

# Legal Requirements for Binding Municipal Electronic Participation in North Rhine-Westphalia

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## Motivation and central research topic

The central research topic is how binding electronic participation (E-Voting) can be introduced and implemented legally on the municipal level in the German state of North Rhine-Westphalia (NRW). Both elections and referenda are covered.



The German and also NRW-constitution stipulate that mandatory elections/referenda have to be general, direct, free, equal and secret. The German Constitutional Court (Bundesverfassungsgericht - BVerfG) also decreed that they have to be transparent, i.e. the voter has the right to understand the process and follow how the result came about. It thus declared the use of voting-machines (as applied for several years) unconstitutional in 2009. Hardly any attempts have been undertaken since to develop E-Voting methods for such elections, though they have been used e.g. in elections to student-parliaments. The dissertation will explain whether and how these techniques can be used also for non-mandatory elections/referenda or possibly even mandatory E-Voting on the municipal level in NRW.

## Approach and current status

Focal point is the decision of the German Federal Constitutional Court (BVerfG) of March 2009 – while declaring the machines used unconstitutional it upheld the general idea of possible valid and legal E-Voting. In addition to introducing the principle of „transparency“ the BVerfG also applied the state structure principles of „Democracy“, „Republic“ and „Rule of Law“ upon the electoral process. This landmark decision is expanded upon by two rulings of the Thuringian High Administrative Court which deal with Online-Voting at the University of Jena. In addition to these judicial rulings numerous scientific publications are given consideration. Little has been published about whether the rules for mandatory elections/referenda also apply to non-mandatory, but legally binding participatory processes. This is of particular importance with regards to the inclusion of § 27a into the NRW Community Order. § 27a GO NRW provides for representation of special interest groups like the elderly or persons with disabilities in a non-mandatory, but nevertheless binding, in political participation with the municipalities deciding upon the exact process.

At the comparative legal level Estonia as leading nation with regards to Online-Voting and E-Democracy is looked at to see whether and to which extent the mechanisms used there can be legally implemented in Germany. Estonia introduced Online-Voting on all levels in 2007 and almost all interactions citizen-state can take place Online.

The topic was approached in a longer legal essay 2015 („Können elektronische Wahlen verfassungsmäßig sein?“) and shorter essay 2016 („Constitutional Parameters for E-Voting in Germany“). Findings were also presented at various conferences nationally and internationally, in the disciplinary and interdisciplinary context. The thesis will be finished and handed in early 2018, the completion/oral exam is planned for the summer or fall of 2018.

## Inter- and transdisciplinarity

The dissertation focusses on legal aspects while the topic also encompasses issues of Political Science (Implementation of Guidelines in the political process, issues of low voter turnout etc.), Sociology and Communications (e.g. possible effects of E-Voting on voter turnout, issues of the „digital divide“ and persons from „underprivileged educational backgrounds“ in political participation) as well as Computer Science (Cryptography, technical possibilities of electronic devices etc.). Alongside the central research question general issues like the importance of political participation for Democracy, legal and other aspects of voter turnout, inclusion of all groups into the democratic process etc. are covered.

These aspects and issues are reflected both in the choice of the supervisors as well as the content of the thesis, which nevertheless is aimed at obtaining a Juris Doctor degree.

The thesis is a cooperative endeavor by the University of Applied Sciences for Public Administration (FHöV) NRW at Cologne and the Heinrich-Heine University, Düsseldorf. In addition to this transdisciplinary approach, the City of Cologne, specifically its experts on elections, have been a partner from the very start to ensure applicability, feasibility, viability and usability of the theoretical findings in practice.

## Supervision team

- Prof. Dr. Frank Bätge, Law, Univ. of Appld. Sci. Public. Admin. NRW
- Prof. Dr. Martin Morlok, Department Of Law, Heinrich-Heine Univ.
- Prof. Dr. Stefan Marschall, Dept. Of Political Science, HHU D`dorf
- Herr Christoph Hurniak, City of Cologne