the Council of 12 December 1977 must be understood as covering only vehicles which are owned by or under the control of the public authority.

O'Keeffe Touffait Mertens de Wilmars

Pescatore Mackenzie Stuart Bosco Koopmans

Delivered in open court in Luxembourg on 6 December 1979.

A. Van Houtte
Registrar

A. O'Keeffe
President of the First Chamber, Acting as President

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 6 NOVEMBER 1979

My Lords,

This case comes to the Court by way of a reference for a preliminary ruling by the Oberverwaltungsgericht of Bremen. The Order for Reference raises questions of interpretation of Council Regulation (EEC) No 543/69 of 25 March 1969 "on the harmonization of certain social legislation relating to road transport". The Court has had occasion to consider that Regulation in a number of Cases, the latest being, I think, Case 97/78 *Schumalla's* case [1978] ECR 2311, where I collected the earlier cases in my Opinion. The questions raised by the Oberverwaltungsgericht of Bremen are however novel.

The Appellant before that Court is the Firma Städtereinigung K. Nehlsen KG, which I shall call "Nehlsen". The Respondent is the City of Bremen.

Nehlsen is a privately-owned commercial undertaking which has contracts with local authorities in Bremen under which it carries out refuse collection in the areas for which those authorities are responsible.

In June 1976 the Industrial Inspectorate ("Gewerbeaufsichtsamt") of Bremen discovered that Nehlsen was failing to comply with certain provisions of Regulation No 543/69, in particular those of Article 7 relating to the length of driving periods and those of Article 14 requiring vehicle crews to carry individual control books. By order ("Verfügung") dated 29 March 1977 the Inspectorate required Nehlsen to comply with those provisions, under threat of penalties.

Nehlsen lodged an administrative complaint ("Widerspruch") against the order, claiming to be exempt from the requirements of Regulation No 543/69 by virtue of Article 4 (4) thereof. At the time, Article 4 (4) was worded as follows:

"This Regulation shall not apply to carriage by:

...

4. service vehicles used by the police, gendarmerie, armed forces, fire brigades, civil defence, drainage or flood-prevention authorities, water, gas or electricity services, highway authorities, telegraph or telephone services, by the postal authorities for the carriage of mail, or by radio or television services;

..."

Not surprisingly Nehlsen's complaint was rejected.

Nehlsen then appealed to the Verwaltungsgericht of Bremen.

While the case was pending before that Court there entered into force Council Regulation (EEC) No 2827/77 amending Regulation (EEC) No 543/69, and in particular Article 4 (4). Unfortunately there are discrepancies between the texts of the amended Article 4 (4) in the different official languages of the Community.

In the English text of Regulation No 2827/77 the new wording of Article 4 (4) is as follows:

"This Regulation shall not apply to carriage by:

...

4. vehicles used by the police, gendarmerie, armed forces, fire brigades, civil defence, drainage or flood prevention authorities, water, gas or electricity services, highway authorities and refuse collection, telegraph or telephone services, by the postal authorities for the carriage of mail, by radio or television services or for the detection of radio or television transmitters or receivers, or vehicles which are used by other public authorities for public services and which are not in competition with professional road hauliers;

..."

The Verwaltungsgericht delivered judgment on 12 July 1978. It held that, since the order under appeal had continuing effect, its validity must be judged by reference to the amended text of Article 4 (4), but that that text did not exempt Nehlsen from the provisions of Regulation No 543/69 any more than had the previous text. The decisive factor was that Nehlsen performed its contracts by using its own vehicles and drivers, not by placing them under the control of the public authorities concerned. Article 4 (4), even in its new version, applied only where a public authority was itself responsible for the working conditions of vehicle crews. Moreover, the Verwal-

tungsgericht held, Nehlsen was "in competition with professional road hauliers". That was so since it was a commercial undertaking and not a public authority, and because it must compete with other private undertakings each time one of its contracts came up for renewal. The Verwaltungsgericht accordingly dismissed the appeal.

The Oberverwaltungsgericht, to which Nehlsen now appeals, has referred the case to this Court for a preliminary ruling concerning "the interpretation of the last alternative in Article 4 (4) of Regulation (EEC) No 543/69 as amended by Regulation (EEC) No 2827/77". The specific questions on which the Oberverwaltungsgericht asks the Court to rule are these:

"(a) (aa) Do the words 'vehicles which are used by other public authorities for public services' in the provisions referred to ... above cover only vehicles that are owned by or under the control of the public authority or

(bb) do they also cover vehicles belonging to private persons or undertakings which are used by them for public purposes on behalf of public authorities under contracts for services governed by private law?

(b) If the answer to Question (a) (bb) is in the affirmative:

Are the vehicles of a private undertaking to which a public authority has entrusted exclusively the performance of public services within the meaning of the provisions mentioned .... above to be considered as 'in competition with professional road hauliers' on the ground that the public authority can terminate the contract concluded with the appointed private undertaking if another undertaking offers the use of its vehicles on more favourable terms?"

There can in my opinion be no doubt that, if question (a) fell to be answered by reference only to the English text of the amended Article 4 (4), the answer would be that the exemption did not cover vehicles used by a private undertaking to collect refuse on behalf of a public authority pursuant to a contract for services between that undertaking and that authority.

As Your Lordships will have observed, Article 4 (4) has two limbs. The first limb comprises, in the English text, "vehicles used by" certain specified kinds of public authorities and services, including expressly "refuse collection" services. The second limb comprises "vehicles used by other public authorities for public services" subject to their not being "in competition with professional road hauliers". The second limb cannot therefore cover vehicles used for refuse collection, which is comprised in the first limb, nor can either limb cover vehicles used by private undertakings.

The same conclusion would I think be reached by anyone who looked only at the French or at the Dutch text.

Where in the first limb the English text has "vehicles used by the police, etc.", the French text has "véhicules affectés au

service de la police, etc." and the Dutch text has simply "dienstvoertuigen van politie, etc.". The equivalent in the French text of the English phrase "highway authorities and refuse collection ... services" is the single expression "la voirie", which of course covers both. The Dutch text expressly mentions "ophaaldiensten voor huisvuil". As regards the second limb, the equivalent in the French text of "vehicles used by other public authorities for public services" is "véhicules utilisés par d'autres autorités publiques pour des services publics". The Dutch text has "door andere overheidsinstanties voor openbare diensten gebruikte voertuigen". I do not think that the change in the French text from "affectés au service de" to "utilisés par", or the change in the Dutch text from "van" to "voor ... gebruikte", is of any significance. I imagine that it was made for stylistic reasons, of a kind that would not apply in English.

The Danish and Italian texts are different in one respect: neither expressly mentions refuse collection in the first limb. The word used in the Danish text is "vejvaesenet" which, I understand, covers the removal of snow from and the sweeping of roads, but not the removal of household refuse. The Italian text has "manutenzione della rete stradale" which, I understand, would not normally be considered to include refuse collection, though it might at a stretch be interpreted as doing so. For the rest the Danish and Italian texts do not materially differ from the English, French and Dutch texts. In the Danish text the equivalent of "vehicles used by the police, etc." in the first limb is "tjenestekøretøjer, der benyttes af politiert, etc."; in the Italian text it is "veicoli delle forze di polizia, etc.". The equivalent in the Danish text of "vehicles used by other public authorities for public services" is "køretøjer, der anvendes af andre offentlige myndigheder til offentlige tjenesteydelser", whilst in the Italian text it is "veicoli utilizzati da altre autorità pubbliche per servizi pubblici".

I do not therefore think that consideration of the Danish and Italian texts leads to a conclusion different from that to which the English, French and Dutch texts point.

I turn to the German text, which seems to be less clear. The equivalent there of "vehicles used by the police, etc." in the first limb is "Fahrzeugen der Polizei, etc.", i. e. a genitive, as in the Dutch and Italian texts. Nor does the first limb, in the German text, mention refuse collection. It refers only (so far as material) to "Straßenbauämter", which I understand to mean "highway authorities". In the second limb, the equivalent of "vehicles used by other public authorities for public services" is "Fahrzeugen, die von anderen Trägern öffentlicher Gewalt zu öffentlichen Zwecken eingesetzt ... werden". The literal translation of that seems to be "vehicles that are devoted by other public authority carriers to public purposes".

The exact German equivalent of "used", "utilisé", "gebruikte", "utilizzati" would, I understand, have been "gebraucht". "Eingesetzt" has a somewhat wider and looser meaning. The German text is also the only one to refer to "public authority carriers" ("Trägern öffentlicher Gewalt") instead of to "public authorities" simpliciter, and

to "public purposes" ("öffentlichen Zwecken") rather than to "public services".

Manifestly, however, the resultant slight ambiguity of the German text cannot lead to the conclusion that Article 4 (4) should be interpreted in a way that would be inconsistent with its wording in the five other languages, and inconsistent also with its evident underlying idea, as to which I agree entirely with the Verwaltungsgericht Bremen. I can only express my surprise that the Commission, to whom all six texts were available, should have argued otherwise in this Court. The German Government and the City of Bremen, for their part, contended for the interpretation upheld by the Verwaltungsgericht.

In the result I am of the opinion that, in answer to the first question referred to the Court by the Oberverwaltungsgericht, Your Lordship should rule that the words "vehicles which are used by other public authorities for public services" in Article 4 (4) of Regulation No 543/69 as amended by Regulation No 2827/77 do not include vehicles used by a private undertaking for refuse collection in performance of a contract between that undertaking and a public authority for the provision of that service.

If that is right the second question referred to the Court by the Oberverwaltungsgericht does not arise. I would however observe that, if Article 4 (4) did cover an undertaking in Nehlsen's position, it would cover also any other private undertaking that tendered in competition with it, so that the closing words of Article 4 (4) would not, I think, exclude the application of the exemption in such circumstances.