JUDGMENT OF THE COURT (Fifth Chamber)
9 June 1994 *

In Case C-292/93,

REFERENCE to the Court pursuant to Article 1 of the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters by the Oberlandesgericht (Higher Regional Court), Frankfurt am Main, Germany, for a preliminary ruling in the proceedings pending before that court between

Norbert Lieber

and

Willi S. Göbel, Siegrid Göbel

on the interpretation of Article 16(1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1972 L 299, p. 32), as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1),

* Language of the case: German.

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, D. A. O. Edward (Rapporteur), R. Joliet, G. C. Rodríguez Iglesias and F. Grévisse, Judges,

Advocate General: M. Darmon,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Norbert Lieber, by Thilo Krause-Palfner, Rechtsanwalt, Frankfurt am Main,

— Willi S. Göbel and Siegrid Göbel, by Reinhard Patzina, Rechtsanwalt, Frankfurt am Main,

— the German Government, by Christof Böhmer, Ministerialrat in the Federal Ministry of Justice, acting as Agent,

— the French Government, by Catherine de Salins, Foreign Affairs Adviser in the Directorate of Legal Affairs, Ministry of Foreign Affairs, and Fabien Moury, Assistant Secretary of Foreign Affairs in that Directorate, acting as Agents,

— the Commission of the European Communities, by Pieter van Nuffel, of its Legal Service, assisted by Hans-Jürgen Rabe, Rechtsanwalt, Hamburg and Brussels, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 22 March 1994,

gives the following

Judgment

1 By order of 10 June 1992, received at the Court on 19 May 1993, the Oberlandesgericht (Higher Regional Court), Frankfurt am Main, referred to the Court for a preliminary ruling under the Protocol of 3 June 1971 on the Interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters a question on the interpretation of Article 16(1) of that Convention (OJ 1972 L 299, p. 32), as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1) (hereinafter 'the Brussels Convention').

2 That question was raised in proceedings between Mr Lieber and Mr and Mrs Göbel.

3 It can be seen from the case file that Mr and Mrs Göbel, who are domiciled in Germany, are the owners of an apartment in Cannes (France).

4 In 1978 Mr Lieber, who is also domiciled in Germany, brought proceedings against Mr and Mrs Göbel in the Landgericht (Regional Court), Frankfurt am Main. Fol-

lowing those proceedings, the parties reached a friendly settlement under which ownership of the apartment was to be transferred to Mr Lieber. In execution of that settlement, Mr and Mrs Göbel allowed Mr Lieber into possession of the apartment. He used it until 1987.

5 In that year the 1978 settlement on the transfer of ownership of the apartment was declared void *ex tunc* for reasons of German law. Mr Lieber then brought proceedings in the Landgericht Frankfurt am Main. Mr and Mrs Göbel counterclaimed for an order that Mr Lieber should pay them compensation for the nine years during which he had used the apartment in Cannes.

6 After obtaining a report from a French expert on the value of the use of the apartment, the Landgericht Frankfurt am Main upheld the counterclaim to the amount of DM 200 791.78.

7 Mr Lieber appealed to the Oberlandesgericht Frankfurt am Main against that decision, arguing that under Article 16(1) of the Brussels Convention a court of the Contracting State where the immovable property was situated, in other words a French court, not a German court, had jurisdiction on the counterclaim.

8 The Oberlandesgericht Frankfurt am Main considered that the case raised a question of interpretation of the Brussels Convention. It therefore stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'Do the matters governed by Article 16(1) of the Brussels Convention also cover questions of compensation for use of a dwelling after a failed property transfer?'

9 Article 16(1) of the Brussels Convention provides that:

'The following courts shall have exclusive jurisdiction, regardless of domicile:

1. in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the courts of the Contracting State in which the property is situated;

...'

10 It must be noted to begin with that, as the German Government correctly pointed out, a settlement such as that in issue here, the object of which was to transfer ownership of immovable property, does not constitute a tenancy of immovable property within the meaning of Article 16(1) of the Brussels Convention. That term applies to agreements for the letting of immovable property (see the judgment in Case 241/83 *Rösler* v *Rottwinkel* [1985] ECR 99, paragraphs 24 and 25). It follows that compensation for the use of property following the annulment of a transfer of ownership of that property cannot be regarded as a right relating to a tenancy of immovable property and fall within Article 16(1) of the Brussels Convention on that basis.

11 The Court must therefore consider whether the compensation in question is a right *in rem* in immovable property within the meaning of that provision.

12 The Court has consistently held (see *inter alia* the judgment in Case C-115/88 *Reichert and Kockler* [1990] ECR I-27, paragraph 9) that Article 16 must not be given a wider interpretation than is required by its objective, since it results in depriving the parties of the choice of forum which would otherwise be theirs and, in certain cases, results in their being brought before a court which is not that of any of them.

13 It follows from that judgment and from the judgment in Case C-294/92 *Webb*, 17 May 1994 [1994] ECR I-1717, paragraph 14, that in order for Article 16(1) to apply, it is not sufficient that the action concerns a right *in rem* in immovable property or that the action is connected with immovable property. The action must be based on a right *in rem* and not, apart from the exception for tenancies of immovable property, on a right *in personam*.

14 The difference between a right *in rem* and a right *in personam* is that the former, existing in an item of property, has effect against the whole world, whereas the latter can only be claimed against the debtor (see the Schlosser Report, OJ 1979 C 59, p. 71, paragraph 166).

15 It is evident that a claim for compensation for the use of immovable property can be raised only against the debtor and thus constitutes a right *in personam*, at any rate where the debtor does not dispute that the person bringing the claim is the owner of the immovable property in question.

16 Mr Lieber points out, however, that in the *Rösler* judgment, cited above, the Court held that the *raison d'être* of the exclusive jurisdiction conferred by Article 16(1) of the Brussels Convention was the fact that tenancies are closely bound up with the law of immovable property and with the provisions, generally of a mandatory character, governing its use, such as legislation controlling the level of rents and protecting the rights of tenants, including tenant-farmers. In Mr Lieber's opinion,

that is why the Court held that the recovery of rent payable by the tenant pursuant to a lease fell within Article 16(1).

17 Mr Lieber considers that those considerations also apply to a claim for compensation for use of property, such as that in issue in the main proceedings, in particular because the compensation sought must be calculated according to principles analogous to those governing tenancies. The calculation cannot be done without recourse to an expert based in France, given that local knowledge is a precondition for drawing up an expert report.

18 That argument cannot be accepted.

19 Firstly, unlike the present case, the judgment in *Rösler*, cited above, concerned a letting agreement, which was therefore covered by the term 'tenancies of immovable property'.

20 Secondly, the mere fact that in a case such as the present one the compensation payable is to be calculated according to the principles governing tenancies does not justify the application of Article 16(1) to a situation where no tenancy is involved. The relationship of landlord and tenant comprises a series of rights and obligations in addition to that relating to rent. That relationship is governed by special legislative provisions, some of a mandatory nature, of the State where the immovable property which is the subject of the lease is situated, for example, provisions determining who is responsible for maintaining the property and paying land taxes, provisions governing the duties of the occupier of the property as against the neighbours, and provisions controlling or restricting the landlord's right to retake possession of the property on expiry of the lease. It is the complex nature of that relationship and the interest of the State in which the property is situated in ensur-

ing that those provisions are complied with which justify the exclusive jurisdiction conferred on that State in cases concerning tenancies. Those reasons do not apply where there is no relationship of landlord and tenant.

21 Thirdly, while it may be easier for the court of the Contracting State in which the immovable property is situated to ascertain the level of rents within its area with a view to determining the amount of compensation payable, it is equally possible for a court in another Member State to consult a local expert in order to obtain the necessary information, as indeed the Landgericht Frankfurt am Main did at first instance in the main proceedings.

22 The answer to the question referred by the national court must therefore be that a claim for compensation for use of a dwelling after the annulment of a transfer of ownership is not included in the matters governed by Article 16(1) of the Brussels Convention.

Costs

23 The costs incurred by the French and German 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 action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Oberlandesgericht Frankfurt am Main by order of 10 June 1992, hereby rules:

A claim for compensation for use of a dwelling after the annulment of a transfer of ownership is not included in the matters governed by Article 16(1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland.

Moitinho de Almeida Edward Joliet

Rodríguez Iglesias Grévisse

Delivered in open court in Luxembourg on 9 June 1994.

R. Grass

Registrar

J. C. Moitinho de Almeida

President of the Fifth Chamber