

Mass resignations of municipal councillors. Abuse of rights or a legitimate instrument of political struggle?

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Abstract

This thesis addresses the question of whether mass resignations of municipal councillors submitted in order to trigger new elections constitute an abuse of rights.

In the introductory chapter, I first discuss the concept of new elections and their legal aspects, which have been neglected in the literature so far. A necessary basis for understanding why to even ask the above research question is to approach why and for what reasons new elections are called, especially in small municipalities. In practice, it appears that the calling of new elections by means of mass resignations is used as a tool by which a minority of councillors seeks to claim more influence than it should have according to the election results.

The following chapters focus on the central theme of the thesis, which is a critical analysis of the decision-making practice of the administrative courts. This is not entirely uniform. Some courts view mass resignations as an abuse of rights, while others consider them to be an expression of the free exercise of the mandate of a municipal representative.

The third chapter focuses on the legal doctrine of prohibition of abuse of rights and is more theoretical in nature. In it, I draw attention to some of the more general and partly controversial features of the concept of the prohibition of abuse of rights as developed in the case law of administrative courts, in particular the Supreme Administrative Court. On the one hand, the prohibition of abuse of rights is an instrument which is to be applied rarely (restrictively) as an exception to the rule that an individual may do anything not expressly prohibited by law. At the same time, however, its application is possible in principle at any time and in any area of the legal order (extensive application). I also reflect on the meaning of the prohibition of abuse of rights in fundamental rights law.

The final chapter then focuses on a critical evaluation of judicial decisions and aims to answer the main research question of this thesis. I argue that mass resignations filed to trigger a new election are not an abuse of rights. Indeed, the right to resign is covered by the principle of free exercise of the right to vote and should be seen as part of the representative's political responsibility.