

Subletting and the fight against speculation

In a judgment (*in French only*) of 23 December 2022, the Constitutional Court declared that "Article 1762-6, paragraph 4, of the Civil Code, as introduced by the Law of 3 February 2018 on commercial leases (...) in that it does not allow an economic operator who has taken a lease of commercial premises to sublet it at a price that allows him to cover his operational expenses relating to the subletting and to obtain a reasonable profit from the subletting, is contrary to Article 11, paragraph 6, subparagraph 1, of the Constitution."

The Court stated that, while the fight against speculation pursues an aim of general interest which justifies the intervention of the legislator, the ceiling on the price of the sublease imposed by Article 1762-6(4) of the Civil Code constitutes a disproportionate restriction.

Pending remedial action by the legislature, the balance between the legitimate aim pursued by the legal provision under review and the freedom of trade and industry is achieved if the sublease rent does not exceed the rent paid by the lessee to the principal lessor, plus his operating expenses relating to the sublease and a reasonable profit.

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