



International Association of Tax Judges

JUDICIAL INDEPENDENCE in Germany

Dr. Ulrich Schallmoser

Judge at the Supreme Tax Court

München

I. Legal framework

- Art. 97 of the German Constitution
 - *„Judges shall be independent and subject only to law*
 - *„Judges appointed permanently to full-time positions may be involuntarily dismissed, permanently or temporarily suspended, transferred, or retired before the expiration of their term of office only by virtue of judicial decision and only for reasons and in the manner specified by the laws. The legislature may set age limits for the retirement of judges appointed for life. In the event of changes in the structure of courts or in their districts, judges may be transferred to another court or removed from office, provided they retain their full salary“*
- Federal law
 - *„Federal Judges Act“*
 - *„Judicature Act“*

II. The meaning of Judicial Independence

- Institutional safeguard for the judiciary as such, not a right or privilege for the individual judge
 - Independence from the Legislature
 - Independence from the Executive
 - Independence within the Judiciary
 - The competent judge (bench) alone has to decide the case
 - Judges are protected against internal interventions
 - Judges are free in their decision-making and only bound by the law
 - Judges are not obliged to follow prior jurisprudence
 - Judges are not bound by the prevailing interpretation of the law by other courts (only control by higher courts)
 - No disciplinary measures in case of wrongful decision-making

III. Appointment of judges

- Article 33 (2) of the German Constitution
„every German shall be equally eligible for any public office according to his aptitude, qualifications and professional achievements“
- Legal university studies (first degree in law)
- Legal training for an overall period of two years at a civil court, the prosecutor`s office or a penal court, with the government, in a lawyer's office and in an elective position followed by the second state examination
- German citizenship
- Respect the free democratic order
- Social competence
- Selection process

IV. Independence and disciplinary supervision

- Principle of substantive independence is guaranteed
- Judges are subject to disciplinary supervision
 - Monitoring
 - Correction
 - Scheduling

V. Financial independence

- Guarantee of „adequate income“ is provided by constitutional law
- Basic guarantees:
 - Remuneration
 - Pension
 - Financial assistance in case of illness
 - Right to do additional business/sideline job