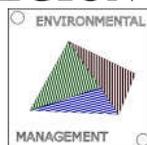


POSTAVENIE KONTROLÓRA V OBECNEJ SAMOSPRÁVE VO VYBRANOM REGIÓNE SLOVENSKA

Pavol MIHÁL

POSITION OF THE CHIEF INSPECTOR IN MUNICIPALITIES IN A CHOSEN REGION OF SLOVAKIA



ABSTRAKT

Cieľom článku je skúmanie Zákona o obecnej samospráve, najmä v súvislosti s postavením kontrolóra obce a vzájomným vplyvom na fungovanie samosprávy. Zameriavame sa najmä na územný celok Skalica, skúmame voľbu kontrolóra a tiež finančné odmeny. Analyzujeme zákonnosť procesu voľby a spôsob vykonávania úloh. Takáto osoba na úrovni obecnej samosprávy by mala byť zárukou nezávislej kontroly obce, pričom článok poukazuje na možné nedostatky spojené s voľbou a kritériami výkonu tejto funkcie.

Kľúčové slová: kontrolór, voľba, obecná samospráva, profesionalita, nezávislosť

ABSTRACT

The purpose of this paper is to examine the Law on Municipalities, specifically in terms of the expected and the real state of an appointment of the chief inspector to the function in a chosen region of Slovakia, specifically in the district of Skalica. We focus on resolutions about election statement of the chief inspection of a municipality, the election itself, as well as his or her salary conditions. We analyse the legitimacy of the election and the way the office is held. The chief inspector should be professionally capable and independent already when being elected. An independent chief inspector is a guarantee of an independent inspection and stability in the local government. Our examination of local governing proofs that its resolutions are not professionally prepared, as there are cases where legal procedures are absent while adopting resolutions about election of the chief inspector of a municipality.

Key words: Chief inspector, election, legitimacy, professionalism, independence, municipality, Law on Municipality

Research type: research paper

INTRODUCTION

The position of the chief inspector in a local government is defined by §18 of Law no. 369/1990 Coll. Law on Municipalities. This statutory provision determines the position of the chief inspector, the election process and legal limitations, range, duties and rules of inspection activities.

The chief inspector, according to the above mentioned law, is not defined as a municipal authority but as an obligatory employee of a municipality, which leads to several differences in this legal position. „The law does not specify that it is an obligation of each municipality to have the chief inspector and that causes application difficulties in reality.“ (J. Tekely, M. Hoffmann, s. 594).

The statutory provision of Law on Municipalities according to § 11 section 4 letter j. „to elect and dismiss the chief inspector of a local government, to set the range of his activities and his salary and to approve the

remuneration of the chief inspector“ makes an impression that it is up to the members of the local parliament of a municipality if they elect the chief inspector or not. This was the reason for uncertainties when the Law on Municipalities had been executed in the past, mainly as far as § 18 is concerned. The explanatory statement of an amendment of the Law on Municipalities no. 369/2004 Coll. clearly states that „each municipality is obliged to create an effective system of inspection and have the chief inspector in place in a way determined by the law. This amendment in § 30 section 2 also determines that „those municipalities in which the chief inspector is not elected or the inspection is not performed by the chief inspector common for several municipalities, must have had a chief inspector elected by January 1, 2005 as ordered by this law. The major of a municipality is obliged to sign an employment contract with the legally elected chief inspector within 14 days from the election.

When preparing this paper, we focused on the legal procedure of election of the chief inspector in Skalica district in Trnava autonomous region for the last 2 years, which means from the second half of the year 2014. We analysed into details the process of election of the chief inspector, from the statutory provision of a local council about the election, to the election itself and statutory provision of the local council about the newly elected chief inspector. This paper does not focus on all municipalities in Skalica district. It takes into account those which performed the election of the chief inspector during the analysed period of time. We have gathered information given on official Noticeboards, web sites and municipal newspapers. Considering the given criteria we analysed the election process.

There are several methods used in this paper: observation, experiment, analysis, synthesis, comparison.

STATUTORY APPOINTMENT OF THE CHIEF INSPECTOR – THEORETICAL BACKGROUND

Chief inspector is an elected function, elected by the municipal council and is employed by a municipality. If the council does not allow otherwise, the chief inspector is restricted in some specific activities, which is entrepreneurship, other employment, membership in leading, inspecting and supervising authorities of legal entities which perform entrepreneurship. Chief inspector does not need an approval of the council for entrepreneurship or employment in fields such as research, pedagogy, lecturing, interpreting, publishing or art. Chief inspector must not hold office as a member of a local parliament, mayor, member of an authority in a legal entity established by a municipality, or have another employment in the municipality in which he performs inspection.

In case of conflict of these functions according to §18 section 2 of Law on Municipalities, the function is cancelled as stated in § 18 section 8 letter g. There is no need for a resolution from the municipal council. They are obliged to take this into account and make a new election statement.

It is demanded by the law that the candidate for a chief inspector has at least complete high school education, which means he has to hand in a certificate about graduation.

The law further specifies and demands from the candidate to have a clean criminal record. The extract must be no older than 3 months.

The law specifies that the new election is in place during the last 60 days of the current tenure and in the same time the election must be stated at least 40 days upfront. The new election must be made public on an official Noticeboard.

To become the new chief inspector, a candidate must obtain an absolute majority which emphasizes the importance of the chief inspector. The absolute majority is also necessary when revising the resolution about election of the chief inspector or when he is removed from office. In case no candidate obtains the absolute majority, there is a second round with two most successful candidates on the same negotiation. To get the office, only a simple majority is needed (to have one vote more than the other candidate). If both candidates get the same amount of votes, the winner will be chosen by lot.

Election statement is dependent on an approved statutory provision of a municipal council. The approval is given by an absolute majority of all present members of local parliament marked as: „About the method and execution of the chief inspector election of municipality XY and about detailed requisites of a written application“, which areas stated below:

- Introduction of legislation based on which the election is stated (law number, number of statutory provision).
- Requested conditions such as complete high school education (municipality has no legal right to amend this conditions) and integrity.
- Requested documents such as a copy of the certificate proving the highest finished education and criminal record not older than 3 months (this one has to be in date also when opening envelopes by the municipal council or a committee with this responsibility), eventually additional documents such as CV or proposed action.
- Setup of working hours, defined by municipal council. In case this provision is absent, chief inspector is elected on full-time directly by the law.
- Details regarding the method of election (public or secret voting, option of the candidates to step forward and introduce themselves).
- Publishing of legal deadlines to submit written registrations which must be at least 14 days before the date of election. It is necessary to deliver the registration directly to the registry of the municipal office within the 14 days.
- Publishing of the election date.

This resolution „About the method and execution of the chief inspector election of municipality XY and about detailed requisites of a written application“, is made public by the municipality in two ways – on a Noticeboard and another usual way (website, municipal newspaper or TV and others).

In this case, the mayor of the municipality does not have the right to stop execution of this resolution by no signing it. It is always valid, even without his signature. From this reason it is very important that the resolution about election of chief inspector has a form of separate resolution.

RESEARCH METHODOLOGY

The focus of our research was to examine an appointment of the chief inspector of a municipality into his office. We researched legal requirements of resolutions about election statement of chief inspector. We used an experiment to actively join the process of election by participating as one of candidates on the work position of the chief inspector.

We would like to point out a legitimacy or lawlessness of the course of the appointment of the chief inspector of a municipality into his office in examined municipalities of the chosen region.

During our cognitive cycle, considering the addressed issue, we do not speak only of one scientific method, but rather about a certain file of scientific methods, which are related to single steps of the cycle. We have divided ours into the following groups:

- We have setup the topic of our research, chosen and defined an issue to be looked into.
- We have studied the necessary literature and gained an overview of the issues.
- Main goals have been set and hypothesis worked out of our research.
- We defined the methodology for our research.
- Working material and facts have been gathered.
- We have interpreted and presented the results of our research.

RESEARCH RESULTS AND FINDINGS

In our research we have focused on an appointment of the chief inspector in municipalities of Skalica district in Trnava autonomous region. From the overall number of 21 we researched 7 municipalities from the second half of the year 2014 to now. The researched sample was limited because of a 6 year tenure of the chief inspector. There was 7 election statements in this time horizon and we actively participated on each of them.

Research analysis and results of resolutions given by municipalities about election statement of the chief inspector.

Having analysed the election statements of 7 chosen municipalities, we found out that only 2 of them met legal requirements of the resolution „About method and execution of election of chief inspector“. These are **Gbely** and

Brodské. In **Brodské** we should bring into focus the fact that envelopes with registrations for the position of chief inspector are opened directly in the council where he or she is elected, which means that none of the members of the local parliament will have the chance to look into the registrations and CVs of the candidates beforehand. There is a space for each candidate to introduce themselves directly in the council. However this remark is not critical and it does not influence a statutory course of the election.

Another municipality, whose resolution „About method and execution of election of chief inspector“ met the legal requirements on the first sight, was **Holíč**. However the attachments to which the resolution directed us, were not available in public resources.

A similar case is the municipality **Radošovce** where attachments are not publicly available in the memorandum. **Radošovce** together with **Kopčany** and **Chropov** state a tender instead of „About method and execution of election of chief inspector“ which is not correct according to the legal status of the election. Even though **Radošovce** met the statutory deadline of 14 days for registrations to be delivered to municipal office (**13.02.2015-27.02.2015**), there was an issue meeting the deadline for election statement of chief inspector, which is at least 40 days before execution of the election (**29.1.2015**).

Similarly to the previously mentioned municipalities, **Kopčany** did not meet the requirements for resolution „About method and execution of election of chief inspector“ given by the law and named the resolution „Election statement of local council in Kopčany. Communication of the deadline for registration and date of election.“ instead. In this case, the statutory deadline for handing in the registrations, which should be at least 14 days before election, was not met (**20.10.2015 – 28.10.2015**).

The most complicated analysis of the resolution „About method and execution of election of chief inspector“ was in municipality **Chropov**. Looking into the memorandum of local council, a tender was mentioned in this case. However there was no other resolution of that kind. Resolution no. 7/2015 approves only time work of 0,026h but does not state any election of chief inspector. Furthermore the deadline for handing in registration was not met, instead of 14 days there were only 4 days available (**25.2.2015 – 01.03.2015**).

This analysis proves that none of the chosen municipalities complied with the resolution „About method and execution of election of chief inspector“ considering all its statutory requirements. Some larger municipalities in Skalica district were close to comply with the law but in case of **Chropov** we believe that the course of election would be lawless and should be cancelled after all.

Analysis of experiment and course of election of the chief inspector in chosen municipalities

Holíč – election statement of the chief inspector complied with the law. 7 candidates registered for the position. One of them gave up and the other 6 met all requirements given by the law. There are 16 members of the local parliament in **Holíč** but only 15 of them were present at the election. In the first round a candidate needs to obtain an absolute majority which means 9 votes altogether. The chief inspector was elected with 14 votes in the first round. The local council challenged the new chief inspector to manage her industrial relations.

Gbely – election statement of the chief inspector complied with the law. Registration as well as resolution no. 63/2015 about election of the chief inspector of the municipality included a part-time employment of 0,2h. Registrations were handed in by 3 candidates within the statutory deadline. There are 12 members of the local parliament and 10 of them were present at the election, which means that 7 votes were necessary for the absolute majority. In the first round none of the candidates obtained it and consequently 2 most successful candidates went to the second round. Simple majority voted for the former chief inspector. It is probable that this chief inspector has another job since this position is only part-time. He should have it approved by the local council. However such a resolution was not to be found.

Radošovce – election statement of the chief inspector complied with the law, however instead of „election“ it said a „tender“, which is a common mistake. In this municipality, the former chief inspector resigned from the office on the local council on 18. December 2014 and communicated that his last day will be on 31. December 2014. According to the law, the local council was supposed to make a new election statement on that very day, however it was done only on 29. January 2015. Registrations were to be handed in by 13. February 2015 which met the requirements for a minimum of 14-day horizon for this process. However, the time horizon between election statement and election itself (**27.2.2015**) required by law was not kept. There were 3 candidates for the position of the chief inspector. There are 9 members of the local parliament and 7 of them were present at the time of election. In the first round, 2 candidates obtained 3 votes each and so the chief inspector was elected in

the second round obtaining 5 votes out of 7. An interesting fact is that after the election the local council appointed this position to be a part-time without having it mentioned in any previous resolution. This seems to be in conflict with the law. According to professional literature and also our opinion the chief inspector should get a full-time position on which he candidates. Similarly to the previous case, there is also no approval of another employment for the chief inspector given by the local council.

Chropov – the election statement in this municipality, as already mentioned above, has no statutory background, as there was no legal resolution about it coming from the local council. Another mistake was a shortened time horizon for handing in the registrations, from the 14- day period required by the law to 4 days (25.2.2015 – 01.03.2015). Moreover, instead of „election“ the municipality stated „tender“ for the position of chief inspector. Our experiment enabled us to experience secrecy of local council meeting in Chropov. We got in touch with the mayor who communicated us postponing of the meeting due to many absent members of the local parliament. The mayor of Chropov Ján Bartal did not invite the candidates for the position of chief inspector to the meeting and was making up stories about course of the meeting. It is obvious from the memorandum of the meeting that it took place in the planned time and date. According to it, there were 2 candidates and the chief inspector was elected in the first round by obtaining all the 3 votes of the present members. There is also no resolution about another employment for the chief inspector approved.

Kopčany, Trnovec – these municipalities don not make their memorandum public. We were not able to gather the necessary information even though we referred to the law no. 211/2000 Coll. about free access to information. From this reason we postponed the research in these municipalities.

Brodské – the election of the chief inspector in Brodské takes place only on 15. December 2016 therefore we cannot provide relevant findings about it yet. We have mentioned the municipality in this paper as we analysed the election statement resolution and our intention was to point out the deadlines and structure of the statement.

Municipality	No. of citizens	Statutory election statement	Date of election statment resolution	Date of election	40-day time horizon before election	Deadline for registrations	14-day horizon for registrations
Holíč	11218	✓	20.3.2014	6.3.2014	✓	29.1.2014	✓
Gbely	5218	✓	23.2.2015		✓		✓
Kopčany	2591	✓	16.9.2015	28.10.2015	✓	20.10.2015	X
Brodské	2360	✓	22.9.2016	15.12.2016	✓	1.12.2016	✓
Radošovce	1804	✓	29.1.2015	27.2.2015	X	13.2.2015	✓
Chropov	380	X	15.1.2015	1.3.2015	✓	25.2.2015	X
Trnovec	314	?	30.1.2015	27.3.2015	✓	11.3.2015	✓

Figure 1: Research results and findings

CONCLUSIONS

When preparing this paper, we focused on the legal procedure of election of the chief inspector in Skalica district in Trnava autonomous region for the last 2 years, which means from the second half of the year 2014. We analysed into details the process of election of the chief inspector, from the statutory provision of a local council about the election, to the election itself and statutory provision of the local council about the newly elected chief inspector. This paper does not focus on all municipalities in Skalica district. It takes into account those which performed the election of the chief inspector during the analysed period of time. We have gathered information given on official Noticeboards, web sites and municipal newspapers. Considering the given criteria we analysed the election process.

It is obvious from our detailed analysis that there most of the examined municipalities did not comply with the Law no. 369/1990 Coll. on municipalities. Some of the mistakes might lead to a lawless appointment of the chief inspector into function. It is mainly a problem of smaller municipalities (up to 3000 citizens) where the municipal leaders may be less professional. We believe that effective trainings of the authorities on local level would help improve this situation in terms of complying with the law and statutory procedures.

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CONTACT ADDRESS

Mgr. Pavol MIHÁL

Fakulta sociálnych vied Univerzity sv. Cyrila a Metoda v Trnave, Bučianska 4/A, 91701 Trnava, Slovak Republic

E-mail: mihal.pavol@gmail.com

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