OPINION OF ADVOCATE GENERAL FENNELLY

delivered on 24 February 2000 *

I — Introduction

1. The present request by the House of Lords, England and Wales, for a preliminary ruling arises from the response of companies exporting citrus fruit from the part of Cyprus to the north of the United Nations Buffer Zone to the ruling of the Court in *Anastasiou and Others* [1] (hereinafter '*Anastasiou I*') that Member State authorities were not entitled to accept phytosanitary certificates issued by authorities other than the competent authorities of the Republic of Cyprus in respect of imports of such fruit from Cyprus. The companies in question subsequently began to export their produce to the Community via a port in Turkey, where phytosanitary certificates were granted by the competent Turkish authorities. Although the case has implications for the troubled political situation in Cyprus, [2] the legal issues concern the system of supervision of the health of plants and plant products imported into the Community from third countries.

II — Legal and factual context

(i) *Community legislative provisions*

2. The objective of Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community [3] is to prevent the reduction of plant production in the Community through protective measures against the introduction of harmful organisms. [4] To that end, it requires the Member States to adopt certain rules governing the introduction into their territory of plants and plant products from other Member States and third countries.

3. With regard to imports from third countries, Article 12 [5] of the Directive, in

* Original language: English.

1 — Case C-432/92 [1994] ECR I-3087, paragraph 65 and operative part.

2 — For a brief overview, see *Anastasiou I*, paragraph 13, and the Opinion of Advocate General Gulmann, paragraphs 9 to 14.

3 — OJ 1977 L 26, p. 20, hereinafter 'the Directive'. The original title was amended by Council Directive 91/683/EEC of 19 December 1991, OJ 1991 L 376, p. 29.

4 — See the second, third, fourth, fifth and seventh recitals in the preamble to the Directive.

5 — As amended by Council Directive 80/392/EEC of 18 March 1980, OJ 1980 L 100, p. 32, Council Directive 85/574/EEC of 19 December 1985, OJ 1985 L 372, p. 25, and Directive 91/683/EEC, loc. cit. Unlike the Republic of Turkey, the Republic of Cyprus is not a party to the International Plant Protection Convention mentioned in Article 12(1)(b) of the Directive. It was stated at the oral hearing that Cyprus had signed the Convention in 1999.

the version applicable at the material time, provides:

'1. Member States shall lay down, at least as regards the introduction into their territory of the plants, plant products and other objects listed in Annex V, Part B and coming from non-member countries:

(a) that these plants, plant products and other objects and their packaging shall be meticulously inspected on an official basis, either in their entirety or by representative sample, and that, if necessary, the vehicles transporting them shall also be inspected meticulously on an official basis in order to make sure as far as can be determined:

— that they are not contaminated by the harmful organisms listed in Annex I, Part A,

— in the case of the plants and plant products listed in Annex II, Part A, that they are not contaminated by the relevant harmful organisms listed in that part of the Annex,

— in the case of the plants, plant products and other objects listed in Annex IV, Part A, that they comply with the relevant special requirements indicated in that part of the Annex;

(b) that they must be accompanied by the certificates prescribed in Articles 7 and 8 and that a phytosanitary certificate may not be made out more than 14 days before the date on which the plants, plant products or other objects leave the consignor country. The certificates prescribed in Articles 7 or 8 ... shall be issued by authorities empowered for this purpose under the International Plant Protection Convention, or, in the case of non-contracting countries, on the basis of laws or regulations of the country. In accordance with the procedure laid down in Article 16, lists of the authorities empowered by the various non-member countries to issue certificates may be established.

... .'

4. Article 7(1)[6] of the Directive provides:

'Where it is considered, on the basis of the examination laid down in Article 6(1) and (2), that the conditions therein are fulfilled, a phytosanitary certificate conforming to the model in Annex VIII, Part A, may be issued ... .'

Article 8(2)[7] of the Directive provides:

'Where plants, plant products or other objects from a Member State have been split up or stored or their packaging changed in a second Member State and are then introduced into a third Member State, the second Member State shall be absolved from making a new inspection complying with Article 6 if it is officially ascertained that no change in these products has occurred in its territory which would involve non-compliance with the conditions laid down in Article 6. In this case a re-forwarding phytosanitary certificate, in one original copy only, conforming to the model laid down in Annex VIII, Part B, drawn up in at least one of the official languages of the Community, ... shall be issued. This certificate must be attached to the phytosanitary certificate issued by the first Member State or to a certified copy of the latter certificate. This certificate may be entitled "phytosanitary certificate for re-export". ... .'

5. Article 6 of the Directive[8] provides:

'1. Member States shall lay down, at least in respect of the introduction into another Member State of the plants, plant products and other objects listed in Annex V, Part A, that the latter and their packaging shall be meticulously examined on an official basis, either in their entirety or by representative sample, and that, if necessary, the vehicles transporting them shall also be officially examined in order to make sure:

(a) that they are not contaminated by the harmful organisms listed in Annex I, Part A;

(b) in the case of the plants and plant products listed in Annex II, Part A, that they are not contaminated by the

6 — As amended by Directive 85/574/EEC, loc. cit.

7 — As amended by Directive 85/574/EEC, loc. cit.

8 — As amended by Directive 91/683/EEC, loc. cit.

relevant harmful organisms listed in that part of the Annex;

(c) in the case of the plants, plant products and other objects listed in Annex IV, Part A, that they comply with the relevant special requirements indicated in that part of the Annex.

...

4. ...

The official examinations referred to in paragraphs 1, 2 and 3 shall be carried out in accordance with the following provisions:

(a) They shall extend to the relevant plants or plant products grown, produced or used by the producer or otherwise present on his premises as well as to the growing medium used there.

(b) They shall be made on the premises, preferably at the place of production.

(c) They shall be made regularly at appropriate times, at least once a year, and at least by visual observation, without prejudice to the special requirements listed in Annex IV; further action may be taken where this is provided for under paragraph 7.

Any producer for whom the official examination referred to above is required under paragraphs 1 to 4 shall be listed in an official register under a registration number by which to identify him. The official registers thus established shall be accessible to the Commission on request. ... .'

Article 9(1) of the Directive [9] provides:

'1. In the case of plants, plant products or other objects to which special requirements laid down in Annex IV, Part A apply, the official phytosanitary certificate required pursuant to Article 7 shall have been issued

9 — As amended by Council Directive 89/439/EEC of 26 June 1989, OJ 1989 L 212, p. 106.

in the country in which the plant, plant products and other objects originate, save:

— in the case of wood, if ...

— in other cases, to the extent that the special requirements laid down in Annex IV, Part A can be fulfilled also at places other than that of origin.'

6. Annex V to the Directive is headed 'Plants, plant products and other objects which must be subject to a plant health inspection — at the place of production if originating in the Community, before being moved within the Community, — in the country of origin or the consignor country, if originating outside the Community, — before being permitted to enter the Community'.[10] Citrus fruits are among the plants and plant products listed in Part B of Annex V to the Directive.

7. Annex IV, Part A, to the Directive lays down special requirements for 'fruits of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf., and their hybrids, originating in third countries'.[11] It requires that the fruits be free from peduncles (stalks) and leaves and that the packaging bear 'an appropriate origin mark'. In addition, where the fruit comes from non-member countries where certain diseases are known to exist, it must be accompanied by the appropriate official certificate. However, it is common case that such diseases are not known to exist in Cyprus. On the other hand, citrus fruit from Cyprus may be affected by the harmful organisms listed in Annexes I and II to the Directive. It seems that the harmful organisms of most concern in the case of citrus fruit from Cyprus are items (a)(24) *Thrips palmi* Karny and (b)(1) *Xylella fastidiosa*, mentioned in Annex I, Part A.I, to the Directive, and item (a)(25) *Scirothirps aurantii* Faure, mentioned in Annex II, Part A.I.

(ii) *The International Plant Protection Convention*

8. The International Convention for the Protection of Plants and Plant Products, done at Rome on 6 December 1951[12] (hereinafter 'the Convention'), resulted, to a certain extent, in the harmonisation of plant health laws, but closer harmonisa-

10 — As amended by Council Directive 92/98/EEC of 16 November 1992, OJ 1992 L 352, p. 1. Annex V was initially entitled 'Plants, plant products and other objects which must be subjected to a plant health inspection in the country of origin or the consignor country, before being permitted to enter any of the Member States'.

11 — These special requirements were added to Annex IV, Part A, by Commission Directive 92/103/EEC of 1 December 1992 amending Annexes I to IV of Council Directive 77/93/EEC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community, OJ 1992 L 363, p. 1.

12 — United Kingdom Treaty Series No 16 (1954).

tion, in the form of the Directive, was felt to be necessary independently of this international cooperation. [13] Article IV(1) of the Convention provides, *inter alia*:

'Each Contracting Government shall make provision, as soon as possible and to the best of its ability, for —

(a) an official plant protection organisation, with the following main functions: —

(i) the inspection of growing plants, of areas under cultivation (including fields, plantations, nurseries, gardens and greenhouses), and of plants and plant products in storage and in transportation particularly with the object of reporting the existence, outbreak and spread of plant pests and of controlling those pests;

...

(iv) the issue of certificates relating to phytosanitary conditions and origin of consignments of plants and plant products ... .

...'

(iii) *Anastasiou I*

9. The Turkish community in the part of Cyprus to the north of the United Nations Buffer Zone (hereinafter 'the northern part of Cyprus') styles itself as the 'Turkish Republic of Northern Cyprus' (hereinafter 'TRNC'), but is not recognised by the Community or any of its Member States. They recognise the Republic of Cyprus as a sovereign State whose territory comprises the whole of the island of Cyprus, apart from the United Kingdom's sovereign base areas. In *Anastasiou I*, the Court addressed the question referred by the High Court of Justice of England and Wales as to whether, having regard to the Directive, Community law precluded Member States from accepting, or required them to accept, the importation of, *inter alia*, citrus products from Cyprus accompanied by phytosanitary certificates issued by the Turkish community in the northern part of Cyprus and not by officials duly authorised by the Republic of Cyprus.

13 — Sixth and seventh recitals in the preamble to the Directive.

10. The Court stated:

'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 recognised 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 recognised, 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 ..., 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 ... phytosanitary certificates.'

11. The Court also stated that EUR 1 movement certificates issued by the Turkish community in the northern part of Cyprus were not acceptable as proof of the Cypriot origin of goods for the purpose of the application of preferential tariffs under the EC-Cyprus Association Agreement.[14] It stated that: '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'.[15] Effective cooperation with the authorities of an unrecognised entity was not possible.[16]

(iv) *The present case*

12. Subsequent to the ruling of the Court in *Anastasiou I*, two undertakings which imported citrus fruit and potatoes into the United Kingdom from the northern part of Cyprus and which had intervened in the main proceedings in that case, Cypfruvex (UK) Limited and Cypfruvex Fruit and Vegetable (Cypfruvex) Enterprises Limited (hereinafter 'the interveners'), made alternative arrangements with a Turkish company, Citex, which is in reality part of the same group of companies. Ships transporting citrus fruit now stop at the Turkish port of Mersin, where the competent Turkish authorities issue certificates confirming that the fruit has been inspected in accordance with the applicable provisions and complies with the phytosanitary regulations applicable in the importing country. The ships' stay in the port is normally less than 24 hours. The fruit is not unloaded nor does it pass the customs barrier. Separate bills of lading consign the produce to Turkey and from Turkey to the importing country. As EUR 1 movement certificates are not issued by the authorities of the Republic of Cyprus, the produce does not benefit from preferential tariffs under the Association Agreement with Cyprus when entering the Community. The same arrangement was adopted in respect of potatoes.

13. S.P. Anastasiou (Pissouri) Limited and a number of other producers and exporters of citrus fruit and potatoes established in the part of Cyprus to the south of the United Nations Buffer Zone, which had already initiated the litigation leading to the judgment in *Anastasiou I* (hereinafter 'the appellants'), requested the High Court, within the framework of those proceedings, to grant an order restraining the Minister of Agriculture, Fisheries and Food (hereinafter 'the respondent') from allowing into the United Kingdom, any citrus fruit or potatoes produced in the northern part of

14 — 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.

15 — Paragraph 38 of the judgment.

16 — *Anastasiou I*, paragraphs 38 to 41.

Cyprus unless accompanied by phytosanitary certificates issued by the competent authorities of the Republic of Cyprus. The interveners intervened once more in support of the respondent. The order sought was refused, as regards citrus fruit, both at first instance and on appeal to the Court of Appeal, England and Wales, leading to the present appeal before the House of Lords. The order sought was granted, and was not the subject of an appeal, in respect of potatoes, apparently because potatoes originating in Cyprus are potentially subject to diseases listed in Annex IV, Part A, to the Directive which can only be detected in the area of cultivation.

14. The House of Lords summarised the essential issue as being 'whether, if the interveners cannot lawfully import these citrus fruits directly into the United Kingdom with certificates issued in the TRNC, they can do so by sending them to a Turkish port from which, backed by phytosanitary certificates issued in that port, they are then sent on to the United Kingdom by a Turkish company which is to all intents and purposes the same as the interveners'. It referred the following questions to the Court for a preliminary ruling:

'1. Under Article 12(1)(b) of 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, as amended ("the Directive"), is a Member State entitled to accept (and if so in what circumstances and subject to what conditions) the introduction into its territories of plants as defined in the Directive ("plants") originating in non-member countries and listed in Annex V, Part B to the Directive where those plants are accompanied only by a phytosanitary certificate issued by a non-member country from which the plants have been transported to the Community and not by a phytosanitary certificate issued by the non-member country of origin?

2. Does the answer to Question 1 differ, and if so, how, if the relevant plants are subject to special requirements laid down in Annex IV, Part A, Section 1 to the Directive which can be fulfilled in non-member countries other than that of origin within the meaning of Article 9(1) of the Directive?

3. Is the judgment of the Court of Justice in Case C-432/92 *Anastasiou* [1994] ECR I-3087 to be interpreted and applied so as to preclude the national authorities of a Member State from permitting the importation of citrus fruits originating in the part of Cyprus to the north of the United Nations Buffer Zone when they are accompanied by a phytosanitary certificate which has been issued by the authorities of another non-member country

from which those citrus fruits have been transported to the Community?

4. Are the answers to any of the above questions different where:

   a. the relevant plants were never imported into the non-member country in which the phytosanitary certificate which accompanied them to the Community was issued in the sense that they were never unloaded from the ship in question and/or never passed the custom barrier; and/or

   b. the special requirements that applied to the relevant plants had already been satisfied in the country of origin?

5. Are the answers to Questions 1 and 2 different where the relevant plants were submitted for the certification in a non-member country other than that of origin, not for any plant health reasons, but so as not to have to obtain a phytosanitary certificate from the authorities empowered to do so in the country of origin?'

III — Observations submitted to the Court

15. Written and oral observations were submitted by the appellants, the interveners, the Hellenic Republic, the United Kingdom and the Commission. The interveners, the United Kingdom and the Commission argue that citrus fruit from Cyprus may lawfully be imported where appropriate phytosanitary certificates are issued by the competent authorities of a non-member State other than Cyprus from which the produce is consigned for re-export to the Community. The appellants and the Hellenic Republic take the contrary view, that such importation is contrary to the Directive unless the produce is accompanied by phytosanitary certificates issued by the competent authorities of the third country of origin, viz. the Republic of Cyprus.

(i) *The case in favour of permitting importation*

16. The broad lines of the case in favour of permitting importation in circumstances such as those of the present case are as follows. In current practice, and for good practical reasons, phytosanitary certificates issued in third 'consignor' countries are generally accepted; counsel for the United Kingdom gave the example at the hearing of trees felled in the northern part of the United States and processed in Canada over a period of over 14 days before export to

the Community, at which point a United States certificate would no longer comply with Article 12(1)(b) of the Directive. Thus, only in special cases is it essential that the certificate be issued in the country of origin of the plants.[17] With a view to the establishment of the internal market, the Directive has, since 1993, laid down two different regimes, one for Community plants, based on the registration of producers and the examination of plants at their place of production,[18] and the other for imports from non-member countries, which bans the importation of certain plants, subjects others to special requirements and in other cases (such as that of apples and pears) merely requires phytosanitary certification. Many plants are not subject to certification at all. Although two regimes exist, the levels of protection assured by each are equivalent.

17. The heading of Annex V to the Directive, in its original form, made clear that plants could be the subject of plant health inspections in either their country of origin or a consignor country. This wording was maintained in 1993 in respect of non-Community produce even after it was removed in respect of plants originating in Member States, as can be seen in paragraph 6 above. This is consistent with Article 9(1) of the Directive, which now applies only to non-Community plants: by providing that only some of the special requirements laid down in Annex IV, Part A, to the Directive must be fulfilled in the country of origin, it implies that the general requirement of certification may be satisfied in other places, as no provision is made for the issue of multiple, partial phytosanitary certificates. This may be contrasted with the position under the original version of Article 9(1) of the Directive, which provided for certification of compliance with special requirements in addition to that prescribed in Articles 7 and 8. The sole special requirements applicable to citrus fruit from Cyprus or Turkey are that it be free from leaves and stalks and that the packaging bear an appropriate origin mark. These can be verified by visual inspection, as can the absence of contamination by certain organisms mentioned in Annexes I and II to the Directive, with the result that there is no obstacle to accepting third-country certification pursuant to an appropriate inspection of the produce.

18. Article 9 of the Directive, rather than Article 12, determines who issues a phytosanitary certificate for non-Community produce. The reference in Article 12(1) of the Directive, which governs certification of plant products from non-member countries, to the certificate prescribed in Article 7 relates only to the nature and form of the certificate. Article 12(1) cannot be understood as extending to the certification process for third-country plants the conditions prescribed in Article 6(4) for Community products, as this would elide the two distinct regimes established by the Directive and would lead to absurd results, such as requiring third-country producers

17 — In accordance with Article 2(1)(a) of the Directive, citrus fruit are 'plants' rather than 'plant products'.

18 — See Article 6(4) of the Directive.

to be registered. It would also make a nonsense of the exceptions provided for in Article 9(1). Prior to the establishment of the dual regime in 1993, there was no stipulation in Article 6 of the Directive regarding the place of inspection of Community produce. It would be disproportionate to impose a condition of certification in the third country of origin, as this is not necessary to the achievement of the objectives of the Directive. The requirement in Article 12(1)(a) of further systematic inspections upon importation would also be unnecessary in such circumstances and, therefore, disproportionate [19] and discriminatory, contrary to Article 40(3) of the EC Treaty (now, after amendment, Article 34(2) EC) and the WTO Phytosanitary Agreement.

19. Article 8 of the Directive, which is also referred to by Article 12(1), relates only to cases where plants have been split up or stored or their packaging changed after export from their country of origin, in which case a re-forwarding certificate, called a phytosanitary certificate for re-export, is to be issued by the competent local authorities and attached to the original phytosanitary certificate. This does not imply that the authorities of a consignor country are not entitled to issue a phytosanitary certificate in cases where the consignment has not been interfered with in any way.

19 — Case C-256/90 *Mignini* [1992] ECR I-2651.

20. As regards the Convention, not all of its objectives are also pursued by the Directive, for example, those relating to production conditions in third countries.

21. The judgment in *Anastasiou I* was only concerned with the interpretation of the words 'authorities empowered' in Article 12(1)(b) of the Directive and does not affect the present case. The problems of cooperation with officials of an entity which is not recognised do not arise with Turkish officials.

22. As regards the circumstances in which certificates are issued in the present case, the Directive prescribes no conditions regarding the unloading of ships, crossing of the customs barrier or the period of time spent in a consignor country. It would be impossible to check compliance with such conditions, which are, in any event, irrelevant to the capacity of the competent authorities to conduct the requisite inspections. Entry into Turkey is irrelevant as the purpose of the phytosanitary certificate is to indicate compliance with the regulations of the *importing* country. The principle of international comity precludes enquiries into the acts of officials of a foreign State carried out in that State. It is sufficient for the phytosanitary certificate to be drawn up in the last place where the plants were before being imported into the Community, even if all special requirements had already been satisfied in the country of origin.

23. In the light of the foregoing arguments, the possibility of obtaining phytosanitary certificates in a third consignor country other than the country of origin of plants is foreseen by the Directive and recourse to that option in respect of citrus fruit from the northern part of Cyprus cannot be characterised as an abuse. It involves simple reliance on a Community-law right, as opposed to situations where it is sought to use Community law to achieve an end which would otherwise be unlawful under national law.

(ii) *The case against permitting importation*

24. The phytosanitary certificate required by Article 12(1) of the Directive in respect of third-country citrus fruit must be issued by the authorities of the country of origin of the produce. The meticulous inspection referred to in Article 12(1)(a) is not confined to frontier inspections upon importation into the Community, which are merely optional and are in any event subject to significant limitations.[20] Such meticulous examination is also required before the issue of phytosanitary certificates under Article 12(1)(b). This is borne out by the reference to Article 7 of the Directive, which refers in turn to Article 6(1) and (2) and thus, by implication, to the conditions in Article 6(4). Although Article 6(4) does not apply directly to third countries, the Community is entitled to impose equivalent requirements as a condition of the importation of produce from non-member countries. It would be contrary to the objective of the Directive if laxer controls, such as visual inspection in the hold of a ship in the port of a consignor country or upon crossing the Community frontier, were permitted for third-country imports than are required for Community plants, which are subject to inspection at the place of production. The system of controls over growing plants and areas under cultivation established by Article I-V(1)(a)(i) of the Convention also indicates that meticulous inspection is only possible in the country of origin. The 'appropriate procedures' mentioned in the model phytosanitary certificate in Annex VIII, Part A, to the Directive should be understood as referring to this provision of the Convention.

25. Article 8 of the Directive enables a consignor third country from which the produce is re-forwarded to rely on the original meticulous inspection, which the model re-forwarding certificate in Annex VIII, Part B, to the Directive implies will have already been conducted in the country of origin. In the case of citrus fruit, the special requirement in Annex IV, Part A, that the packaging contain an appropriate origin mark can only be satisfied by inspection in the country of origin,[21] with the result that the condition in Article 9(1) of the Directive for the grant of a phytosanitary certificate in another non-member

20 — *Anastasiou I*, paragraph 62.

21 — See *Anastasiou I*, paragraph 39, regarding the verification of the origin of plants by way of EUR 1 movement certificates.

country is not satisfied. Furthermore, it would be absurd if the mere fact that the special requirement regarding the removal of leaves and stalks could be verified by visual inspection after export from the country of origin were to entail that checks regarding the harmful organisms mentioned in Annexes I and II to the Directive, which require knowledge of and control over the conditions of production, could also be carried out after initial export to another third country. Counsel for Anastasiou expressed concern at the oral hearing about the possibility of detecting certain microscopic insects through a brief visual inspection. Thus, Article 9(1) permits certification outside the country of origin of compliance with special requirements imposed by Annex IV, Part A, only to the extent that those requirements can be satisfied at other places. This is supplementary to the original phytosanitary certificate, the model of which in Annex VIII, Part A, reserves space for any 'additional declaration'. In addition, as Article 9(1) permits a limited exception to the principle of certification in the country of origin of plants, it should not apply where satisfaction of all the special requirements imposed by Annex IV, Part A, can in fact be certified in the country of origin, as in the present case.

26. The reference in the heading of Annex V to the Directive to health inspections in a consignor country is clearly misleading, as it is inconsistent with the Directive's substantive terms and its objective. This discrepancy was especially obvious when the original version of Article 9(1) applied, which expressly required the issue of a phytosanitary certificate in the country of origin of produce listed in Annex IV, Part A which was imported into the Community, in addition to those prescribed in Articles 7 and 8 of the Directive.

27. *Anastasiou I* is central to resolving the case and the third question should be answered first. The judgment makes reference to the need for cooperation between national authorities concerning contaminated produce. [22] In such circumstances, it must be possible to raise the problem with the authorities in the country in which the plants were grown, but this is excluded as regards the 'authorities' in the northern part of Cyprus and the competent authorities of the Republic of Cyprus do not have access to that area.

28. As regards the fifth question, Community law does not permit reliance on one legal rule to circumvent the application of another. [23] Otherwise, exporters to the Community could engage in forum-shopping to seek the most lax regime for the issue of phytosanitary certificates for their produce and could permit the 'laundering'

22 — Paragraph 63.

23 — Case C-23/93 *TV10* [1994] ECR I-4795, paragraphs 20 to 22; Case 33/74 *Van Binsbergen* v *Bedrijfsvereniging Metaalnijverheid* [1974] ECR 1299, paragraph 13; Case 229/83 *Leclerc* v *Au Blé Vert* [1985] ECR 1, paragraphs 23 to 27; Case C-367/96 *Kefalas and Others* v *Greek State and OAE* [1998] ECR I-2843, paragraph 20. Case 81/87 *Daily Mail* [1988] ECR 5483 was cited to similar effect before the Court of Appeal.

of produce of unknown or unlawful origin. There is no legitimate commercial or plant health reason to ship fruit to the Community via Turkey.

IV — Analysis

29. I do not propose to address the questions referred by the House of Lords seriatim. The essential question in the present case, as the House of Lords has itself noted, is whether citrus fruit can be imported into the Community in circumstances such as those at issue. The matters raised in the individual questions are all, of course, important factors in reaching a decision on that question. I shall address in turn the distinct questions whether, in principle, phytosanitary certification by a non-member country other than that where the plants originate is ever permissible, and, in the case of a positive answer, whether citrus fruit from the northern part of Cyprus can be the subject of such certification.

30. I should state at the outset that the Directive is not very clearly drafted and that a degree of confusion regarding its interpretation is understandable. A particular source of difficulty is the fact that the rules applicable to the importation of non-Community plants into the Community are set out by reference to those governing Community produce, which have been extensively modified to permit the establishment of an internal market regime which is only of relevance to non-Community produce once it has in fact been imported. It is possible, none the less, to draw conclusions regarding the interpretation of the terms of the Directive from its structure and objectives. Pursuant to such an analysis, I accept the arguments put forward by the interveners, the United Kingdom and the Commission that the authorities of a consignor country other than that of origin of non-Community agricultural produce may, in principle, certify that that produce complies with the regulations of the importing country in cases either where the plant in question is not subject to special requirements set out in Annex IV, Part A (so that Article 9(1) does not apply), or where any applicable special requirements can be fulfilled at places other than that of origin (as envisaged by the saver in Article 9(1)).

31. As a starting point, given that the Directive is designed to govern the free circulation of plants and plant products within the Community, whatever their origin, it can be presumed that an equivalent standard of scrutiny should be applied to all such produce. Secondly, as Community produce is capable of being traded within the Community from the moment of harvesting, it makes sense for scrutiny to take place at or before this point in time, to ensure that such trade is as free as possible thereafter — without prejudice to any other arguments for such scrutiny at the place of production, such as greater ease of detection of certain harmful organisms. On the other hand, intra-Community trade in non-Community produce can only be free once such produce has actually cleared the

Community's frontier. This is a sensible point, both temporally and geographically, at which to conduct Community checks to supplement those already conducted in third countries. It also means that, save for the case of organisms which can only, or more easily, be detected at the place of cultivation, the Community interest is not affected by the point, in time or space, before importation at which third-country authorities conduct inspections of plants and issue phytosanitary certificates. As the United Kingdom persuasively demonstrated, flexibility in this regard may be necessary for the purposes of trade, particularly in non-perishable goods which need not be imported into the Community within 14 days of harvesting.

32. Furthermore, the Directive, which is based on Article 43 of the EC Treaty (now, after amendment, Article 37 EC) as well as Article 100 of the EC Treaty (now Article 94 EC), expresses, in the first and second recitals in its preamble, a concern for Community plant-production yields, which justifies interest in production conditions. On the other hand, the Directive's concern with such conditions in third countries can only be based on an interest in controlling their impact in the Community, principally by way of controls on plants and plant products derived from such production. I would, therefore, accept the argument that the Directive's aims are not as wide as those set out in Article IV of the Convention.

33. It is important to emphasise that the Directive is exclusively concerned with the protection of the health of Community plants. If its requirements can be satisfied, the fact that the goods originate in a part of Cyprus controlled by an entity not recognised by the Community is of no relevance. Such goods enjoy access to the Community market on the same terms as those from the southern part of Cyprus, provided that the various conditions imposed by Community law can be satisfied.

34. I turn now to the Directive's provisions. As regards imported plants and plant products, the Directive seeks to achieve an equivalent level of protection to that achieved by inspections within the Community through acceptance, as a matter of convenience and of international comity, of the results of inspections by third-country authorities, as set out in phytosanitary certificates, combined with the supplementary monitoring mechanism of frontier inspections. It is clear to me that Article 12(1)(a) of the Directive relates exclusively to the 'meticulous' inspections which Member States are required to conduct when produce coming from non-member countries enters the Community for the first time. In this respect, its terms may be contrasted with those of Article 12(1)(b), which require the laying down not of procedures for the grant of phytosanitary certificates by third countries, but simply of a condition — which it is within the competence of the Community to

impose — that produce must be accompanied by a certificate in order to enter their territory. I might add that the terms of Article 12(1)(a) are mandatory in nature and that this seems to me to be consistent with the need to ensure equivalent levels of protection in respect of all produce. Thus, in so far as part of the judgment in *Anastasiou I* may be read as suggesting that such frontier inspections are discretionary in nature, I respectfully disagree, while adding that such an interpretation of paragraph 62 of the judgment is not self-evident and is not, in any event, central to the Court's reasoning in that case. Although the Court also referred at paragraph 62 to the limitations to which such checks are subject, it is clear from the provision made for them in Article 12(1)(a) that they are an integral part of the control process for imported plants and plant products. They represent an important guarantee to Member States other than that of first importation that a 'meticulous' inspection has been carried out.

35. Thus, Article 12(1)(b) of the Directive, with its references back to Articles 7 and 8, is, in normal circumstances, the source of the standard by which to judge the acceptability of phytosanitary certificates issued by third-country authorities. As we are dealing in the present case with consignments of fruit which were in no way interfered with in the port of Mersin, I refer principally to Article 7. It may be noted, first of all, that Article 12(1)(b) makes no mention of where the certificate is to be issued. It states only that it must be issued within 14 days before the produce leaves the consignor country, which, depending on the nature of the produce and the vagaries of international trade, may or may not be the country of origin of the produce. Nor does Article 12(1)(b) describe expressly the standard of inspection by third-country authorities which is necessary for produce to be deemed to be duly certified when it is later presented at the Community frontier. As regards Community produce, Article 7 of the Directive does not set out such a standard either. It refers, instead, to the examination laid down in Article 6(1) and (2), and I see no reason why third-country plants and plant products, which are to be accompanied upon importation by the certificate prescribed in Article 7, should not be subject to the same standard, that is, meticulous official examination of the produce and its packaging or a representative sample thereof, and, if necessary, of the vehicles transporting it, to ensure that it is not contaminated and that it complies with any special requirements.

36. It should be obvious, however, from my analysis above of the manner in which the Directive, as amended, implements the internal market and pursues the aims of the common agricultural policy that, for both practical and principled reasons, the provisions of Article 6(4) of the Directive regarding inspections at the place of cultivation and the registration of producers

neither can nor should be understood as being applicable to non-Community plants and plant products. It is merely regrettable that when this provision was added, it was not stated expressly that it only concerns Community produce. To impose such conditions in respect of organisms which can as easily be detected at a later stage from inspection of the produce itself would greatly interfere with the inspection practices of the Community's sovereign trading partners, would not increase the level of protection of Community producers or consumers, would be unnecessary to the achievement of the internal market and would, consequently, as has been submitted, be disproportionate. Irrespective of whether a phytosanitary certificate is issued in the country of origin of a consignment of produce or in a consignor country, the requirement set out by the Court in *Anastasiou I*, that the Member State authorities be able to make contact to raise any doubt or difficulty with the issuing authorities, can be satisfied provided that they belong to a recognised entity. Even in the case of contamination, the Community's interest under the Directive is primarily in preventing the issue of certificates in respect of contaminated produce, which might thereby enter the Community, rather than in addressing the source of contamination.

37. As regards the Cypriot citrus fruit at issue in the present case, it appears that the three harmful organisms listed in Annex I, Part A, and Annex II, Part A, which are of relevance can all be detected through meticulous examination of the fruit itself. Thus, if citrus fruit were subject to no special requirement under Annex IV, Part A, I would view the principal issue as being resolved by the foregoing analysis, subject to enquiry into the inspection standards actually applied in Mersin and the question of abuse of rights. This analysis would be fortified by a number of additional textual points which I have preferred not to emphasise before now because of my observations on the general textual weakness of the Directive. First, the regime under Article 9(1) of the Directive expressly permits, in prescribed circumstances, the acceptance of phytosanitary certificates issued by countries other than the country of origin of produce which is subject to special requirements; that regime may also be read as implying, *a contrario*, that produce which is not subject to special requirements may in all circumstances be accompanied by a phytosanitary certificate issued by a consignor country rather than the country of origin. Secondly, it is probably telling that the reference to consignor countries in the heading to Annex V to the Directive was retained in the case of third-country produce at the point when it was expressly removed in respect of Community produce as part of the establishment of the internal market. [24]

38. A more important structural point is that, although the Court has not received

24 — There is an alternative possible reading of the heading of Annex V — that it refers to certification by the country of origin or, in circumstances governed by Article 8(2) of the Directive, to certification by the consignor country.

expert evidence on this point, the distinction between Annexes I and II, on the one hand, and Annex IV, on the other, appears to turn, at least in part, on the fact that organisms mentioned in the former two can be detected from simple inspection of plants or plant products themselves, while the special requirements set out in the latter are, to a great degree, linked with a particular place of production and the assessment of conditions there — identification of the mother plant, identification of particular diseases in the vicinity, testing of the soil and roots, etc. If this is correct, it goes a long way towards explaining the regime established by Article 9(1) of the Directive regarding plants and plant products which are subject to special requirements.

39. However, a much more difficult question is whether, in the circumstances of the present case, the interveners can avail of the exception or 'saver' in the second indent of Article 9(1) of the Directive from the general rule that certificates will only be accepted in respect of third-country plants and plant products which are subject to special requirements if they are issued by the country of origin. It is not disputed that it is possible to check whether the leaves and stalks have been removed from fruit by means of inspection in places other than that of origin, including, if appropriate inspections are made, in a port of passage. Indeed, the stalk removal may in certain cases take place only after the fruit has left its country of origin. However, verification that the packaging of the fruit contains an appropriate origin mark raises more serious difficulties. In this regard, although the point was disputed, the Court has not been greatly assisted by the pleadings submitted to it. More seriously, the drafting of the Directive is unhelpful in so far as, on a literal reading, the special requirement is merely that the goods 'bear an appropriate origin mark', without any reference to the fact of origin, how it is to be certified or by whom.

40. It presents no difficulty for the Turkish authorities, or those of any consignor country, to check that a stamp of some sort indicating origin has been affixed to the packaging of a consignment of fruit. However, the special requirement regarding citrus (and some other) fruit, set out at point 16.1 of Annex IV, Part A, to the Directive, states that this must be 'appropriate'. Analysis of this requirement is made difficult by the fact that there is no indication, either in the measure which inserted it or elsewhere, of why this special requirement has uniquely been imposed in respect of a handful of fruit varieties. It seems to operate independently of the other special requirements which apply only in respect of citrus fruit of certain origin, i.e. from countries where certain diseases are known to occur: similar special requirements, differentiated by reference to origin, apply to other plants and plant products without being accompanied by an origin marking requirement. None the less, I must assume that the requirement serves a purpose. To my mind, the qualification 'appropriate' must, therefore, have substantive content. It presupposes that the certifying authorities have reason to believe in the veracity of the mark, as it would otherwise be useless. Furthermore, in the event of a doubt or dispute regarding the certification of that mark, the Member State authorities must be able to cooperate with their third-

country counterparts in order to resolve the problem.

41. In the ordinary course, there should not be any problem, as Cypriot goods bound for the Community should be accompanied by an EUR 1 certificate of origin issued by the authorities of the Republic of Cyprus, which, on the basis of international comity and administrative cooperation, could be relied upon by the Turkish authorities to verify the origin marking on the packaging. Furthermore, the Member State authorities would be in a position to consult with the authorities of both Turkey and the Republic of Cyprus in a case of suspected fraud or other irregularity. The present case, of course, is not so simple, as the goods' origin in Cyprus has not been certified by the Republic of Cyprus.

42. The point of departure in the search for an answer to this problem is the wording of Article 9(1), which, in the case of products listed in Annex IV, establishes a general rule that 'the official phytosanitary certificate ... shall have been issued in the country in which the plant, plant products and other objects originate ...'. I do not accept the contention of the United Kingdom and the interveners that this provision should be regarded as an exception to a general rule established in Article 12 read with the title to Annex V that the certificate can be given by the appropriate authorities in any consignor country. Article 9(1) constitutes the special rule applicable to plants covered by Annex IV, Part A.

43. Two further points about legislative history seem to me to cast light on the issue. Firstly, the requirement that the phytosanitary certificate be issued in the country of origin was contained in the original version of the Directive. The saving provision in Article 9(1) for other cases — 'to the extent that the special requirements laid down in Annex IV, Part A can be fulfilled also at places other than that of origin' — was introduced in an amending Council Directive of 1989.[25] The third recital in the preamble to that directive explains that it had 'become necessary to clarify the requirements in Article 9(1) ... that the official phytosanitary certificate ... must be issued in the country of origin of the plants ... [and that it] ... appear[ed] appropriate to define the exceptions to this requirement in a more general manner so that Article 9(1) need to be amended whenever a relevant amendment is made by the Commission to Annex IV'.[26] At the date of adoption of that Directive, citrus fruit was not listed in Annex IV, Part A. Nor was any of the other plants or plant products there listed subjected to any requirement of origin marking. It is clear, however, that the purpose of introducing that saver was to allow flexibility so that, while the Commission might amend Annex IV, the Council would not have to

25 — Directive 89/439/EEC, cited in footnote 9 above.

26 — There is clearly a mistake here. It should read: 'need not be'; cf. French version: '*n'ait pas besoin*'. This is confirmed by consultation of the other language versions.

amend Article 9(1) each time to take account of any changes.

44. Second, it was not until the Commission replaced entirely Annexes I to IV in 1992 [27] that citrus fruit was added to Annex IV, Part A. The relevant special requirements are contained in Items 16.1, 16.2, 16.3 and 16.4. Thus, the requirement that 'the packaging shall bear an appropriate origin mark' cannot have been within the contemplation of the Council when the saver to Article 9(1) was drafted. The Council subsequently established the machinery delegating to the Commission, with the advice of the Standing Committee on Plant Health, the power to adapt Annex IV, including the specification of 'special requirements'. [28]

45. Items 16.2, 16.3 and 16.4 in Annex IV, Part A, lay down, respectively, as regards citrus fruit originating in third countries where three separate plant organisms are known to occur, a requirement (subject to slight variation in each of the three cases) for an 'official statement' that the fruits originate in areas free from the relevant organism or, alternatively, that the absence of symptoms thereof may be verified by observation, sampling or treatment over specified periods. It is clear that none of these requirements could be met, for the purpose of Article 9(1), elsewhere than in the country of origin. However, it is common case that none of the specified plant diseases is known to occur in Cyprus (subject to a proviso on behalf of the appellants that this cannot necessarily be said for the northern part of Cyprus).

46. The relevance of these requirements, in my view, is that proof of the origin of the products is essential in order to establish that these diseases do not occur in the fruit's country of origin. There is, in short, a need to show that they originate in Cyprus. Then the special requirements set out in items 16.2, 16.3 and 16.4 will not apply.

47. In this light, I turn to consider whether Article 9(1) permits reliance on its saver, i.e. that the phytosanitary certificate, in so far as it establishes that 'the packaging ... bear[s] an appropriate origin mark', can be issued other than in the country of origin.

48. The Commission accepted at the hearing that the special requirement is not met by the simple fact that the goods bear an origin mark and that proof of origin is required. With the support of the United

27 — Directive 92/103/EEC, cited in footnote 11 above.

28 — Articles 3(6), 5(3) and 16a of the Directive as amended by Directives 89/439/EEC and 91/683/EEC.

Kingdom and the interveners, it claimed that this proof is adequately given by the phytosanitary certificate issued by the Turkish authorities. It was said that the latter could satisfy themselves of the Cypriot origin of the fruit from an inspection of the accompanying shipping documents, in particular the bill of lading, and that the United Kingdom has confidence in the Turkish authorities to certify that they are so satisfied.

49. It seems to me, however, that the shipping documents cannot establish more than that the goods were *shipped* from Cyprus, something the United Kingdom authorities could see for themselves. They say nothing about where the fruit was originally from or even where or by whom and with what authority the origin marking was affixed. It seems highly likely that, in reality, the Turkish authorities, since they recognise the entity which controls the northern part of Cyprus, in fact rely on certification of origin emanating from that source. Such a process might indeed offer a better guarantee of the true origin of the fruits than shipping documents. However, it has not been suggested that such indirect reliance on certification by the authorities in the northern part of Cyprus is the basis upon which the United Kingdom has to date accepted the Turkish phytosanitary certificates. In any event, such indirect reliance would be difficult to reconcile with *Anastasiou I*, where, in the case of direct exports from the northern part of Cyprus, it is stated that 'any difficulty or doubt concerning a certificate must be brought to the attention of the authorities of the exporting State ...' and that such 'cooperation ... cannot be established with authorities who are not recognised either by the Community or by its Member States'. [29]

50. I acknowledge that, in the context of the system of EUR 1 movement certificates, the Court has recognised the possibility of exceptions where production of such a certificate is impossible. In *Huygen and Others*, [30] the Court held that it was possible to take into account other evidence of the origin of goods where it proved impossible for the authorities of the exporting State to verify their origin. Although the authorities of the exporting State are normally in the best position to verify directly the facts which determine origin, where they were not in a position to do so nothing prohibited the authorities of the importing State from checking the accuracy of a certificate of origin by reference to other sources. [31] The additional evidence in that case was the original invoice for the goods in question. [32] However, I do not think that the reasoning of *Huygen and Others* can easily be transposed to the present context.

29 — Paragraph 63.
30 — Case C-12/92 [1993] ECR I-6381.
31 — Ibid., paragraphs 25 and 27.
32 — Ibid., paragraph 7.

Even if non-official documents such as invoices could normally furnish better proof of origin than shipping documents, the fact remains that any investigation of cases of suspected fraud, or even simple error, would be irremediably hampered by the impossibility of cooperation with the authorities in the northern part of Cyprus. The Turkish authorities would not be an adequate substitute for the legitimate authorities, that is, those of the Republic of Cyprus, in any investigation of the underlying transactions undertaken at the behest of and in cooperation with Member State authorities. I might add that an erroneous or fraudulent misattribution of origin of a single consignment of contaminated fruit could have far graver and more far-reaching consequences for plant health in the Community than the limited and essentially financial consequences of such misattribution, for tariff purposes, under the EUR 1 regime.

51. In my view, therefore, while it is possible to rely on a phytosanitary certificate issued by the Turkish authorities in respect of the first part of the special requirement set out in Item 16.1 in Annex IV, Part A — 'the fruits shall be free from peduncles and leaves' —, it is not so in respect of the second — 'the packaging shall bear an appropriate origin mark'.

52. In the light of my conclusion regarding the acceptability of a phytosanitary certificate issued by the authorities of a consignor country in respect of imports into the Community of third-country citrus fruit, it is not necessary for me to address the other aspects of this case raised by the House of Lords, viz. the circumstances in which the Turkish authorities conducted their inspections and the alleged abuse of Community-law rights by the interveners. Suffice to say that, should the Court accept my general thesis regarding the issue of phytosanitary certificates by consignor countries and disagree with my analysis of the effect of Article 9(1) of the Directive with regard to citrus fruit, I tend to accept the arguments put forward on these points by the interveners, the United Kingdom and the Commission, for the reasons set out in the summary of their arguments at paragraphs 22 and 23 above.

V — Conclusion

53. In the light of the foregoing, I recommend that the Court reply as follows to the questions referred for a preliminary ruling by the House of Lords:

A Member State is entitled to accept the introduction into its territories of plants originating in non-member countries and listed in Annex V, Part B, to Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community where those plants are accompanied only by a phytosanitary certificate issued by a non-member country other than that of origin, from which the plants have been transported to the Community, provided that, in the case of plants which are subject to special requirements set out in Annex IV, Part A, to that Directive, those special requirements can be fulfilled in the non-member country which issued the phytosanitary certificate. The special requirement that the packaging of citrus fruit bear an appropriate origin mark cannot be fulfilled at a place other than that of origin in the case of citrus fruit stated to originate in the part of Cyprus to the north of the United Nations Buffer Zone.