



Germany Blog

GCC rules Berlin rent cap unconstitutional. Implications and assessment

Legal issues

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1. **Who are the plaintiffs?**

Last year, 284 conservative (CDU/CSU) and liberal (FDP) MPs filed a suit against the Berlin rent cap ("Mietendeckel") on the compatibility of the law of the state Berlin with the constitution.

2. **What was the time line?**

The law came into force on Feb 23, 2020. The action against the rent cap was brought in May 2020. Today, the German Constitutional Court has decided that the rent cap is unconstitutional.

3. **What is the key issue from a legal perspective?**

In Germany, housing is regulated by states. But rental law is regulated by federal law, in Germany's Civil Code (Bürgerliches Gesetzbuch). Today, the GCC pointed out that the constitution forces a clear distinction between federal and state law.

4. **What are the key issues for renters and landlords in Berlin?**

First, the law froze rents retroactively at the level in June 2019. Second, it introduced an upper limit for rents. New buildings finished since 1 January 2014 are excluded from the cap. But when new buildings are re-let then rents above the upper limit could be lowered to the limit. Third, rents for existing contracts were lowered where the rent was 20% above the upper limit specified in the rent cap. Many lawyers regarded this encroachment on existing contracts to be in particular unconstitutional.

Impact on Berlin

1. **How large is the affected market?**

Ownership rate is below 20%. So roughly 3m renters and 1.5m apartments are affected.

2. **What is the impact on rents in Berlin?**

From 2018 to 2020, rent growth decelerated with the extensive media coverage of the Berlin rent cap. In 2020 rent growth was only 2% p.a. In new contracts, landlords often stipulated two rents after the introduction of the rent cap. One should the rent cap remain in place and a second rent otherwise. Hence, rent growth may jump by a few percentage points in Berlin.

3. **What is the impact on housing supply in Berlin?**

There is some preliminary evidence that the introduction of the rent cap had a negative impact. Investors were less willing to invest in existing objects.



More conversion of rental homes in privately held homes. Less supply for the rental market. So these negative trends could be partially reversed.

4. **Does the judgement have direct political consequences?**

Due to the legal uncertainty, Berlin's Senate has advised tenants to save the difference between their old rent and the new lower rents, as subsequent payments to the landlord might be required depending on the GCC's verdict. Trouble has to be expected as probably not all tenants heeded the Senate's advice. If tenants don't pay, can the landlord terminate the lease, or will the city of Berlin ultimately intervene?

5. **What is the potential impact on the Senate election in Berlin (state elections) on Sept 26, 2021?**

The coalition of red, red and green (Social Democrats, Lefts, and Greens) has a comfortable lead in latest polls. There might be a negative impact but a reelection remains possible.

Impact on Germany

1. **Will the decision have an impact on other German metropolises and metropolitan regions?**

Definitely. The rent cap in Berlin was clearly the main topic in the German housing market pre-COVID. Across German cities, rent growth decelerated with the extensive media coverage of the Berlin rent cap. Rental growth could pick up again in several cities and regions, as many initiatives which copied the Berlin rent cap will lose momentum.

2. **Will this have the potential to extend the house price cycle?**

From a valuation perspective: Yes. Higher rents potentially increase market prices. However, it could also provide some positive impulses for supply. Bottom line: Yes, to a limited extent.

3. **Will the decision have an impact on the parliamentary election on Sept 26?**

For years, metropolises and several metropolitan regions have suffered from an increasing housing shortage. The topic ranks relatively high on the agenda, at least from the voters' perspective. However, as various past approaches showed only limited success, politicians have realized that there is no quick fix to provide sufficient housing at a price average income earners can afford. As all major parties still see government intervention such as public investment, regulation or subsidies as a solution rather than deregulation and markets, it is unlikely that housing will trigger contentious debates during the campaign.

See [Germany Monitor, Berlin housing market, February 27, 2020.](#)



Appendix 1

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