
Legal Issues of Online Participation in Municipalities and Universities in the Federal Republic of Germany

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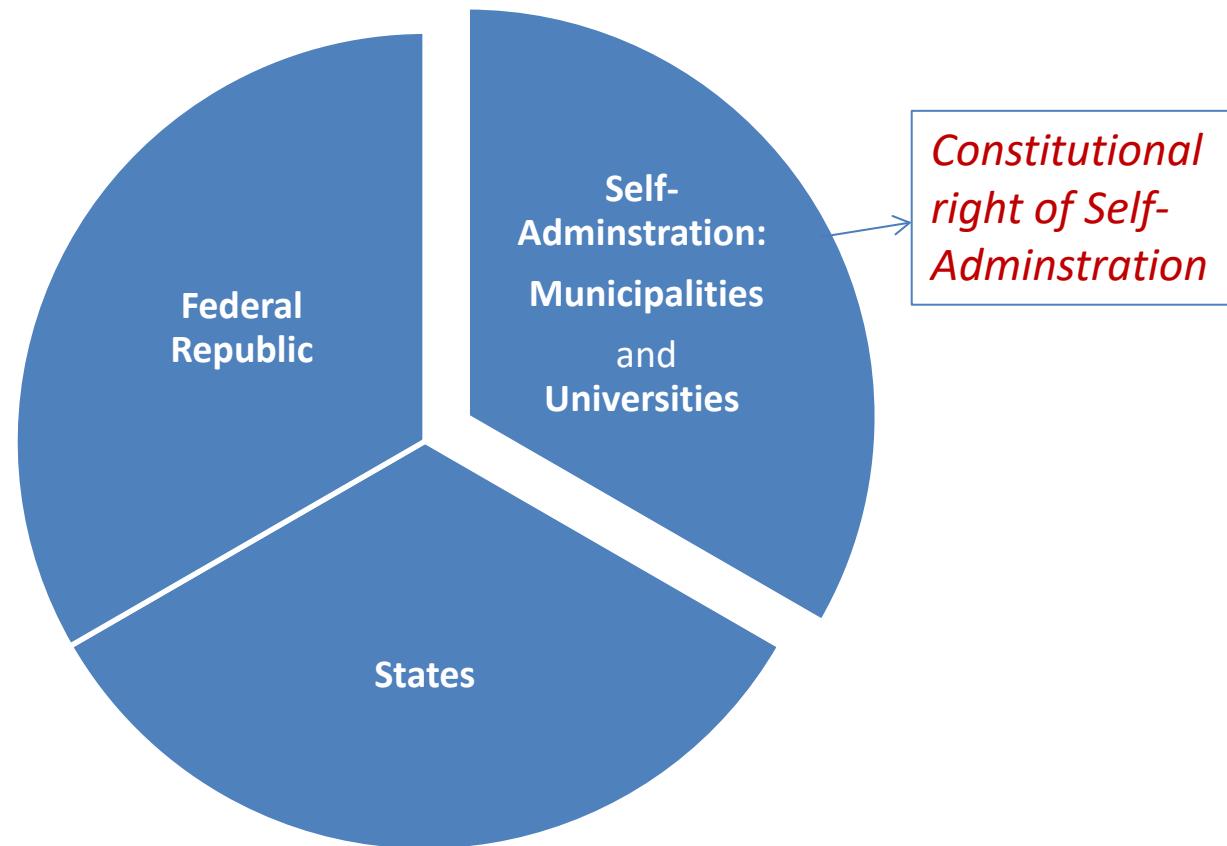
NRW-FORTSCHRITTSKOLLEG
ONLINE-PARTIZIPATION



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Public **Self-Administration** below the State Level



Constitutional Right of Self-Administration

- For **municipalities** (Art. 28 II GG) and **universities** (Art. 5 III GG)
- right to regulate their interests for their members
- under the existing federal and state laws
- on their own responsibility.
- Right to **rule statutes** within their area of responsibility
- Right to **elect their own representatives and bodies**

-> German Constitutional Court:

„The image of Self-Administration is significantly influenced by the principle of participation.“

(BVerfG, Beschl. v. 19.11.2014)



Elections ruled by State Law

- **State level**
 - Federal Republic
 - Election of the National Parliament (Bundestag)
 - Election of the European Parliament
 - States
 - Election of the State Parliament (Landtag)
- Corporations of **Self-Administration**
 - Municipalities
 - Elections of the Council and Mayor in the city
 - Elections of the District Council and Administrator in the District
 - Universities
 - Elections of Senate and Faculty Representative Committee
 - Essential decisions ruled by state law
 - **[Additional electoral regulations of the university]**



Elections ruled by own Statutes

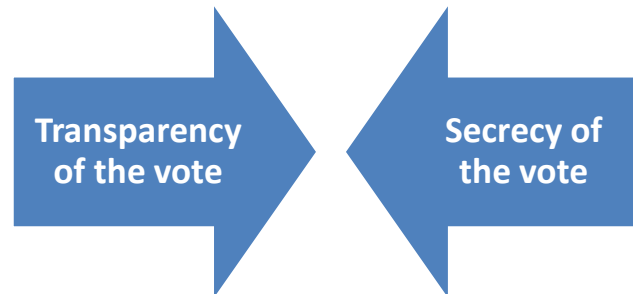
- Municipalities
 - Elections of **voluntary** advisory Councils (senior citizens, disabled persons or youth Councils) can be ruled by **own statutes**.
- Universities
 - The additional electoral regulations of the elections of Senate and Faculty Representative Committee must be ruled by an **own statute**.
 - The introduction of E-Voting could also be an aspect in the statute.



Introduction of **E-Voting** according to Jurisdiction (1)

- Elections on **state level**

According to the **Federal Constitutional Court** the use of the current electoral computers **does not comply with the constitutional principle of Transparency of the vote!** (*BVerfG*, Urt. v. 3.3.2009)



- Elections regulated by **state law on the level of municipalities**
(*Councils and Mayors of cities and districts*)

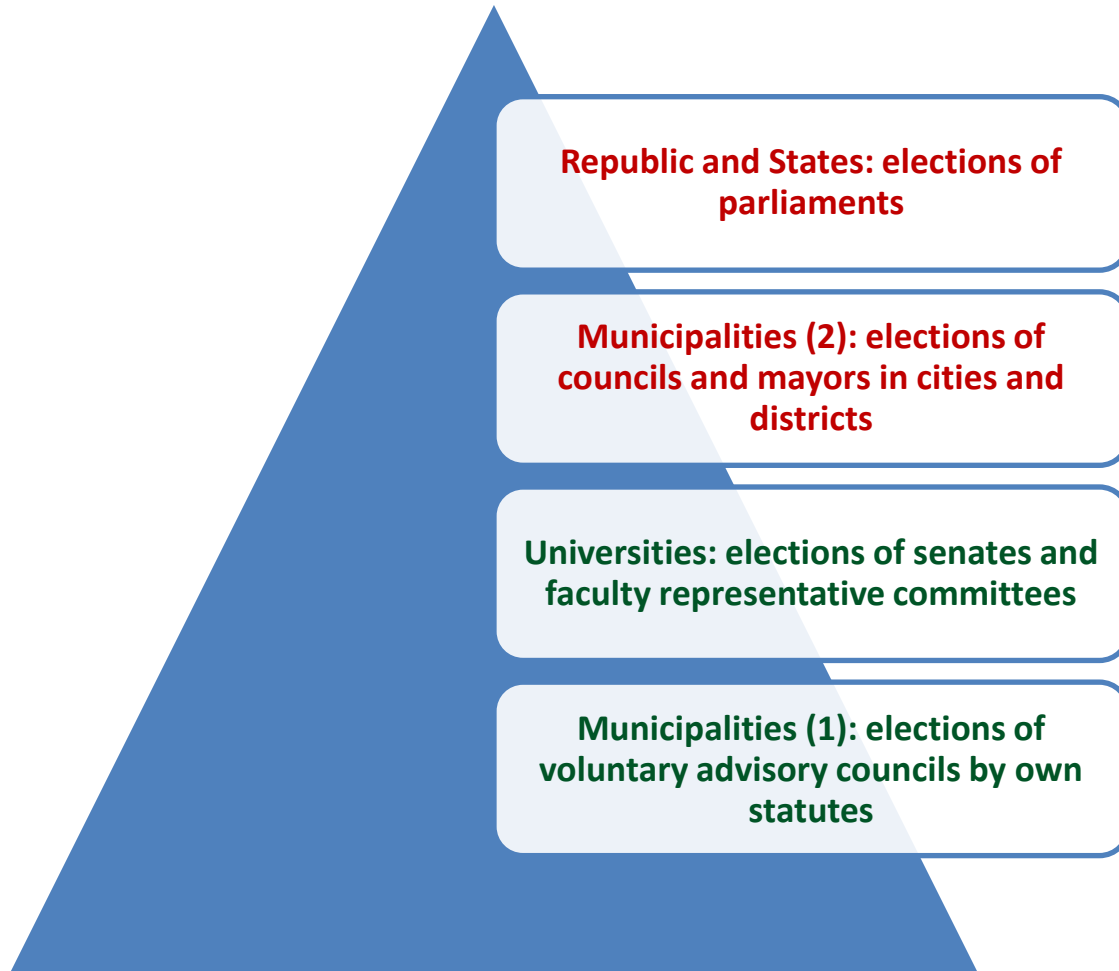
Because of a homogeneity clause in the constitution (*Art. 28 I S. 2 GG*) there are almost the **same juridical conditions (problems)**.

Introduction of **E-Voting** according to Jurisdiction (2)

- For elections of the Senate and Faculty Representative Committee in the universities there are possibilities to **introduce E-Voting** by **regulations of the university** under certain conditions (ThürOVG, Urt. v. 30.5.2017 and Supreme Administrative Court: *BVerwG*, Beschl. v. 14.3.2018).
- The lowest juridical conditions exist for elections of **voluntary advisory Councils in municipalities**. The introduction of E-Voting is in principle permitted. Basic level of security and freedom from manipulation must be considered.



Increasing Requirements of Online Elections



Applications for the Introduction of E-Voting

Universities

- Introduction of E-Voting by own **election-statute**
- Consideration of the voters turn out and the electoral principles (process of **weighing up**).
- **Safety measures and electoral standards** in the statutes of the university

Municipalities

- Voluntary advisory Councils introduced by **own statutes**
- The **regulations of the elections** must also be ruled in these statutes.
- Consideration of the voters turn out and the fundamental electoral principles (process of **weighing up**).



Process of Weighing up by the Self-Administration Body



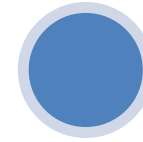
Legal risks

- Securing **authentic voting**
- Election decision by voters and **not by computer**
- Protection **against recognizability** of voting
- **Traceability** of your own vote
- Danger of **manipulation**



Legal advantages

- Positive aspects for the **generality of vote (voters turnout)**
- Effects of political legitimacy?
- **Avoiding** unconscious false labeling, counting errors, misinterpretation of the will to vote



Weighing up

- responsibility of the statutory body
- regulatory requirement
- minimization of the legal risks



Organisation of electoral Elections in Universities

- Example: **Friedrich-Schiller-University Jena** [s. BVerwG, 14.3.2018]
- Detailed regulations on electronic voting in the **election-statute** (voting, beginning and end, disturbances, technical requirements, counting etc.)
- Electoral-register on **university-owned** servers with **PIN u. TAN for each voter**
- Electoral system that follow **current technical standards** (Federal Office for Security in Information Technology)
- Note on **free** sources of supply for **security** software and ways to secure the private computer
- Voting on the PC or Smartphone



Legal Requirements of electoral elections in Universities

(1) - ThürOVG, Urt. v. 30.5.2017 and Supreme Administrative Court: BVerwG, Beschl. v. 14.3.2018 -

- **Clear regulations** are required to safety measures and minimum standards.
- The voting decision must arrive unadulterated in the electronic ballot box and must be counted as such.
- An espionage on the election process must be avoided by appropriate technical precautions.
- It is also necessary to regulate how public enumeration should be carried out.
- Internet dialing from the home computer should not be the only voting option you can choose.



Legal Requirements of electoral elections in Universities

(2) - ThürOVG, Urt. v. 30.5.2017 and Supreme Administrative Court: BVerwG, Beschl. v. 14.3.2018

- A neutral official Committee has to verify the **functionality of the used electronic official hardware and software** and their correct representation of the suffrage.
- Only electronic **software applied by public authority** may be used for voting and counting.
- In order to exclude double votes or a falsified vote, a corresponding **identification** of the person making the selection is required by the Public Office.
- It must be possible for the votes cast to be reviewed by the voters before counting.
- Also, in the case of electronic voting, there must be the possibility to cast an in-valid vote or no vote.



Electoral elections of **voluntary advisory Councils in Municipalities**

- Significantly high scope!
- Introduction of elements of electronic participation can first be tested and evaluated in these areas.
- Basic level of security and freedom from manipulation must also be guaranteed here.



Resumee

- The **introduction of E-Voting in State elections of Parliaments and elections of Councils and Mayors in cities and districts** in Germany is at present not possible.
- The use of online participation in **elections of Senates and Faculty Representative Committees in universities by own statutes** is considerably freer and respected by the jurisdiction.
- Electoral **elections of voluntary advisory Councils in municipalities by own statutes** have even lower legal requirements.



**Thank you very much
for your attention!**

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