

JUDGMENT OF THE COURT  
5 July 1994 \*

In Case C-432/92,

REFERENCE to the Court under Article 177 of the EEC Treaty by the High Court of Justice (Queen's Bench Division) for a preliminary ruling in the proceedings pending before that court between

**The Queen**

and

**Minister of Agriculture, Fisheries and Food,**

**ex parte S. P. Anastasiou (Pissouri) Ltd and Others**

Interveners:

**Cypfruvex (UK) Ltd**

**Cyprus Fruit and Vegetable Enterprises Ltd (Cypfruvex),**

\* Language of the case: English.

on the interpretation of the Agreement of 19 December 1972 establishing an Association between the European Economic Community and the Republic of Cyprus, annexed to Council Regulation (EEC) No 1246/73 of 14 May 1973 (OJ 1973 L 133, p. 1), and Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of organisms harmful to plants or plant products (OJ 1977 L 26, p. 20),

THE COURT,

composed of: O. Due, President, G. F. Mancini, J. C. Moitinho de Almeida, M. Diez de Velasco (Rapporteur) and D. A. O. Edward (Presidents of Chambers), C. N. Kakouris, R. Joliet, F. A. Schockweiler, G. C. Rodríguez Iglesias, F. Grévisse, M. Zuleeg, P. J. G. Kapteyn and J. L. Murray, Judges,

Advocate General: C. Gulmann,  
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- S. P. Anastasiou (Pissouri) Ltd and Others, by D. Vaughan QC, and M. Clough, Barrister, instructed by Allen & Overy, Solicitors,
- the United Kingdom, by J. E. Collins of the Treasury Solicitor's Department, acting as Agent, and P. M. Roth, Barrister,
- the Greek Government, by D. Raptis, State Legal Adviser, V. Kondolaimos, Member of the State Legal Service, and I. Khalkias, Representative of the State Legal Service in judicial proceedings, acting as Agents,

— the Commission of the European Communities, by P. J. Kuijper, Legal Adviser, and P. Hetsch, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of S. P. Anastasiou (Pissouri) Ltd and Others, represented by D. Vaughan QC, and M. Clough, Barrister, of Cypfruvex (UK) Ltd and Cyprus Fruit and Vegetable Enterprises Ltd (Cypfruvex), represented by D. Janney, Solicitor, and P. Watson, Barrister, of the United Kingdom, represented by J. E. Collins, S. Richards and P. M. Roth, Barristers, of the Greek Government, represented by V. Kondolaimos, assisted by Professor C. Rozakis, of the Irish Government, represented by A. Aston, Barrister-at-Law, and of the Commission, represented by P. J. Kuijper, Legal Adviser, and P. Hetsch, of its Legal Service, at the hearing on 2 March 1994,

after hearing the Opinion of the Advocate General at the sitting on 20 April 1994,

gives the following

### Judgment

- 1 By order of 2 December 1992, received at the Court on 24 December 1992, the High Court of Justice (Queen's Bench Division) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty five questions on the interpretation of the Agreement of 19 December 1972 establishing an Association between the European Economic Community and the Republic of Cyprus, annexed to Council Regulation (EEC) No 1246/73 of 14 May 1973 (hereinafter 'the Association Agreement'), and Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of organisms harmful to plants or plant products.

- 2 The questions were raised in proceedings brought by producers and exporters of citrus fruit established in the part of Cyprus to the south of the United Nations Buffer Zone and the national marketing board for potatoes in Cyprus against the Ministry of Agriculture, Fisheries and Food, in connection with the importation into the United Kingdom of citrus fruit and potatoes from the part of Cyprus to the north of that zone (hereinafter 'the northern part of Cyprus').
- 3 Trade in citrus fruit and potatoes between the Republic of Cyprus and the Community is governed by the Association Agreement and the protocols thereto, as amended or replaced.
- 4 Article 3(3) of the Association Agreement provides that:

'The Contracting Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Agreement. They shall refrain from any measure likely to jeopardize the achievement of the aims of the Agreement.'

- 5 Under Article 5 of the Association Agreement:

'The rules governing trade between the Contracting Parties may not give rise to any discrimination between ... nationals or companies of Cyprus.'

- 6 Citrus fruit and potatoes originating from Cyprus benefit from preferential arrangements under the Association Agreement and the protocols thereto. Under Article 7 of the Agreement, the rules of origin to be applied are those set forth in the Protocol. The protocol currently applicable is that of 1977 concerning the definition of the concept of 'originating products' and methods of administrative cooperation (hereinafter 'the 1977 Protocol'), which was annexed to the Additional Protocol to the Agreement establishing an Association between the European Economic Community and the Republic of Cyprus, itself annexed to Council Regulation (EEC) No 2907/77 of 20 December 1977 (OJ 1977 L 339, p. 1).
- 7 Article 6(1) of the 1977 Protocol states that evidence of the originating status of products is given by movement certificate EUR.1. Articles 7(1) and 8(1) of the 1977 Protocol specify that the movement certificate is to be issued by the customs authorities of the exporting State. Article 8(3) provides in particular that it is the responsibility of the customs authorities of the exporting State to ensure that the forms referred to in Article 9 (movement certificates, specimens of which are given in Annex V to the 1977 Protocol) are duly completed.
- 8 Under Article 24 of the 1977 Protocol, subsequent verification of EUR.1 movement certificates is to be carried out at random or whenever the customs authorities of the importing State have reasonable doubt as to the authenticity of the document or the accuracy of the information regarding the true origin of the goods in question. For that purpose the customs authorities of the importing State are to return the movement certificate, or a photocopy thereof, to the customs authorities of the exporting State, giving the reasons of form or substance for an inquiry. The customs authorities of the importing State are to be informed of the results of the verification as quickly as possible. The results must be such as to make it possible to determine whether the disputed certificate applies to the goods actually exported, and whether these goods can in fact qualify for the application of the preferential arrangements. Disputes between customs authorities that cannot be settled or raise a question as to the interpretation of the Protocol are to be submitted to the Customs Cooperation Committee established under the Association Agreement.

- 9 Directive 77/93, cited above, lays down rules governing the issue of phytosanitary certificates. Article 12(1)(b) of that directive, as amended by Council Directives 80/392/EEC of 18 March 1980 (OJ 1980 L 100, p. 32) and 85/574/EEC of 19 December 1985 (OJ 1985 L 372, p. 25), requires the certificates to be issued by authorities empowered for that purpose under the International Plant Protection Convention or, in the case of non-contracting countries, such as the Republic of Cyprus, on the basis of the laws or regulations of that country. Citrus fruit and potato tubers are among the products listed in Annex V which, under Article 12, must be accompanied by a phytosanitary certificate upon importation.
- 10 On 24 October 1991 the applicants in the main proceedings wrote to the Minister, the respondent in the main proceedings, seeking confirmation that the competent UK authorities would no longer allow the importation of citrus products or potatoes produced in Cyprus into the United Kingdom without the appropriate movement or phytosanitary certificates issued by the authorities of the Republic of Cyprus.
- 11 By letter dated 3 December 1991, the respondent replied that the United Kingdom did not accept documentation referring to the 'Turkish Republic of Northern Cyprus' (hereinafter 'the TRNC') and that it permitted the entry of citrus products and potatoes from Cyprus in accordance with the relevant Community legislation. The applicants sought further clarification, whereupon the Ministry of Agriculture, Fisheries and Food replied, in a letter of 24 March 1992, that, as far as the UK authorities were aware, any imports which might have entered the Community from the northern part of Cyprus would have done so in accordance with the Community requirements.
- 12 The applicants then applied to the High Court of Justice, Queen's Bench Division, for judicial review of the respondent's decision contained in the letters referred to

above and of the UK authorities' practice of allowing imports into the United Kingdom without the necessary documentation issued by the competent authorities of the Republic of Cyprus.

- 13 It is apparent from the order for reference that the following facts are not disputed by the parties:
- (a) The Republic of Cyprus is a sovereign State, recognized by all the Member States of the European Community. Its Constitution was adopted in 1960 and its territory comprises the whole of the island of Cyprus, apart from the sovereign base areas.
  - (b) The United Kingdom and the other Member States do not recognize a 'Turkish Republic of Northern Cyprus'.
  - (c) There has been a UN buffer zone across the island of Cyprus since 1974. Almost the entire Turkish-Cypriot community resides to the north of that buffer zone. Significant volumes of citrus products and potatoes are imported into the United Kingdom from that part of Cyprus.
  - (d) None of the movement or phytosanitary certificates that accompany citrus products or potatoes imported into the United Kingdom from the northern part of Cyprus are issued by the authorities of the Republic of Cyprus.
  - (e) The UK Customs and Excise, which is responsible for checking movement certificates concerning imported goods, have refused to accept certificates issued by, or bearing a customs stamp referring to, the TRNC. They have continued to accept movement certificates accompanying goods exported from the northern part of Cyprus which bear a stamp in the name of the 'Cyprus Customs Authorities' but do not originate from the authorities of the Republic of Cyprus.

(f) Similarly, the UK authorities do not accept phytosanitary certificates issued in the name of the TRNC. They do accept phytosanitary certificates issued in the northern part of Cyprus accompanying products consigned by exporters from that part. Some of those certificates have been issued in the name of the 'Republic of Cyprus — Turkish Federated State of Cyprus'. In practice, since 1991 at least, all phytosanitary certificates for produce exported from the northern part of Cyprus have been issued only in the name of the 'Republic of Cyprus — Ministry of Agriculture'.

14 Taking the view that the dispute involved the interpretation of Community law, the national court decided, by order of 2 December 1992, to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'Having regard, in particular to:

- (i) the 1972 Agreement establishing an association between the European Economic Community and the Republic of Cyprus, the 1977 Protocol on the definition of the concept of "originating" products and methods of administrative cooperation and the 1987 Protocol laying down the conditions and procedures for the implementation of the second stage of the 1972 Agreement and adapting certain provisions of the 1972 Agreement, and
- (ii) the provisions of Council Directive 77/93/EEC on protective measures against the introduction into the Member States of organisms harmful to plants or plant products, as amended:
  1. Where the importation into a Member State of citrus products or potatoes from Cyprus is accompanied by EUR.1 movement certificates issued by the Turkish community in the part of Cyprus to the north of the UN buffer zone and not

by officials authorized by the Republic of Cyprus, does Community law:

(a) preclude the Member State from permitting that importation?

(b) require the Member State to accept those certificates?

2. Where the importation into a Member State of citrus products (other than lemons) and potatoes from Cyprus is accompanied by phytosanitary certificates issued by the Turkish community in the part of Cyprus to the north of the UN buffer zone and not by officials duly authorized by the Republic of Cyprus, does Community law:

(a) preclude the Member State from permitting that importation?

(b) require the Member State to accept those certificates?

3. Would it make any difference to the answers to 1 or 2 above if:

(a) it were in practice impossible for exporters from the part of Cyprus to the north of the UN buffer zone to obtain certification for their products from the Republic of Cyprus?

(b) there were a significant impediment to exporters from the part of Cyprus to the north of the UN buffer zone exporting their products through the part of Cyprus under the effective control of the Government of the Republic of Cyprus?

(c) the procedures for the issue and verification of such certificates in the part of Cyprus to the north of the UN buffer zone were as dependable as the procedures in the part of Cyprus under the effective control of the Government of the Republic of Cyprus?

4. Would it make any difference to the answer to Question 2 above if the experience from checks in the Member State were to show no distinction between the standard of plant health of such products imported from the part of Cyprus to the north of the UN buffer zone and from the part of Cyprus under the effective control of the Republic of Cyprus?

5. Is it relevant to the answers to Questions 3(a) or (b) above to determine whether or to what extent any impossibility or impediment was caused by the Turkish community in the part of Cyprus to the north of the UN buffer zone and/or by the Republic of Cyprus, and if so what difference does this make?

15 The essence of these questions, which can best be considered together, is whether the Association Agreement and Directive 77/93 should be interpreted as precluding acceptance by the national authorities of a Member State, when citrus fruit or potatoes are imported from the northern part of Cyprus, of movement and phytosanitary certificates issued by authorities other than the competent authorities of the Republic of Cyprus, or conversely, as requiring acceptance of such certificates, and whether the answer would be different if certain circumstances connected with the special situation of the island of Cyprus were taken as established.

16 The questions referred to the Court concern two types of certificate required when citrus fruit or potatoes originating from Cyprus are imported into the Community:

— movement certificates required as evidence of the originating status of products within the meaning of the 1977 Protocol;

— phytosanitary certificates required pursuant to Directive 77/93.

17 According to the applicants in the main proceedings and the Greek Government, the practice whereby national authorities accept certificates issued by the Turkish community in the northern part of Cyprus and not by officials duly authorized by the Republic of Cyprus is unlawful. That practice is in breach of the obligations imposed by Articles 6(1), 7(1), 8(1) and (3) and 9 of the 1977 Protocol with regard to movement certificates and by Article 12(1)(b) of Directive 77/93 with regard to phytosanitary certificates.

18 With regard more specifically to movement certificates, the applicants in the main proceedings and the Greek Government claim that under the express provisions of the 1977 Protocol only certificates issued by the customs authorities of the Republic of Cyprus can attest to originating status as products of Cyprus.

19 The United Kingdom and the Commission do not dispute that in normal circumstances the practice in question should be regarded as incompatible with Community law. They maintain, however, that, in view of the special situation of Cyprus, the 1977 Protocol and Directive 77/93 should be interpreted to the effect that the authorities of the Member States are bound, with regard to products from the northern part of Cyprus, to accept certificates issued by the entity established in

that part of the island and not by officials authorized by the Republic of Cyprus, in order to prevent discrimination between nationals or companies of Cyprus.

- 20 They argue that on the facts it must be taken as established that it is practically impossible or at least very difficult for exporters from the northern part of Cyprus to obtain for the products which they export certificates other than those issued by the Turkish community in that part of the island. They add that the procedures for checking the origin of the goods and the standard of plant health in practice provide all the necessary guarantees.
- 21 They also state that the provisions of the 1977 Protocol relied on by the applicants in the main proceedings do not have direct effect. According to the United Kingdom, their purpose is to establish an administrative system for verifying the origin of products and effective administrative cooperation between the authorities of the exporting State and those of the importing State. In the light of their wording and context, those provisions should not be regarded as directly effective in proceedings before the national courts.
- 22 Since the question whether the relevant provisions of the 1977 Protocol have direct effect has been raised, it should be examined at the outset.
- 23 As the Court has consistently held, a provision in an agreement concluded by the Community with non-member countries must be regarded as having direct effect when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure (see in particular the judgment in Case 12/86 *Demirel* [1987] ECR 3719, at paragraph 14).

24 The aim of the Association Agreement is the progressive elimination of obstacles to trade between the Community and Cyprus. Under the Agreement, certain specific products originating in Cyprus are to benefit from preferential tariffs when imported into the Community.

25 The relevant rules in the 1977 Protocol concerning the origin of products play an essential role in determining which products can be covered by the Agreement and thus benefit from preferential treatment. In that regard they lay down clear, precise and unconditional obligations.

26 Furthermore, the Court has already taken the view by implication in its judgments in Case 218/83 *Les Rapides Savoyards and Others* [1984] ECR 3105 and in Case 12/92 *Huygen and Others* [1993] ECR I-6381 that provisions concerning movement certificates appearing in trade agreements concluded by the Community with non-member countries, similar to the provisions at issue in the main proceedings, may be applied by the national courts.

27 It follows that the relevant provisions in the 1977 Protocol have direct effect and may be relied upon in proceedings before a national court.

28 The next question to be examined must therefore be whether those provisions preclude acceptance by the national authorities of a Member State, upon importation of citrus fruit or potatoes from the northern part of Cyprus, of movement certificates issued by authorities other than those of the Republic of Cyprus.

29 The preferential arrangement established by the Association Agreement applies to products from Cyprus in so far as they are accompanied by a movement certificate

attesting to their Cypriot origin (Article 6(1) of the 1977 Protocol). That certificate is issued by the customs authorities of the exporting State when the goods to which it relates are exported if they can be considered 'originating products' within the meaning of the 1977 Protocol (Articles 7(1) and 8(1)). The Republic of Cyprus and the Community are to assist each other through their respective customs administrations in checking the authenticity of those certificates (Article 22 of the 1977 Protocol). The customs authorities of the importing State may decide that subsequent verification of the certificates is necessary if they entertain doubts as to the authenticity of the document or the accuracy of the information contained in them, and they are to be informed of the results of such verification by the exporting State; if disputes cannot be settled between the customs authorities of the two States, or if they raise a question as to the interpretation of the Protocol, they are to be submitted to the Customs Cooperation Council (Article 24 of the 1977 Protocol).

- 30 According to the applicants in the main proceedings and the Greek Government, it follows from the precise and unconditional terms of the foregoing provisions as to evidence of and checks on the originating status of products that only the customs authorities of the Republic of Cyprus are competent to issue movement certificates and to ensure administrative cooperation with the customs authorities of the importing State. Consequently, those provisions preclude acceptance of certificates issued by other authorities.
- 31 The United Kingdom and the Commission contend, however, that the provisions in question, interpreted in the light of Article 5 of the Association Agreement and having regard to the special situation of the island, allow a Member State to accept certificates issued by the Turkish community in the northern part of Cyprus.
- 32 They point out that the Association Agreement applies to the entire territory of Cyprus apart from the Sovereign Base Areas but including the northern part of

Cyprus, and that its overall object is the progressive elimination of obstacles to trade between the Community and Cyprus. That trade arrangement may not, they maintain, in terms of Article 5 of the Agreement, give rise to any discrimination between nationals or companies of Cyprus, so as to ensure that the commercial benefits stemming from the Agreement benefit the entire population of Cyprus.

33 In those circumstances, if the preferential arrangement were allowed for products from the southern part of Cyprus but not for products from the northern part, there would, in their view, be discrimination contrary to Article 5. The position would be the same if there was a significant impediment to Cypriots living in the northern part of Cyprus in obtaining the necessary certificates that did not apply to Cypriots living in the southern part.

34 Given the special situation of Cyprus, the United Kingdom and the Commission maintain that *de facto* acceptance of the certificates in question issued by authorities other than the competent authorities of the Republic of Cyprus is certainly not tantamount to recognition of the TRNC as a State, but represents the necessary and justifiable corollary of the need to take the interests of the whole population of Cyprus into account.

35 According to the Commission, that approach is clearly in line with the interpretation given by the International Court of Justice in its Advisory Opinion on Namibia (Opinion on the legal consequences for States of the continued presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276(1970) (ICJ Reports 1971, p. 16)); in its view, a policy of non-recognition should not result in depriving the people of Cyprus of any advantages conferred by treaty. The same approach, the Commission maintains, has been followed by the Council and the Commission in interpreting and applying the Association Agreement itself and the financial protocols.

- 36 The argument propounded by the United Kingdom and the Commission cannot be accepted.
- 37 While the *de facto* partition of the territory of Cyprus, as a result of the intervention of the Turkish armed forces in 1974, into a zone where the authorities of the Republic of Cyprus continue fully to exercise their powers and a zone where they cannot in fact do so raises problems that are difficult to resolve in connection with the application of the Association Agreement to the whole of Cyprus, that does not warrant a departure from the clear, precise and unconditional provisions of the 1977 Protocol on the origin of products and administrative cooperation.
- 38 The system whereby movement certificates are regarded as evidence of the origin of products is founded on the principle of mutual reliance and cooperation between the competent authorities of the exporting State and those of the importing State (*Les Rapides Savoyards and Others* and *Huygen and Others*, cited above).
- 39 Acceptance of certificates by the customs authorities of the importing State reflects their total confidence in the system of checking the origin of products as implemented by the competent authorities of the exporting State. It also shows that the importing State is in no doubt that subsequent verification, consultation and settlement of any disputes in respect of the origin of products or the existence of fraud will be carried out efficiently with the cooperation of the authorities concerned.
- 40 A system of that kind cannot therefore function properly unless the procedures for administrative cooperation are strictly complied with. However, such cooperation

is excluded with the authorities of an entity such as that established in the northern part of Cyprus, which is recognized neither by the Community nor by the Member States; the only Cypriot State they recognize is the Republic of Cyprus.

41 In those circumstances, the acceptance of movement certificates not issued by the Republic of Cyprus would constitute, in the absence of any possibility of checks or cooperation, a denial of the very object and purpose of the system established by the 1977 Protocol.

42 That finding can be invalidated neither by the principle that the Association Agreement must apply, according to the terms of Article 5, in a non-discriminatory manner to the whole population of Cyprus, nor by the practice of the Commission which, prompted by the desire to uphold that principle, is said to have sent to the Member States specimen stamps and authorized signatures, as used by the Turkish community in the northern part of Cyprus when drawing up the certificates in question and accepted by certain Member States.

43 Although, in accordance with the rules on the interpretation of treaties (see Article 31 of the Vienna Convention on the Law of Treaties of 23 May 1969, hereinafter 'the Vienna Convention'), substantial importance properly attaches to the object and purpose of a treaty and to any subsequent practice in its application, it is important to note that Article 5 of the Association Agreement reflects only one of its objectives and must be reconciled with the other general aims of the Agreement and with the actual provisions interpreted, particularly since the relevant provisions of the 1977 Protocol do not constitute mere administrative arrangements but provisions necessary for the proper operation of the trade arrangements provided for in the Association Agreement.

44 In that context, the prohibition on discrimination between nationals or companies of Cyprus imposed by Article 5 of the Association Agreement cannot lead to a

departure from the fundamental rules of that Agreement which determine its operation in the manner intended by the Contracting Parties. Efforts undertaken to enable the population of Cyprus to benefit from the advantages of the Association Agreement must be pursued, as the Advocate General properly emphasized in paragraph 53 of his Opinion, within the framework of the Agreement and with all due consideration for the legitimate interests of the other Contracting Party.

- 45 In that connection, the file shows that the advantages stemming from the Association Agreement have on several occasions been accessible to the whole population of Cyprus. Thus the financial protocols concluded pursuant to the Agreement are administered in such a way that the resources made available by the Community are used for purposes that are equally for the benefit of the population established in the northern part of Cyprus. That appears to be the case, for instance, of funds for financing the implementation of projects relating to the unified town planning scheme for Nicosia and the Nicosia sewerage scheme, part of which extends into the territory of the northern part of Cyprus.
- 46 It is also significant that, since Article 5 appears in an international Agreement, the Community must take particular account of its partner to the Agreement when interpreting and applying it. On that point, it follows from the contractual obligation of the Community to refrain from jeopardizing the achievement of the aims of the Agreement (Article 3 of the Association Agreement) that no means of proof of the origin of products other than that expressly provided for in the 1977 Protocol may be unilaterally adopted by the Community. Any alternative means of proof must be discussed and decided upon by the Community and the Republic of Cyprus within the framework of the institutions established pursuant to the Association Agreement, and then applied in a uniform manner by the two Contracting Parties.
- 47 Article 5 cannot in any event confer on the Community the right to interfere in the internal affairs of Cyprus. The problems resulting from the *de facto* partition

of the island must be resolved exclusively by the Republic of Cyprus, which alone is internationally recognized.

48 Moreover, it is clear from the file that the Community has not so far alleged that the events that took place on the island of Cyprus prevent the proper operation of the Agreement, nor has it contended that the Republic of Cyprus has infringed the provisions of the Association Agreement by discriminating against Turkish exporters established in the northern part of Cyprus.

49 In addition, as regards the interpretation which the Commission draws from the Advisory Opinion of the International Court of Justice on Namibia, cited above, and which is said to have influenced its application of the Association Agreement, suffice it to say, as the Advocate General rightly noted at paragraphs 57 to 59 of his Opinion, that the special situation of Namibia and that of Cyprus are not comparable from either the legal or the factual point of view. Consequently no interpretation can be based on an analogy between them.

50 Furthermore, the practice followed in applying the Agreement after the material events took place does not suffice to establish unequivocally, within the meaning of Article 31 of the Vienna Convention, the existence of an agreement between the parties regarding the interpretation of the relevant provisions of the 1977 Protocol.

51 The official position of the Republic of Cyprus set out in a speaking note addressed to the Commission in 1983, in which it was specified that only products accompanied by movement certificates issued by the official Government and exported from sea or airports under its control satisfied the conditions of the Association Agreement, clearly stands in contrast to the Commission's practice.

- 52 Moreover, as is clear from the file, the practice followed after the material events reflects the absence of a uniform approach on the part of the Member States. Although some Member States have accepted certificates issued by authorities other than those of the Republic of Cyprus, others have not.
- 53 The existence of different practices among the Member States thus creates uncertainty of a kind likely to undermine the existence of a common commercial policy and the performance by the Community of its obligations under the Association Agreement.
- 54 That being so, the relevant rules of the 1977 Protocol must be interpreted strictly, in order to ensure uniform application of the Association Agreement in all the Member States. It follows that the phrase 'the customs authorities of the exporting State' in Articles 7(1) and 8(1) of the Protocol must be understood as referring exclusively to the competent authorities of the Republic of Cyprus when exports to the Community are involved.
- 55 The Association Agreement therefore precludes acceptance by the competent authorities of a Member State, upon importation of citrus fruit or potatoes from Cyprus, of movement certificates issued by authorities other than the competent authorities of the Republic of Cyprus.
- 56 With regard to phytosanitary certificates, a preliminary point to note is that the purpose of Directive 77/93 is to harmonize the laws and regulations to be adopted by the Member States by way of protective measures against the introduction into the Community of organisms harmful to plants or plant products. To that end the

directive establishes a common system aimed at preventing the introduction into the Member States of plants or plant products from non-member countries when certain conditions are not satisfied.

- 57 One of those conditions is that the plant or plant product in question should be accompanied by a phytosanitary certificate drawn up on a specific form, following an examination enabling freedom from any disease or any parasites to be certified.
- 58 Article 12(1)(b) of the directive, as amended, requires phytosanitary certificates to be issued by the authorities empowered to do so on the basis of laws or regulations of the exporting country.
- 59 The applicants and the Greek Government claim that, in the case of products originating from Cyprus, phytosanitary certificates may only be issued on the basis of laws or regulations of the Republic of Cyprus.
- 60 The United Kingdom and the Commission consider that the interpretation and application of the contested provisions of Directive 77/93 must not lead to arbitrary discrimination between the inhabitants of Cyprus. They claim that in practice certificates issued by the entity in the northern part of Cyprus are just as dependable as those issued by the Republic of Cyprus and that the reliability of such certificates may always be checked at the frontier by the authorities of the importing Member State. Consequently, to reject phytosanitary certificates issued by the Turkish community in the northern part of Cyprus would constitute arbitrary discrimination against the population of that part of the island.

- 61 It should be noted that the common system of protection against the introduction of harmful organisms in products imported from non-member countries, laid down in Directive 77/93, is based essentially on a system of checks carried out by experts lawfully empowered for that purpose by the Government of the exporting State and guaranteed by the issue of the appropriate phytosanitary certificate. The conditions governing acceptance of those certificates as a uniform means of proof must consequently be absolutely identical in all the Member States.
- 62 In applying Directive 77/93, importing Member States may of course carry out checks at the frontier on products from non-member countries. In practice, however, as the Commission has admitted in its written observations, such checks have significant limitations and, in any event, cannot take the place of phytosanitary certificates.
- 63 Furthermore, any difficulty or doubt concerning a certificate must be brought to the attention of the authorities of the exporting State by the importing Member State. That cooperation, which is necessary in order to achieve the objectives of the directive, cannot be established with authorities who are not recognized either by the Community or by its Member States. It would be impossible for an importing State to address enquiries to the departments or officials of an entity which is not recognized, for instance concerning contaminated products or certificates that are incorrect or have been interfered with. Clearly only the authorities of the Republic of Cyprus are in a position to take action following complaints connected with the contamination of plant products exported from Cyprus.
- 64 Consequently the term 'authorities empowered' appearing in Article 12(1)(b) of Directive 77/93 must be interpreted as referring exclusively, with regard to imports of products from Cyprus, to the authorities empowered by the Republic of Cyprus to issue phytosanitary certificates.

- 65 Directive 77/93 therefore precludes acceptance by the authorities of a Member State, when citrus fruit or potatoes are imported from Cyprus, of phytosanitary certificates issued by authorities other than the competent authorities of the Republic of Cyprus.
- 66 The special situation of Cyprus, which is the result of its *de facto* partition and explains the hypothetical circumstances referred to in the third, fourth and fifth questions, is not such as to alter, with regard to exports of products from its northern part, the conclusions reached on the interpretation of the provisions concerning movement and phytosanitary certificates.
- 67 In the light of all the foregoing considerations, the answer to the questions submitted by the national court must be that the Association Agreement and Directive 77/93 are to be interpreted as precluding acceptance by the national authorities of a Member State, when citrus fruit and potatoes are imported from the northern part of Cyprus, of movement and phytosanitary certificates issued by authorities other than the competent authorities of the Republic of Cyprus.

### Costs

- 68 The costs incurred by the United Kingdom, the Greek and Irish Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the High Court of Justice (Queen's Bench Division), by order of 2 December 1992, hereby rules:

**The Agreement of 19 December 1972 establishing an Association between the European Economic Community and the Republic of Cyprus, annexed to Council Regulation (EEC) No 1246/73 of 14 May 1973, and Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of organisms harmful to plants or plant products must be interpreted as precluding acceptance by the national authorities of a Member State, when citrus fruit and potatoes are imported from the part of Cyprus to the north of the United Nations Buffer Zone, of movement and phytosanitary certificates issued by authorities other than the competent authorities of the Republic of Cyprus.**

Due	Mancini	Moitinho de Almeida
	Diez de Velasco	Edward
Kakouris	Joliet	Schockweiler
	Rodríguez Iglesias	Grévisse
Zuleeg	Kapteyn	Murray

Delivered in open court in Luxembourg on 5 July 1994.

R. Grass	O. Due
Registrar	President