions exceptional circumstances impose on those exercising the power of the State the duty to take exceptional measures for the salvation of the country on the strength of the above maxim. Furthermore, it is said that when the life of the country is threatened the exigencies of the moment prevail over the juridical scruples of legality. It is the superior law of the nation to ensure its existence, to defend its independence and security.

Josephides, J., having reviewed the principles of the Doctrine of Necessity, reached the conclusion that four prerequisites must be satisfied before the Doctrine may become applicable:–

"(a) an imperative and inevitable necessity or exceptional circumstances;

(b) no other remedy to apply;

(c) the measure taken must be proportionate to the necessity; and

(d) it must be of a temporary character limited to the duration of the exceptional circumstances."

Then he concludes as follows:-

> "A law thus enacted is subject to the control of this Court to decide whether the aforesaid prerequisites are satisfied, i.e. whether there exists such a necessity and whether the measures taken were necessary to meet it."

It is true that when the President arrived on December 7, 1974, Cyprus was still facing tragic and very thorny problems. But the Doctrine of Necessity permits deviation from the relevant constitutional provisions only if and when the imposed measures required under the exceptional circumstances cannot be taken by the appropriate constitutional organs or in accordance with the constitution. It has not been disputed or challenged by counsel for the accused that on that date the House of Representatives was still functioning and certainly I can take judicial notice that the said House continued to enact laws even during those difficult times. Once, therefore, in accordance with the Constitution the legislative power shall be exercised by the House of Representatives and once it was functioning, there was nothing to stop the House from enacting a general law of amnesty either before or after the announcement by the President of granting amnesty. That decision, if it was taken would have been in accordance with the Constitution.

For the reasons I have advanced, it follows that the prerequisites of applying the Doctrine of Necessity in the case in hand were not in existence. I would reiterate once again that on that date there was no necessity to suspend the constitutional provisions because of the impossibility of applying them. (See Odent on Contentieux Administratif Vol. 1 at pp. 136-137).

That the legislature is the proper organ under the Constitution to enact laws of amnesty finds further support in the *United States* v. *Wiltberger*, 5 L. Ed. 37, where Chief Justice Marshall, speaking about the construction of penal laws, said at p. 42:-

> "The rule that penal laws are to be construed strictly, is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the Court, which is to define a crime, and ordain its punishment."

It has been said that amnesty is granted because forgiveness

is deemed more expedient for the public welfare than prosecution and punishment. Nevertheless, amnesty cannot be implemented indirectly, as a matter of policy in the course of the exercise, before conviction, by the Attorney-General of the Republic. In my view, it would be a misconception of the Constitutional provisions to invoke paragraph 2 of Article 113, in support of the view that the amnesty announced by the President could be implemented by the Attorney-General under paragraph 2 of Article 113. Reading the contents of this paragraph, it leaves no doubt in my mind that its true construction is that the powers of the Attorney-General are applicable in the public interest in individual, concrete and specific cases only and not generally to a category of offences of a political nature. This view is supported also by the provisions of almost all modern constitutions and particular reference may be made to Art. 60 paragraph 2 of the Basic Law for the Federal Republic of Germany, 1969, which says that "He (The Federal President) shall exercise the right of pardon in individual cases on behalf of the Federation." See also Article 79 of the Constitution of Italy and Article 17 of the French Constitution of 1958. It may be added that this equally applies to the granting of pardon which always contemplates individual cases.

It is pertinent to state that in Cyprus the principle of granting amnesty has been settled by the Constitutional drafters and it is vested only in the legislative body and not in the President of the Republic. It can be granted to persons who have committed crimes against the sovereignty of the state; and also for political offences, forgiveness being deemed more expedient for the public welfare than prosecution and punishment. It is true, of course, that the House of Representatives, on October 30, 1975, enacted the Coup d' Etat (Special Provisions) Law, (Law 57/75) published in the Official Gazette on October 31, 1975. The House adopted a resolution referring to the question of amnesty but that resolution does not in any way support the case of the accused, or indeed the argument relied upon by counsel.

Having reached this conclusion, and for all the reasons I have put forward, I would dismiss the contentions of counsel on the first ground because the accused cannot plead successfully under the aforesaid section 69(1)(c) that he was granted a pardon for the offences with which he was charged.

Turning now to the second question of law, I think I would add that until July 15, 1974, the accused remained a Represen-

tative and his seat did not become vacant. But after the coup d' etat, I must confess that, having heard the arguments of counsel, I had no difficulty in reaching the view that when he took over the office of the President of the Republic, contrary to 5 the law and the Constitution, his seat in the House became vacant. Because of the great importance of this question, I would turn to the Constitution in order to examine whether the office of the President is incompatible with that of the Representative.

10 Article 41.1, in a mandatory language says that:

> " The office of the President.... of the Republic shall be incompatible with that of a Minister or of a Representative ....".

On the contrary, although the Constitutional drafters used 15 again mandatory language in Article 70, no reference is made to the office of the President. It says: "The office of a Representative shall be incompatible with that of a Minister or of a member of a Communal Chamber......".

On the other hand, Article 71 lays down that "The seat of a 20 Representative shall become vacant

(a) upon his death;

(b) upon his written resignation;

(c) upon the occurrence of any of the circumstances referred to in paragraph (c) or (d) of Article 64 or if 25 he ceases to be a citizen of the Republic;

(d) upon his becoming the holder of an office mentioned in Article 70".

Having in mind the doctrine of the separation of powers, it becomes abundantly clear in my view, that the President of the 30 Republic cannot become also a Minister or a Representative because, firstly, the President appoints the Ministers and, secondly, this would violate the principles expounded above.

It is true that in Article 70 and 71 no express provision is to be found about the incompatibility of the office of a Representative 35 with the office of the President of the Republic. But once Article 41.1 preceded Articles 70 and 71, and because Article 41.1 made the question of incompatibility abundantly clear,

I do not think it was necessary for the constitutional drafters to repeat the same wording, i.e. that the office of a Representative is incompatible with the office of the President.

In fairness to counsel, he did in effect concede that having regard to the provisions of Articles 41, 70 and 71, the accused could not have held the office of the President, had he occupied it constitutionally, and at the same time remain a Representative. But, much to my surprise, counsel put forward this argument, that once the accused took over the office of the President as a result of the coup d' etat, admittedly in violation of the Constitution, he retained his seat and continued to remain a Representative because he held the office for only eight days and in a de facto and not de jure capacity. In rupport of this argument, counsel relies on the provisions of Law 57/75 and the case of *Liasi & Others* v. *The Attorney-General of the Republic and Another*, (1975) 3 C.L.R. 558, where observations were made as to the doctrine of the de facto organs, and it was held that it could not be said that the coup d' etat Government was in any way legalized under the accepted tests of the general principles of law, and in particular that there was no popular support of it.

Having had the occasion to go through the provisions of Law 57/75, I cannot but express my surprise why counsel relied on this law, which was enacted for the purpose of condemning the coup d' etat, and making it clear that the Government of July 15, 1974 were only usurpers of power had no popular support at all, and that everything done by that Government was of no legal effect whatsoever. In fact, section 3 of Law 57/75 provides that the coup d' etat and the Government which was set up as a result of it have no legal existence at all. Needless to say that section 4 was clearly intended to do justice to those who became the victims of the coup and to restore the constitutional order. Certainly, the legislature in enacting that law had neither any express nor any implied intention that the accused would have benefited from the provisions of that law. Indeed, any other construction would certainly have been contrary to the notion of legality and the principle that people should have the right to choose the Government of their liking.

Indeed, I would go further and state that Law 57/75 made it very clear that all the usurpers of power automatically lost their offices on taking over the other offices which were incompatible with the ones they had been holding. It is important to remember that, irrespective of any legal scruples, once the

accused admitted that he actually took over the office of the President as a result of the coup, he was disqualified and ceased to remain a Member of the House of Representatives for the reasons I have given earlier in this Judgment. If any further 5 authority would be needed, the answer could be provided by the case of *Hoti Lal* v. *Raj Bahadur AIR* (1959) Raj. 227, relied upon by counsel for the Republic. Wanohoo C.J., speaking in the Court of Appeal as to the construction of Article 102(1)(a) of the Constitution of India, said:-

10 " The disqualification arises from the fact of holding an office of profit under the Government of India or the Government of a State even if there is some defect, legal or otherwise, in the order making the appointment. The intention behind the Article 102 is to debar all de facto 15 holders of office of profit under the Government of India or the Government of any State. If this were not so, a person who may be actually holding an office of profit under the government will not be disqualified if there was some defect, legal or otherwise, in his order of appointment.

20 What Article 102 in our opinion, emphasises is the holding of office in fact and the defect in any order of appointment relating to the holder of an office would not, in our opinion, make any difference. So assuming that there was some defect, in the order of appointment of Shri 25 Mukat, he would still, in our opinion, be a person who held an office of profit under the Government of Rajasthan and would, therefore, be disqualified under Article 102".

For all these reasons, and once the seat of the accused became ipso facto vacant, in my view, no leave of the Supreme Court was 30 required under Article 83.2 of the Constitution for his arrest and prosecution in the present case.

As regards the third question of law, counsel contended that one of the objects of Article 156 of the Constitution is to ensure that at the trial of an offence specified in such Article, the Assize 35 Court should be presided over by a judicial officer of the highest rank and that as such object could still be achieved under present circumstances, that Article was not inoperative. The argument which I have had in this case has not caused me to change the views which I held when the *Republic* v. *Liassis* (1973) 2 C.L.R. 40 283 was decided, or to disagree with any of the conclusions reached. Moreover, I am convinced that I must agree with the

view, i.e. had Article 156 aimed at ensuring such an object put forward by counsel, then the constitutional drafters would not have been limited to providing about the President of the High Court presiding at the trial, but it would have referred in general to all Judges of that Court. In fact Article 156 refers only to the President of the High Court because its only object was to ensure that at the trial the presiding Judge would be a neutral, non-Cypriot Judge.

With this in mind, and for all the reasons I have given earlier, I have agreed that the Nicosia Assizes did possess jurisdiction to try the accused in the present case.

A. LOIZOU, J.: The accused was committed to be tried by the Nicosia Assize Court and on the 21st July, 1976 when he appeared before it and was charged with two offences contained in the information filed by the Attorney-General, namely, preparation of war or warlike undertaking, contrary to sections 40, 20 and 21 of the Criminal Code, Cap. 154, and the use of armed force against the Government, contrary to sections 41, 20 and 21 of the Code, before pleading thereto, entered, through his counsel, the following special pleas under section 69 of the Criminal Procedure Law, Cap. 155:

" 1. That he has obtained a pardon for the offences with which he is charged, in that the acts and/or offences which are described in the Information have been amnestied by the President of the Republic, His Beatitude Archbishop Makarios the III, in a speech that He on 7.12.1974 delivered.

2. (a) That the accused is a Member of the House of Representatives, having been elected as such in 1970 for five years and that the term of office of the House of Representatives has been extended by Laws 29/75 and 25/76, the latter providing that the term of office of the present House shall continue in office till the House to be elected on 5.9.1976 assumes office but in no event later than the 31.12.1976.

(b) That even if the accused acted as President of the Republic during the coup d' etat of the 15.7.1974; that in view of the provisions of Law 57/75 and that as the accused has neither died nor resigned in writing nor has he become disqualified by the other reasons provided in

Article 71 of the Constitution, i.e. those provided by paragraphs (c) and (d) of this Article, he continues to be a Member of the House of Representatives.

As Article 83.2 of the Constitution provides that a Member of the House of Representatives cannot be arrested, prosecuted or imprisoned without the leave of the High Court (now read 'Supreme Court') so long as he continues to be a Representative and as such leave has not been granted, the Assize Court has no jurisdiction to try the accused.

3. That the Assize Court has no jurisdiction to try the accused in view of the provisions of Article 156 of the Constitution which require that a special Court be constituted to try the offences of the type the accused is charged with and that although the Supreme Court has held in the case of *The Republic* v. *Liassis* (1973) 2 C.L.R. 283, that the provisions of Article 156 are totally inoperative, the position must be reconsidered in the light of the events that intervened since the judgment in the aforementioned case was delivered."

The relevant extract of the speech of His Beatitude reads as follows:

" Βαθύτατα λυποῦμαι, διότι ἀπὸ τινων ἐτῶν πάθη καὶ μίση διαιροῦν τοὺς Ἕλληνας Κυπρίους. Καὶ αἱ ἀντιθέσεις ἔλαβον ἔκτασιν μέχρι πολιτικῶν δολοφονιῶν καὶ ἐνόπλων συγκρούσεων. Καὶ ἐνῶ ἡ Κύπρος κατεστρέφετο, Ἕλληνες Κύπριοι ἔστρεφον τὰ ὅπλα ἐναντίον τῶν ἀδελφῶν των. Δὲν θὰ ἀναφερθῶ εἰς τὰ αἴτια τοῦ διχασμοῦ διότι δὲν ἐπιθυμῶ νὰ ἀναξέσω πληγὰς τοῦ παρελθόντος, τῶν ὁποίων θέλω τὴν ἐπούλωσιν. Καὶ διὰ τοῦτο δὲν ἔχω πρόθεσιν διώξεως ἐχθρῶν καὶ ἀντιπάλων ἢ προσαγωγῆς ἐνώπιον δικαστηρίου τῶν βαρυνομένων μὲ τὰ πολιτικὰ ἀδικήματα ἢ μετασχόντων εἰς τὸ κατ' ἐμοῦ πραξικόπημα. Δίδω εἰς ὅλους ἄφεσιν ἁμαρτιῶν καὶ ἀμνηστίαν ἐπὶ τῇ ἐλπίδι ὅτι θὰ ἐπέλθῃ ἑνότης τοῦ λαοῦ μας. Ἐνώπιον τοῦ θυσιαστηρίου τῆς Κύπρου τὰ πάθη καὶ ἡ διχόνοια οὐδεμίαν ἔχουν θέσιν.

Ἐθνικὴν ἐπιταγὴν ἀποτελεῖ ἡ ψυχικὴ ἑνότης τοῦ Κυπριακοῦ Ἑλληνισμοῦ καὶ πρὸς τὴν κατεύθυνσιν αὐτὴν ἔχομεν καθῆκον ὅλοι νὰ συμβάλωμεν. Ἐκκλησία, Πολιτεία, Κόμματα, Ὀργανώσεις, Τύπος καὶ ἄτομα."

Its English translation reads:-

> " I am deeply grieved that for some years passion and hatred have been dividing Greek Cypriots. And conflict has led to political murders and armed clashes. And while Cyprus was being ruined, Greek Cypriots turned their arms against their brothers. I shall not refer to the causes of conflict, for I do not wish to rake up old wounds which I want to see healed. And for this reason, it is not my intention to prosecute my enemies and opponents or to bring to justice those involved in political offences or those who took part in the coup against me. I forgive them all for their transgressions and grant them amnesty in the hope that the desired unity among our people will be achieved. In the face of the calamity of Cyprus, there is no room for passions and discord. The spiritual unity of the Greek Cypriot people is a national dictate. And all of us, the Church, the State, Parties, Organizations, the Press and individuals, have a duty to contribute to this end".

After the aforesaid special pleas were entered counsel for the accused and the prosecution addressed the Court on the 26th and 27th July.

On the 28th July, after an affidavit was filed by the defence, with the consent of the prosecution, which was giving the factual background, the defence applied under section 148(1) of the Criminal Procedure Law, Cap. 155, that the Court reserved for the opinion of the Supreme Court, the points raised under the special pleas already entered in the case. This application was objected to by the Prosecution and the Court was referred to the case of *The Republic* v. *Kalli* (*No.* 1), 1961 C.L.R., p. 266, in which the desirability to avoid piece-meal trials by applying for the reservation of questions of law under section 148 was pointed out and suggestion was made that even the Attorney-General upon whose application a Court is bound to reserve a question of Law, should not make often use of his right. The Court was also referred to the case of *Charalambous* v. *The Attorney-General* (1974) 2 C.L.R. 37 at p. 44, which dealt with the meaning of the words "question of law arising during the trial" and in which it was clarified that *Kalli* (*No.* 1) case (*supra*) should not be taken as laying down that on an application by the defence under section 148(1) a trial Judge should refuse to answer a question of law for the opinion of this Court, merely for the

sake of avoiding an interruption of the trial even though he thinks that it is a proper case in which to do so.

The Assize Court in its ruling referred to the argument of Mr. Loucaides that the proper stage for such application to be made would be after the ruling of the Court was delivered and to his remark that if the ruling was against the prosecution, he would exercise his rights under section 148(1) of the Law. The Court then ruled that it was a proper case in which it could reserve, at that stage, the points of law raised by the defence for the opinion of the Supreme Court, having in mind what was said by Mr. Loucaides which showed, as they put it, "the importance he attaches to the points raised by the defence, having heard argument of counsel on this application and having considered the nature of the objections raised by the defence and also the authorities including the case of *Charalambous* v. *The Republic* (1974) 2 C.L.R. 37".

Although in the case of an application made by the Attorney-General the Court is left with no discretion and must reserve the question raised, in the case of an application made on behalf of an accused, the Court "may" do so. The use of the word "may" in this context signifies the existence of a discretion in such instance. This differentiation can be explained by the fact that there is no express statutory provision giving the Attorney-General the right to appeal from an acquittal by an Assize Court and section 148 of the Criminal Procedure Law preexisted the enactment of the present Procedure Law as Law No. 40 of 1948, whereby the Attorney-General was given a right of appeal from acquittals and sentence by a District Court only. 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.

Having expressed these views on the exercise of the judicial discretion under section 148(1) of the Criminal Procedure Law, Cap. 155, and without purporting to have exhaustively laid down the rules for its exercise, I propose to give my reasons for agreeing with the unanimous opinion of this Court upon the questions reserved, delivered on the 20th August, 1976.

The opinion of this Court to the three questions reserved by the Assize Court is reproduced verbatim in the judgments already delivered where an extensive reference is made to the arguments advanced by both sides, as well as to the judicial approach in other countries and the opinions of textbook writers on the issues in question, that a repetition by me of same would make this judgment unnecessarily longer. In any event, resort to the analogous situations in other countries should generally be made only if the relevant texts of the Laws of Cyprus as compared with those in other countries, justify such a course.

I take, for example, Article II section 2 of the U.S. Constitution which gives the President expressly power "to grant reprieves and pardons for offences against the United States, except in case of impeachment." So, the American Authorities turned on the meaning of the words used in this text, and particularly the word "pardon" a general power which is not to be found in our Constitution.

For the purpose, therefore, of determining whether the

President of the Republic has the power to grant a general amnesty or not, one has to turn to our Constitution and any relevant laws. I use the term "amnesty" in its wide sense, namely, of rendering inoperative or suspending the operation of Criminal Laws with regard to categories of acts and persons and placing them beyond the reach of punishment and relieving them from all penalties carried by the offences which they have committed.

It has to be examined, therefore, whether in the Constitution, by virtue of which the office of the President of the Republic was created and its powers and duties are set out, there is any provision which may be treated as empowering the President of the Republic to grant such amnesty in its wider sense as Head of the State. Article 53 of the Constitution, is the only relevant Article to which reference is also made in Articles 47(i) and Articles 48(m) and 49(m). Both these latter paragraphs speak of the exercise of the prerogative of mercy in capital cases as in Article 53 provided, which Article reads as follows:-

"53.1. The President or the Vice-President of the Republic shall have the right to exercise the prerogative of mercy with regard to persons belonging to their respective Community who are condemned to death.

2. Where the person injured (vlaven prosopon—zarar goren kimse—magdur) and the offender are members of different Communities such prerogative of mercy shall be exercised by agreement between the President and the Vice-President of the Republic; in the event of disagreement between the two the vote for clemency shall prevail.

3. In case the prerogative of mercy is exercised under paragraph 1 or 2 of this Article the death sentence shall be commuted to life imprisonment.

4. The President and the Vice-President of the Republic shall, on the unanimous recommendation of the Attorney-General and the Deputy Attorney-General of the Republic, remit, suspend, or commute any sentence passed by a Court in the Republic in all other cases."

There is, therefore, no Article in the Constitution empowering the Head of State to grant amnesty, the powers to pardon being confined to those set out in the aforesaid Articles. Needless to say that there has been no law enacted either. The question

then left to be examined, is whether, as part of the incident of the succession of State, the President of the Republic is vested under Article 188.3 (b) of the Constitution, whereby "any reference to the President and the Vice President of the Republic separately and jointly according to the express provisions of the Constitution................", with powers of the Colonial Governor or at that of the Crown which a Colonial Governor represented at the time. Reference, therefore, has to be made to the powers of the Colonial Governor which are to be found in the Letters Patent of 1925 paragraph XIX which deals with the grant of pardons and remissions of fines published in the Cyprus Gazette (Extraordinary No. 1) of the 1st May, 1925 p. 227 and which reads:-

> " XIX When any crime or offence has been committed within the Colony, or for which the offender may be tried therein the Governor may, as he shall see occasion, in Our name and on Our behalf, grant a pardon to any accomplice in such crime or offence who shall give such information as shall lead to the conviction of the principal offender, or of any one of such offenders, if more than one: and further may grant to any offender convicted in any Court or before any Judge or Magistrate within the Colony a pardon, either free or subject to lawful conditions, or any remission of the sentence passed on such offender, or any respite of the execution of such sentence, for such period as the Governor thinks fit, and may remit any fines, penalties or forfeitures due or accrued to Us."

Therefore, the Colonial Governor was vested with only limited powers and this was consonant with the British tradition and practices that the Crown was held to enjoy the exclusive right of granting pardons and that privilege could not be claimed by any other person either by grant or prescription. (See Halsbury's Laws of England, Vol. 7, para. 525 and foot-note (e). Jurisdiction in Liberties Act, 1535). It was, however, usually delegated to Colonial Governors and to Governors-General, though in so doing the Sovereign did not entirely divest herself of the prerogative. The general rule being that "prerogatives cannot be affected or parted with by the Crown except by express statutory authority.........." (Halsbury's Laws of England 3rd Ed. Vol. 7, p. 222, para. 465). A rule, obviously invoked in the case of the delegation of the prerogatives of the Crown to the then Colonial Governor of Cyprus under the aforesaid paragraph of the Letters Patent of 1925.

Consequently, the Head of State, as such, is not vested with pardoning powers inherent in his office, but only with those derived from the legal instrument—usually the Constitution—creating such office and the powers that are given to it thereby.

5 In my opinion, the announced amnesty could be implemented as such solely by legislation, in furtherance of the principle that offences are created by Statute and by Statute only their operation can be suspended. Our Constitution does not empower the executive to grant an amnesty. Therefore, the power is 10 left with the legislature. Furthermore, I cannot trace any other powers in the Constitution, whatsoever, which may be invoked to implement an intention to grant a general amnesty, nor can such a power be implied from the wording of Article 53 of the Constitution which expressly specifies the powers of mercy and 15 suspension or remission of sentence which are obviously inapplicable to the present case and which are the only ones which the drafters of the Constitution chose to give to the Head of the State and which contains out also the procedure regulating their exercise.

20 The claim that the announced amnesty was effective by virtue of the Doctrine of Necessity and in view of the tragic situation in which the country found itself to be, cannot be accepted as the situation could be met by a legislative enactment. The House of Representatives apart from the fact that, as shown by the 25 Laws, on the Statute Book, it was continuously functioning throughout the latter part of 1974 and 1975, in October 1975, it enacted the Coup d' Etat (Special Provisions) Law, which clearly shows that it had the opportunity and could have legislated, if it had so thought, a law regarding amnesty.

30 For all the above reasons there could not be raised successfully by the accused a plea under section 69(1)(c) of the Criminal Procedure Law, Cap. 155, that he had obtained the pardon for the offences with which he was charged.

I turn next to the second question of law which was reserved 35 for the opinion of this Court that the accused having taken over the office of the President of the Republic as a result of the coup d' etat on the 15th July, 1974, his seat in the House of Representatives became vacant and therefore the leave of the Supreme Court under Article 83 of the Constitution for his 40 arrest and prosecution in the present instance, was not required.

The factual basis for this legal issue, is not disputed. The

accused was elected as a member of the House of Representatives in 1970 and he was still a member when by means and as a result of the coup d' etat on the 15th July, 1974 he took over the office of the President of the Republic and continued holding it until the 23rd July, 1974 that is to say, two days after the Turkish army invaded Cyprus. Relevant to this issue are Articles 41, 70 and 71 of the Constitution which are hereinafter reproduced verbatim:

"41. 1 The office of the President and of the Vice President of the Republic shall be incompatible with that of a Minister or of a Representative or of a Member of a Communal Chamber or of a member of any municipal council including a Mayor or of a member of the armed or security forces of the Republic or with a public or municipal office.

For the purposes of this Article 'public office' means any office of profit in the public service of the Republic or of a Communal Chamber, the emoluments of which are under the control either of the Republic or of a Communal Chamber, and includes any office in any public corporate or public utility body.

70. The office of a Representative shall be incompatible with that of a Minister or of a member of a Communal Chamber or of a member of any municipal council including a Mayor or of a member of the armed or security forces of the Republic or with a public or municipal office or, in the case of a Representative elected by the Turkish Community, of a religious functionary (din adami).

For the purposes of this Article 'public office' means any office of profit in the service of the Republic or of a Communal Chamber the emoluments of which are under the control either of the Republic or of a Communal Chamber, and includes any office in any public corporation or public body.

71. The seat of a Representative shall become vacant—

(a) upon his death;

(b) upon his written resignation;

(c) upon the occurrence of any of the circumstances referred to in paragraphs (c) and (d) of Article 64 or if he ceases to be a citizen of the Republic;

(d) upon his becoming the holder of an office mentioned in Article 70".

Taking the combined effect of the aforesaid Articles, the President of the Republic undoubtedly cannot also be a member of the House of Representatives and vice versa. This is also reinforced by the marked separation of powers which is a characteristic of our Constitution.

A further argument advanced on behalf of the accused in this respect, is that the two offices are incompatible only if the office of the President is assumed in a lawful and constitutional manner and not as a result of a coup d' etat; therefore, the accused continued to retain his office as a member of the House of Representatives having been merely a de facto President of the Republic.

In support of this proposition the provisions of the Coup d' Etat (Special Provisions) Law, 1975 (57/75) have been invoked. Also, reference has been made to the case of *Liasis & others* v. *The Attorney-General of the Republic and another* (1975) 3 C.L.R. 558, in which I held that it could not be said that the "coup d' etat Government" was in any way legalized under the accepted tests of the general principles of Law and in particular that of having on its side the popular support.

The office of the President of the Republic under Article 41 of the Constitution, is incompatible with that of a member of the House of Representatives. This Article precedes the other two and one would consider, driving things to their logical conclusion, that it would have been a mere superfluous repetition to refer also to the incompatibility of the office of a member of the House of Representatives to that of the President, once that had already been stated by Article 41 of the Constitution.

It remains to consider, therefore, whether a person who assumes the office of a President by means of and as a result of a coup d' etat is placed in a better position that a person who has assumed that office with the prescribed constitutional procedure.

In some countries, there are set time-limits within which one who holds incompatible offices has to express his choice as to which of them he wishes to retain. There is no such provision in our Constitution and a member of the House of Representatives upon becoming a Minister or President, automatically vacates his seat. It is not usual to have a constitutional provi-

sion dealing expressly with the situation where an office is assumed or usurped as a result of the use of arms, but it is only logical to say that such a usurper of an office cannot be in a better position than had he lawfully assumed same. And the accused, in the present case, does not dispute that he assumed the office and acted as a President for a period of just over eight days and that he exercised the powers of that office. In fact, in the preamble of Law 57/75, reference is made to the "Coup d' etat Government" which is defined in section 2 of the Law, as meaning the person who, "during the coup d' etat unconstitutionally and illegally assumed the office of the President of the Republic. ...." and "acts" are defined as including every act or decision of a legislative or administrative nature which, under section 4 of the Law, are declared as non-existing and devoid of substance. This Law was obviously enacted for the sake of the restoration of the lawful order which was disturbed as a result of the coup d' etat and not the exoneration of the accused or his collaborators from the consequences of their acts. Consequently, the accused lost automatically, his status as a Member of the House of Representatives since there was a real exercise of the duties of an office incompatible with the status of a member of the House of Representatives, and Article 83.2 did not apply in his case.

I turn now to the third question which presents no difficulty. The answer could be found in the case of *The Republic* v. *Liassis* (1973) 2 C.L.R. 283, and at that a judgment of the Full Bench of the Supreme Court which constitutes a binding precedent on all inferior Courts. The doctrine of judicial precedent has been inherited from the English Law of which it is a distinguishing characteristic. Under this doctrine, every Court is bound to follow any case decided by a Court above it in the hierarchy and the fact that judgments of Assize Courts are subject to appeal to the Supreme Court shows that such a Court is obliged to follow the decisions of the Supreme Court to which appeals therefrom lie. The Assize Court, however, reserved also this question, on the ground that the defence had submitted that the said judgment should be reconsidered.

The argument of counsel for the accused has been that the Assize Court had no jurisdiction to try the accused, in view of the provisions of Article 156 of the Constitution, which require that a special Court be constituted to try the offences of the type the accused was charged with and that the case of *The*

Republic v. *Liassis* (*supra*) should be reconsidered in the light of things that intervened since the judgment in the aforementioned case was delivered. The argument advanced was that the intention of the constitutional draftsman, as appearing from Article 156, was to see that for the offences specified in that Article, the appropriate Court should be presided over by a judicial officer of the highest rank and that that objective could still be achieved if directions were made in such a way that one of the members of the Supreme Court, was asked to preside at the Assize Court which would try the accused.

I do not subscribe to this argument, inasmuch as the objective of Article 156 was to have a non-Cypriot Judge presiding over such an Assize Court with the other non-Cypriot Judge presiding in the Appeal Court in case of appeal, a situation which does not exist today.

In matters where on account of imperative and inevitable necessity or exceptional circumstances, a particular provision of the Constitution becomes inoperative, and acts of constitutional effect have to be taken to meet the vacuum that has arisen on account thereof, the appropriate organ under the Constitution is vested with a discretion regarding the proper measures to be adopted for the purpose of meeting such a necessity. (See *Messaritou* v. *C.B.C.* (1972) 3 C.L.R. 100 at p. 113-114).

In the instant case the pre-existing procedure regarding the trial of indictable offences in general was followed, taking cognizance of the fact that the communal element in the jurisdiction of the Courts no longer existed since the enactment of the Administration of Justice (Miscellaneous Provisions) Law, 1964. (See also, the case of The *Attorney-General of the Republic* v. *Mustafa Ibrahim and Others*, 1964 C.L.R. p. 195). This course, in my view, was duly warranted by the circumstances and came within the narrow limits of its discretion.

However, though the issue was that of the composition and therefore the jurisdiction of the Court trying such criminal case and not strictly speaking the interpretation of a criminal provision, yet, it is useful to refer to what was stated by Lord Goddard, L.C.J. in *R.* v. *Taylor*, 34 Cr. App. R. 138 at p. 142, that:

"The Court.............has to deal with the liberty of the subject, and if this Court found on reconsideration that, in

the opinion of a Full Court assembled for that purpose, the law has been either misapplied or misundertood and that as a result a man had been deprived of his liberty, it would be its bounden duty to reconsider the earlier case with a view to determining whether he had been properly convicted."

To the effect that the doctrine of stare decisis is not applied by the Court of Criminal Appeal with the same rigidity as in their civil jurisdiction, see also *Rex* v. *Gould*, 52 Cr. App. R. p. 152 at p. 153. Of course, the rule of stare decisis has been further modified by the practice statement of the House of Lords, of 1966 regarding its own decisions, but I need not deal with that aspect here. It is sufficient to say that this Court may reconsider its earlier decisions but for the sake of preserving the certainty of the Law and the uniformity of its application in similar circumstances, this has to be done most cautiously and only when it is persuaded that the relevant law was either misapplied or misunderstood.

These are the reasons for agreeing with the opinion which was expressed on the 20th of August, 1976 on the question of law reserved.

MALACHTOS, J. I agree with the reasons given by Mr. Justice Triantafyllides, President of the Court, which I had the advantage of reading in advance and I have nothing to add.

Order accordingly.