it necessary to deal in detail. For instance, reference was made to section 37(1) of Act 62 of 1955, the history of conflicting interpretations of it, and the manner in which the Legislature intervened by means of section 31 of Act 80 of 1964. Suffice it to say that I can find nothing in those considerations which can serve to detract from the views I have expressed above regarding the intention of the Legislature as manifested in the Act which is under scrutiny here.

It is said that a mandatory sentence of the kind in question here is extremely unusual, if not unique. I agree. In my judgment, however, the indications that the Legislature intended to provide for just such a sentence are so compelling, and indeed overwhelming, that I can see no avenue of escape, other than to rewrite the Act, which, unfortunately, it is not within my power to do.

I turn now to section 283 of the Criminal Procedure Act 51 of 1977, which is quoted in the

judgment of my Brother SMALBERGER. In my view section 283 cannot be made to apply to a mandatory sentence of the kind in question here, at all. To begin with section 283(2): it excludes from the operation of subsection (1) "any offence for which a minimum penalty is prescribed.....". In my opinion, a provision for a mandatory sentence does not fall within the ambit of these words. When the Legislature provides, in terms which are found to be peremptory, that an offender is to be sentenced to imprisonment for a stated period, no more and no less, it is not prescribing "a minimum penalty". To be sure, the effect of providing for a compulsory sentence will be imprisonment for a period which can, in a sense, be regarded as a minimum, but that relates only to the effect of the provision, and, what is more, only to one half of its effect. It is simultaneously a provision for a maximum sentence. To my mind it would be a misnomer to call a mandatory or compulsory sentence of a fixed period of imprisonment a

minimum penalty, just as it would be a misnomer to call it a maximum penalty. When section 283(2) refers to "a minimum penalty", it implicitly presupposes that a heavier penalty is possible, but in the case of mandatory sentence no such possibility exists. Because a mandatory sentence precludes anything more than what is prescribed, it cannot be brought home within the words "a minimum penalty is prescribed". Proceeding, then, to subsection (1): its provision that a person liable to a sentence of imprisonment for a period may be sentenced to imprisonment for any shorter period, is couched in very general terms. Consequently, in accordance with established principle, it cannot be invoked to override the specific provisions of a particular statute to the contrary. To illustrate the point: assuming that subsection (2) had not been included after subsection (1), the latter could not have been made to apply to a particular statutory provision prescribing a minimum sentence for a specific

offence. The fact that the Legislature saw fit in subsection (2) expressly to exclude from the operation of subsection (1) the case of a minimum penalty, does not entail, however, that subsection (1) applies to other instances of a specific provision which in a different form is in conflict with its general provisions. Any specific provision which runs counter to the general provision of subsection (1) must override the latter. It follows, therefore, that section 283(1) cannot be made to apply to the case of a mandatory sentence such as that contained in section 126A(1)(a). The fact that the words of section 126A(1)(a), "liable ..... to imprisonment for a period ....." happen to coincide largely with the words of section 283(1), "liable to a sentence of imprisonment ..... for any period .....", is not of any consequence, for, on my finding as to the intention of the Legislature in regard to section 126A(1)(a), the words I have quoted must be taken to convey imprisonment "for

a period which shall be (neither more nor less than) .....", and that effectively excludes the operation of section 283(1).

It remains to deal with the subsidiary question to be decided: whether it is competent for a court sentencing an offender under section 126A(1)(a) to suspend any part of the sentence. In my judgment the answer must be in the negative. The object of the Legislature is to coerce compliance with the provisions of the Act relating to compulsory service of the various kinds dealt with. That object could be achieved effectively, if suspension were possible, only if it were made the primary condition of suspension that the offender should render the service in question. But for such a situation the Legislature has already made express provision in section 126A(7). The effect of section 126A(7) is to create a procedure by which it is made possible for the offender himself to bring about the suspension of his sentence; he can do

so simply by signing the prescribed notice directed to the Adjudant-General, stating that he is willing to render service, and there is no reason why he should not do so, if he is so minded, immediately on sentence being passed. It is thus for the offender himself at any stage to procure, in effect, the suspension of his sentence. By expressly creating this unusual procedure the Legislature has, in my view, made it perfectly plain that the sentencing court shall not be empowered to suspend any part of the sentence. This conclusion is in no way detracted from by the reference in section 126A(3)(b)(i) to a sentence of imprisonment which has not been suspended in full; obviously that provision would apply where it is possible to do so, viz in relation to sections 126A(1)(b) and 126A(2)(b), but it cannot negative the clear effect of sections 126A(1)(a) and 126A(2)(a) read with section 126A(7).

It was suggested in argument that a sentence under section 126A(1)(a) could be suspended on

conditions other than the rendering of military service, such as that the offender should perform community service of some kind. I cannot agree. Such a possibility flies in the face of the clear intention of the Legislature as reflected in section 126A(7). Moreover, in the case of religious objectors the Legislature has, in section 72E, created an elaborate machinery for alternative kinds of service, including community service, and has expressly provided, in section 72I(5), for the suspension of sentences imposed under sections 72I(1) or (2)(a) on condition that such service be rendered. In view of the Legislature's much harsher treatment of conscientious objectors, it is inconceivable, in my view, that it would have countenanced the rendering of community service, in their case, as a means of avoiding military service. Accordingly such a possibility has been excluded by the clearest necessary implication.

In regard to the suspension of sentences

under section 126A(1)(a), reliance was placed, on behalf of the appellants, on the provisions of section 297 of the Criminal Procedure Act 51 of 1977. In my judgment section 297 cannot be made to apply to a mandatory sentence such as is provided for in section 126A(1)(a). My reasoning in this regard is the same as that set out above in respect of section 283 of the Criminal Procedure Act. I do not propose to repeat it. In brief: the expression "an offence in respect of which any law prescribes a minimum punishment", where it occurs in sections 297(1) and (4), does not embrace a mandatory sentence of the kind provided for in section 126A(1)(a); and the general provisions contained in section 297(1)(b) must be considered to be overridden by the specific provisions of section 126A(1)(a).

Finally: I have reached the conclusions stated in this judgment with profound regret. On the view I have taken as to the intention of the

Legislature, I agree fully with the description of my Brother SMALBERGER of section 126A(1)(a) as a draconian provision which is not necessary or desirable for achieving the purpose of the Act. Unlike my Colleague, however, I have found myself compelled to accept that the Legislature's intention was as I have stated it to be, for the reasons I have given. But I wish to make it clear that I subscribe fully to what SMALBERGER JA has said generally in regard to the cherished principle that the discretion of the courts in the matter of sentence should not be encroached upon, and that the individualization of punishment should not be rendered nugatory. I agree, also, that on the view I have taken of the effect of section 126A(1)(a), it must inevitably lead to harsh and inequitable results. It is not for me to comment on the policy of the Legislature, when once I have found an unavoidably clear expression of it in the Act. But I am qualified, entitled and obliged to speak my mind on the effect of that policy on the

administration of justice in the courts of the country, which is the sphere in which I function. And on that level I find a legislative provision like section 126A(1)(a), which reduces a sentencing court to a mere rubber stamp, to be wholly repugnant.

I would dismiss both the appeals.

A.S. BOTHA JA