

UPDATE: ON 15 APRIL 2021 THE GERMAN FEDERAL CONSTITUTIONAL COURT (BUNDESVERFASSUNGSGERICHT) HAS RULED THE BERLIN RENT CAP (BERLINER MIETENDECKEL) TO BE VOID IN ITS ENTIRETY

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Legal Briefings

With yesterday's ruling, the Second Senate of the German Federal Constitutional Court (Court) declared the law of the State of Berlin on rent limitation on residential properties in Berlin (Berlin Rent Cap) to be unconstitutional and therefore void in its entirety.

CONTENT OF THE BERLIN RENT CAP

Since 23 February 2020 the MietWoG Bln applied to a large percentage of residential assets located in Berlin. Expressly excluded were new buildings that were ready for first occupancy from 1 January 2014 on. The main feature of the Berlin Rent Cap was to achieve a standstill and in some cases a reversion of rent increases by

- a rent freeze that prohibited the charging of rents in existing lease agreements that exceeded the amounts stipulated in the Berlin Rent Cap,
- a rent cap for re-letting, and

- stipulating substantial fines for landlords not complying with the provisions of the Berlin Rent Cap.

WHAT HAPPENED?

Various political groups, real investors and lower courts having to apply provisions of the MietWoG in their proceedings filed pleadings to the Court asking it to rule on whether or not the law was constitutional. The Court refused to conduct expedited proceedings, but now ruled on the matter substantially earlier than originally expected.

KEY CONSIDERATION OF THE COURT'S DECISION

The Court ruled on the Berlin Rent Cap exclusively on the basis that the formalities for passing the law in line with the requirements of the German Constitution had not been observed. In the Court's opinion the issue of slowing or reversing rent increases had already been addressed by the legislator comprehensively on a federal level, which pursuant to the German Constitution means that the German states including the land of Berlin were excluded from enacting legislation on the same subject matter.

CONSEQUENCES AND OUTLOOK

The ruling inter alia results that caps and reductions imposed by the Berlin Rent Price cap are void with retroactive effect. Tenants will be obliged to make corresponding additional payments to their tenants, and it is clear from corresponding surveys that by far not all tenants have established sufficient liquidity reserves to make such payments. Tenants will need to liaise with landlords in order to find suitable solutions and some landlords have already indicated that they will not claim additional payments or are at least willing to make some concessions in order to help tenants. An open question remains under which circumstances landlords are entitled to terminate tenants due to failure to make additional payments immediately subsequent to the Berlin Rent Cap having been declared void.

The issue of stopping rent increases will certainly remain on the political agenda and is likely to be an important topic in the upcoming federal election campaign. Many politicians have immediately suggested for the Berlin Rent Cap to now be implemented (with slight changes) on a federal level. In this respect, it is worth noting that many of the provisions of the Berlin Rent Cap were considered by legal experts to be unconstitutional for other reasons than mistakes made in the process of enacting the law. As the Court did not have to assess such matters in its ruling there is now a lack of reliable guidance in this respect and it seems rather likely that any substitute federal law will again be challenged in court.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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