

Analysis of Legal Powers of Municipal Wardens They Possess to Ensure Safety at the Local Level

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Purpose:

This article is primarily intended for students and other professionals at the Faculty of Criminal Justice and Security of the University of Maribor to familiarise themselves with the Slovenian regulation in the field of criminal justice and security. The article presents safety powers of municipal wardens from the perspective of the applicable Slovenian law. Readers may learn how the Slovenian legal system works at the local level, what general legal acts provide a basis for municipal wardens' actions and what are legal rules for their application.

Methods:

The article is a scientific review based on grammatical and dogmatic interpretation of applicable legal regulations and selected decisions of the Constitutional Court of the Republic of Slovenia, and on an analytical method (*de lege lata*) of the review of the Slovenian legislation in the field in question. The legal methods used by the author also include a synthetic method of comparing the legislation from the underlying Municipal Warden Services Act (»Zakon o občinskem redarstvu« [ZORed], 2006) and its main amendments set out in the Act Amending the Municipal Warden Services Act (»Zakon o spremembah in dopolnitvah Zakona o občinskem redarstvu« [ZORed-A], 2017).

Findings:

The paper is a comprehensive review of measures that municipal wardens may use to ensure safety at the local level. The author lists the relevant scientific and professional literature and argues about polemic issues with other prominent Slovenian authors dealing with the field in question, i.e., legal powers of municipal wardens. He mainly refers to the works of authors, such as Meško, Žaberl, Dvojmoč, Lavtar, Kečanović, Gostič, Brezovnik, Grafenauer, and Flander.

Limitations/Implications:

Due to the limited length of the article the overview of the municipal wardens' powers covers essential legal concepts. The author's intention is to introduce to the Slovenian or foreign readers the complex notions from the Slovenian legal system, sometimes in a non-technical way since the readers will be both from the field of law and from the field of criminal justice and security.

Practical Implications:

The article has practical application for domestic and foreign experts wishing to gain knowledge of the Slovenian regulation relating to safety at the local level. Definitions are correct and up-to-date and contribute, therefore, to boosting the knowledge in this field. The article contains a further overview of terms to broaden the understanding of the legal categorical apparatus in local safety and security.

Originality/Value:

This is a review article and therefore its originality is limited since the author does not provide any new scientific information. Rather, he summarises, through a scientific legal analysis, what is already known. The original value of the article lies in the way the author puts the legal and repressive measures of municipal wardens in a readable and easy-to-understand context so that readers can remember them easily. The definitions of terms used in the article are useful and will be helpful to many readers in their future study or research.

Keywords: local safety and security, municipal and inter-municipal warden services, measures and powers of municipal wardens, right to security, Slovenian administrative law

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Analiza pooblastil občinskih redarjev, ki jih imajo za zagotavljanje varnosti na lokalni ravni**Namen prispevka:**

Prispevek je namenjen predvsem študentom in drugim strokovnjakom Fakultete za varnostne vede Univerze v Mariboru, da se seznanijo s slovensko pravno ureditvijo na področju kazenskega pravosodja in varstvoslovja. V prispevku so predstavljena varnostna pooblastila občinskih redarjev z vidika veljavnega slovenskega pravnega reda. Bralec se lahko seznaní, kako slovenski pravni red na lokalni ravni deluje, kateri splošni pravni akti so podlaga za ukrepanje občinskih redarjev in kakšna so pravna pravila uporabe le-teh.

Metode:

Prispevek je pregledne narave in temelji na gramatikalni in dogmatični razlagi veljavnih pravnih predpisov in izbranih odločb Ustavnega sodišča RS ter na analitični metodi (*de lege lata*) pregleda slovenske ureditve na naslovnem področju. Od pravnih metod avtor uporabi tudi sintetično metodo primerjave ureditve iz osnovnega zakona »ZORed« (2006) in prikazom glavnih sprememb v »ZORed-A« (2017).

Ugotovitve:

V prispevku so na pregledni način prikazani ukrepi, ki jih občinski redarji lahko uporabijo za zagotavljanje lokalne varnosti. Avtor sproti navaja pregled relevantne znanstvene in strokovne literature ter polemizira s stališči drugih vidnih slovenskih avtorjev, ki se z naslovnim področjem pravnih pooblastil občinskih

redarjev ukvarjajo. Pri tem navaja predvsem dela avtorjev, kot so Meško, Žaberl, Dvojmoč, Lavtar, Kečanović, Gostič, Brezovnik, Grafenauer in Flander.

Omejitve/uporabnost:

Pogled pravnih opredelitev pooblastil občinskih redarjev zaradi omejene dolžine prispevka zajema bistvo razdelanih pravnih institutov. Avtor skuša slovenskemu ali tujemu bralcu pravno zapletene pojme slovenskega pravnega sistema včasih približati tudi na poljudni način, saj bodo bralci tako s pravnega področja kot tudi s področja varstvoslovja.

Praktična uporabnost:

Prispevek je praktično uporaben za domače in tuje strokovnjake, ki se želijo seznaniti s slovenskim sistemom pravne ureditve lokalne varnosti. Opredelitve pojmov so korektne in sodobne, zato prispevajo k večanju znanja na tem področju. Prispevek prinaša dodatni pregled pojmov, ki širijo razumevanje pravnega kategorialnega aparata na področju lokalne varnosti.

Izvirnost/pomembnost prispevka:

Prispevek je pregledne narave, zato je njegova izvirnost omejena. Avtor namreč ne postavlja znanstvenih spoznanj na novo, temveč na pravno-analitični način z znanstveno metodo povzema in opredeljuje tisto, kar je že znano. Izvirna vrednost prispevka je v tem, da avtor pravne in represivne ukrepe občinskih redarjev postavi v berljiv in lahko razumljiv kontekst, da si jih bo bralec zapomnil. Definicije pojmov, prikazanih v članku, so uporabne in bodo marsikateremu bralcu prišle prav pri nadaljnjem študiju ali raziskovanju.

Gljučne besede: lokalna varnost, občinsko in medobčinsko redarstvo, ukrepi in pooblastila občinskih redarjev, pravica do varnosti, slovensko upravno pravo

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1 INTRODUCTION

Two types of local bodies have been set up in Slovenia to regulate minor offences in the field of security, falling within the powers of municipalities that most frequently sanction municipal and state offences subject to control by the municipalities. These are municipal warden services and municipal inspectorates. The focus of the sections below will mainly be on municipal warden services. As minor offence authorities, they form part of the national security system in the Republic of Slovenia. They have become an important part of the national security system after the adoption of the first Municipal Warden Services Act (»ZORed«, 2006). This law conferred on municipal wardens' specific powers that they had not previously possessed. The duties of municipal wardens and their area of work are set out in the »ZORed« (2006) as well as in municipal decrees adopted on a proposal from the mayor by municipal councils in accordance with Article 2 of the aforementioned act. On grounds of procedural economy and streamlining of municipal warden services, inter-municipal warden services may also be provided in the form of a body of a common administration between at least two

municipalities. When no municipal warden services are organised (or no inter-municipal warden services are co-organised) by a municipality, it should identify another minor offence body to be authorised to decide on offences pertaining to the area of work covered by municipal warden services (»ZORed«, 2006: Article 4).

In 2017, the »ZORed« (2006) was amended following the adoption of the Act Amending the Municipal Warden Services Act (»ZORed-A«, 2017), that substituted specific articles of the »ZORed« (2006), notably the provisions relating to the establishment of municipal warden services, areas of work, and duties of municipal wardens. Because of the constant extension of the municipal wardens' powers, their area of work is governed not only by the aforementioned act but also by other laws, such as the law governing the roads, the law governing public order and the law governing minor offences, etc. According to Lavtar and Kečanović (2007), the powers exercised by local communities under the new arrangements primarily include the duties focused on traffic control and maintenance of law and order.

The powers that municipal wardens may use in their work to ensure safety are material for the success of such services provided at the local level. According to Žaberl (2007), municipal wardens' powers resemble the police powers, but due to the nature of their work they are more specifically targeted and therefore much more sensitive as regards the interference with bodily integrity of individuals.

Municipal warden services are a part of the municipal administration and independent internal organisational units, which within the framework provided by the law and based on the municipal safety programme ensure public safety and public order in a certain area and carry out the tasks within their powers. »ZORed« is designed as an organisational regulation and it regulates the following areas of operation of warden services (Lavtar & Kečanović, 2007): (1) the establishment, scope of work, organisation, and management of municipal warden services, (2) the requirements for performing the tasks of municipal warden services, (3) the powers of municipal wardens, (4) the uniform, equipment, and emblems of municipal wardens, (5) training programmes and training in the professional competences of authorised officials of municipal warden services, (6) the content and manner of keeping records of municipal warden services. An important document for the operations of a municipal warden service is the municipal safety programme, which is also adopted by the municipal council upon the proposal of the mayor. The programme details the type and scope of municipal warden service tasks, taking into consideration an assessment of the safety situation in the municipality. The safety programme is a long-term municipal strategic document that determines the starting points for ensuring a safe and quality life at the local level (Lavtar & Kečanović, 2007).

Therefore, in the sections below this article is drafted using the grammatical interpretation of applicable laws (a *de lege lata* analysis) relating to the wardens' powers, as well as the teleological interpretation of their powers tackling safety in municipalities (a *ratio legis* analysis).

2 REGULATORY FRAMEWORK OF MUNICIPAL WARDEN SERVICES IN THE REPUBLIC OF SLOVENIA

Article 21 of the Local Self-Government Act (»Zakon o lokalni samoupravi« [ZLS-UPB2], 2007) provides that the tasks of municipalities also include the provision of municipal warden services. Moreover, Article 49 of the same Act specifies that the tasks relating to the provision of public services falling within the municipal competence shall be carried out by the municipal administration.

The Municipal Warden Services Act (»ZORed, 2006«; »ZORed-A, 2017«) is the originating organisational legal act governing the work of municipal wardens. Article 3 of this Act sets out the scope of work and duties of municipal wardens, while its Article 5 specifies who shall perform the municipal warden functions. In Chapter II of the Act the focus is on the municipal programme on safety, coordination of programmes, provision of expert assistance and cooperation between wardens and police officers. Chapter III is dedicated to the powers possessed by wardens when performing their duties, and to the conditions for the exercise of such powers. Article 10 stipulates, *inter alia*, that the law governing the police duties and powers shall apply to specific powers whose application is not laid down in this Act.

Article 15 of the Road Traffic Rules Act (»Zakon o pravilih cestnega prometa« [ZPrCP-UPB7], 2021) stipulates that municipal warden possess specific powers that apply to municipal roads inside and outside settlements open to public traffic (»ZPrCP-UPB7«, 2021). Their activities include, among others, the control of environmental protection, traffic-calmed zones, pedestrian zones, driving a vehicle on a road, vehicles exceeding speed limits, stopping vehicles, parking and many others. The third indent of Article 15 reads: »On roads within built-up areas, on municipal roads outside built-up areas used for public road traffic, municipal traffic wardens shall regulate traffic, perform measures provided by this and other Acts, and measures provided by municipal acts regulating traffic according to this Act« (»ZPrCP-UPB7«, 2021).

In accordance with the provisions of the Roads Act (»Zakon o cestah«, 2010), municipal wardens possess powers to control the use of public and non-categorised roads, as well as a number of other duties, including those allowing them to withdraw a vehicle from traffic. Police officers, municipal wardens and toll supervisory inspectors oversee the implementation of this Act as part of the road traffic monitoring. On a road in respect of which municipal wardens have the power to provide control and the road is open to public transport, wardens may take provisional measures to prevent risks to road users if any deficiencies are identified posing a direct threat to the road safety. They shall notify thereof the competent provider of regular road maintenance services, the road owner or the road operator duly authorised by the road owner and the competent road inspection body. Municipal wardens may also order the removal of specific objects from roads causing dazzle to road users, reducing the view ahead on roadways, reducing visibility of road traffic signs or equipment, misleading, hampering or distracting road users (»Zakon o cestah«, 2010).

The Protection of Public Order Act (»Zakon o varstvu javnega reda in miru« [ZJRM-1], 2006) confers powers on municipal wardens to implement

the provisions of this Act relating to indecent behaviour, making noise, use of hazardous materials for banging, damaging an official sign, mark or decision, writing on buildings, vandalism, camping, use of animals, etc. In accordance with Article 25 of the ZJRM-1, municipal wardens may seize objects or gas mixtures for loud banging causing disturbance or a feeling of insecurity among people (»ZJRM-1«, 2006).

The Minor Offences Act (»Zakon o prekrških« [ZP-1-UPB8], 2011) does not lay down the scope of work of municipal wardens, their duties and powers. It is important, however, in that it stipulates general conditions for identification of minor offences and sanctions for such offences. In addition, general conditions for liability for minor offences are set out.

In accordance with Article 140 of the Constitution of the Republic of Slovenia (»Ustava Republike Slovenije«, 1991), the competencies of a municipality comprise local affairs which may be regulated by the municipality autonomously and which affect only the residents of the municipality. Legal sources produced in municipalities include statutes, rules of procedure, decrees, budgets, orders, rulebooks and guidance (Brezovnik & Grafenauer, 2006). On the basis of the General Administrative Procedure Act (»Zakon o splošnem upravnem postopku«, 2006), a municipal council shall confer by way of a decree official authority to conduct procedure and make decision in administrative matters falling within the primary competences of self-governing local communities.

A municipal safety programme is a basic and reference strategic and safety document covering the work of municipal wardens. It is adopted by a municipal council on a proposal from the mayor to determine the type and scope of tasks of municipal wardens based on the assessment of the security situation in the municipality (»ZORed«, 2006). It lays down the criteria for ensuring public safety and public order in the territory of the municipality as well as the goals and measures to achieve these goals. Moreover, its purpose is to develop partnership between the police and municipal wardens in the provision of all warden services as defined in Article 3 of the »ZORed« (Gostič, 2007).

3 ANALYSIS OF SAFETY POWERS OF MUNICIPAL WARDENS IN SLOVENIAN LAW

The right to security as determined in the constitution should be borne in mind when analysing the exercise of safety powers of municipal wardens. The modern concept of personal security thus on one hand entails personal security against violence or harm, and on the other access to basic human and social values. This includes, inter alia, protection against personal and structural violence and crime and protection against other social and natural phenomena that endanger personal security. More broadly speaking, the modern concept of personal security is also closely intertwined with the concept of sustainable human development (Flander & Tičar, 2019).

In accordance with Article 34 of the Constitution of the Republic of Slovenia (»Ustava Republike Slovenije«, 1991), everyone has the right to personal dignity and safety. This constitutional provision is concretised by the constitutional

theory and constitutional case-law. In its Decision No. U-I-25/95 (Ustavno sodišče RS, 1997), the Constitutional Court of the Republic of Slovenia explained, *inter alia*, that the right to personal security is primarily a negative right. As such, this right imposes on the state, local communities, other holders of public authority and in general on everyone the obligation to abstain from any intentional inadmissible interference with bodily integrity and security of an individual. Any infringement of the right to personal security is prohibited by the constitution, except for those explicitly allowed (U-I-25/95).

On the other hand, the right to security is also a right to positive state action as set out by the Constitutional Court in its Decision No. Up-1082/12 (Ustavno sodišče RS, 2013). The state and local communities are required to actively seek to ensure the highest possible reasonably achievable level of security of residents.

In this respect, local community authorities are also obliged to ensure to the entire population, within the scope of their powers, efficient criminal law, minor offences law, civil law, administrative law and other legal protection against any interference with their personal security (Ustavno sodišče RS, 2013). The sections below contain an analysis of repressive powers of municipal wardens in the field of ensuring safety and security.

In order to ensure security municipal wardens may impose the following measures and carry out the following proceedings in which a penalty is imposed:

1. A warning is the least restrictive measure that may be used by a municipal warden. This power is regulated in the »Police Tasks and Powers Act« (ZNPPol, 2013). Wardens may issue a warning to draw attention of natural and legal persons, including state authorities, to the circumstances, acts and omissions that could constitute a threat to human life, security, property or public order. It may be issued orally or in writing by using technical means or via public media. Warnings should be clear, brief and unambiguous.

When municipal wardens as an authority decide on the rights, obligations, and legal benefits of clients, they are primarily bound by the principle of legality. Their decisions are subject to the law and regulations both formally and substantively. Any decisions bound by the law are considered as primary and fundamental, meaning that an authorised officer shall use substantive and procedural rules as enshrined in the law. Another potential form of decision-making when issuing a warning is the use of discretionary decisions. It is legally permissible and governed in the »ZP-1-UPB8« (2011). The third decision-making option would be legally unbound or arbitrary decisions that are prohibited by law.

Discretionary powers of municipal wardens constitute a bridge between a series of unexpected, unpredictable situations and a substantive decision they should take. They are based on a clear legal authorisation under the Minor offences act (»ZP-1-UPB8«, 2011) of the misdemeanour authority, i.e. a municipal warden that holds this right and exercises it. A discretionary power is always determined by law. Instruments of a lower rank, such as government decrees, regulations of ministers or decisions issued by municipalities do not provide a sufficient legal basis for a legal and systemic regulation of discretionary powers.

Once a discretionary power to decide is laid down in the law, municipal wardens remain bound by substantive and procedural law. However, in addition to those other circumstances are taken into consideration. Wardens may make various decisions relating to the identification of a minor offence. They may issue a decision imposing a fine or a reprimand, a payment order if it is prescribed or they may suspend the procedure using a formal note. Municipal wardens possess discretionary powers when conditions are met for issuing a warning rather than a specific act, including sanctions.

The Minor offences act (»ZP-1-UPB8«, 2011) lays down when and how a warning should be issued, in what way municipal wardens are bound by regulations, what are the limits on the discretion and when the conditions are satisfied indicating that discretion powers are appropriate, namely: »The minor offence authority's authorised official may, instead of imposing a sanction, issue a warning to the offender in cases where the minor offence is insignificant and the official is of the opinion that a warning is a measure proportionate to the gravity of the act committed. The authorised official shall warn the offender and explain to him or her the nature of the minor offence. The minor offence authority may keep a record of warnings issued but shall not be allowed to process personal data in this context.«

2. Imposition of a fine in the case of minor offences forms part of wardens' powers they possess when a minor offence is established in accordance with the Minor offences act (»ZP-1-UPB8«, 2011). A fine is imposed as the main penalty for offences regulated in municipal decrees or laws which are subject to the review by municipal wardens in substantive and legal terms. A fine is always indicated on a payment order or a minor offence decision. Normally, a payment order is issued, but municipal wardens issue a decision Minor offences act (»ZP-1-UPB8«, 2011, Article 56.) if the substantive provision, defining a minor offence, provides for mandatory confiscation of objects in addition to the imposition of a fine; in the event of asset recovery; if a reprimand is issued instead of a fine; if a municipal warden imposes a fine lower than the minimum fine prescribed (only in cases of infringements of government regulations; in municipal regulations, however, fines are indicated in single amounts rather than using a scale of fines) and in other cases when the conditions for issuing a payment order do not exist.

3. Moreover, municipal wardens may give a **verbal order** when performing their tasks, including mandatory instructions and prohibitions, measures and activities directly impacting successful provision of municipal warden services (»ZORed«, 2006). This power resembles the police power, namely an order on the basis of which police officers may give instructions or require certain behaviour from individuals to be able to perform their tasks (»ZNPPol«, 2013).

4. Municipal wardens **establish identity** of persons in respect of whom there are grounds for believing, based on their behaviour and conduct at a specific place or at a specific time, that they will commit, are committing or have committed a minor offence or a criminal offence whose perpetrators are prosecuted ex officio. The identity is established by stopping a person in an appropriate manner and explaining the reason for that, followed by the request

to hand over a public document bearing the person's photograph issued by a state authority. If the person is covered or masked, the municipal warden may demand that the person uncover himself/herself to determine his/her identity. If the municipal warden has doubts regarding the authenticity of the public document or if the person does not have such a document, or if the identity cannot be established with certainty, the municipal warden may establish identity through a discussion, verification of data on identity with the aid of data from other documents and the aid of other persons, or at another location or in a manner suggested by the person, if such an action is deemed safe and practical. If, however, the municipal warden is unable to establish the person's identity he/she may request the police to establish the identity («ZORed«, 2006).

5. Municipal wardens may also conduct a **security check of a person** in accordance with the provisions of the «ZNPPol« (2013) specifying that a security check may be carried out of a person if according to the circumstances the person in question might attack someone or harm himself/herself. The security check includes checking the persons, their possessions and transport means, whereby police officers, municipal wardens will establish if the person is armed or carries other dangerous objects or substances on his/her person by tapping down using their hands the individual's clothes, gloves, hair coverings and hair and examine the shoes. A security check of a person does not include a body search, or a strip search and municipal wardens are not allowed to search any hidden parts of the vehicle. As a rule, the search is performed by a police officer of the same sex, except when a security search cannot be postponed. Technical instruments or a service dog may be used during the search («ZNPPol«, 2013).

6. **Confiscation of items** is a power not specifically laid down by the «ZORed« (2006) and as a result, the provision of the law applies governing the manner in which the power is exercised by police officers. It specifies that items intended for assault or self-infliction, as well as items that can seriously endanger public order or the general safety of people or property may be confiscated. An item must be confiscated so as not to cause unnecessary damage, a confiscation certificate must be issued to the person in question and confiscated items handed over to the competent body where a follow-up procedure is carried out. If proceedings against the person whose items have been confiscated have not been initiated before a competent body, the items must be returned to the individual unless they are regarded as dangerous items or as items to be confiscated by law or if the person unambiguously expresses his/her intention not to possess the item any longer. Any items to be confiscated under the law shall be destroyed under official supervision and a relevant report shall be drawn up («ZNPPol«, 2013).

7. By **detaining a person** municipal wardens may temporarily restrict the movement of a person subject to the proceedings, they must acquaint the person with the reason for his/her detention and if the person so wishes also with the expected duration of the detention. Detention should only be for the period necessary to fulfil the procedures or a maximum of one hour since the

beginning of the procedure. A person whose identity should be established may be detained at the scene; a person caught in the act of committing a criminal offence in respect of which a perpetrator is persecuted ex officio and a perpetrator of an offence falling within the jurisdiction of another misdemeanour authority when it is necessary to ensure security of persons and property (»ZORed«, 2006).

8. Municipal wardens are allowed to use **three different instruments of restraint**, i.e., physical force, means of cuffing and restraining and gas spray. Municipal wardens must not use instruments of restraint against children or the visibly ill, elderly or impaired persons, persons with apparent severe disabilities or visibly pregnant women, unless this is strictly necessary to bring their resistance to detention under control or repel an assault or prevent a person from self-harm (»ZORed«, 2006). As regards the power relating to the **use of physical force** the same conditions apply to municipal wardens as to police officers. Physical force may be used if they are unable to control the person's resistance in any other way, repel an attack or prevent self-harm of the person. Therefore, municipal wardens are allowed to use professional hand grips, hand, and foot strikes, throws and takedowns, exert expert pressure, physical force for pushing, shoving, transporting or separating people. The principle of professionalism applies to the use of any force (»ZORed-A«, 2017; »ZNPPol«, 2013). Municipal wardens may use **gas spray** if the conditions for the use of physical force are fulfilled and if they are unable to use any other less stringent instrument of restraint (»ZORed-A«, 2017). It is a means of defence to temporarily incapacitate the perpetrator. Aggressiveness of an attacker is not the sole sufficient precondition for the application of gas spray but also a simultaneous attack that cannot be averted (Zaberl, 2007). In accordance with Article 14 of the »ZORed-A« (2017), municipal wardens are allowed to **use means of cuffing and restraining** if a person resists detention, for averting an attack and preventing self-harm of the person.

4 ANALYSIS OF THE LATEST AMENDMENTS TO THE LEGAL REGULATION OF MUNICIPAL WARDEN SERVICES AND THE CONCLUSION

The »ZORed-A« (2017) brought about amendments to the previous »ZORed« (2006) with most amendments referring to the third chapter governing the powers of municipal wardens when performing their tasks. The first amendments relate to Article 10 of the »ZORed« (2006) reading: »Unless otherwise provided by this Act, the provisions of the Police Tasks and Powers Act (ZNPPol, 2013) and implementing regulations governing the principles and manner of using similar powers of police officers shall apply to the exercise of the powers of giving warnings, carrying out a security search, seizing items and the application of coercive measures.«

The second indent of Article 10 of the »ZORed-A« (2017) reads: »The exercise of the powers referred to in the preceding paragraph shall be subject to

the provisions of the Act governing police tasks and powers, unless otherwise provided by this Act.«

In Article 12 of the »ZORed-A« (2017) the term identity was replaced by identity. Municipal wardens, therefore, have the power to establish the identity, but it is not identical to the power of police officers who are given access to consult the data contained in appropriate records (Lavtar, 2017). If municipal wardens wish to carry out an identification procedure they must still request the assistance of the police.

Another amendment refers to Article 13 of the »ZORed« (2006), which stated that at the location of an incident, municipal wardens may detain a perpetrator and a person who has been caught committing a criminal offence for which the perpetrator is prosecuted *ex officio* or on the proposal, and that they were also allowed to detain a person where identification by the police was required, namely until the police arrive, but no longer than one hour (»ZORed«, 2006).

In accordance with the »ZORed-A« (2017), this Article now states that municipal wardens may temporarily restrict the movement of the person involved in a procedure, that they must clarify the reasons for detention to the person at issue and inform the person, if so requested, of the expected duration of detention. Moreover, municipal wardens may detain at the location of an incident a person whose identity needs to be established, a person who has been caught committing a criminal offence for which the perpetrator is prosecuted *ex officio* or a perpetrator if this is necessary to ensure the safety of people and property. The detention may last for as long as it is necessary, but no longer than one hour after the procedure has begun (»ZORed-A«, 2017).

Article 14 of the »ZORed-A« (2017) was also extended by stating more clearly the conditions for the application of specific instruments of restraint. In accordance with the amendment to the Act, municipal wardens may use the means of cuffing and restraining if the person resists detention, in order to repel an assault and in order to prevent a person from self-harm (»ZORed-A«, 2017). Municipal wardens may use physical force if they cannot otherwise bring the resistance of the person who needs to be detained under control, repel an assault, or prevent self-harm. Municipal wardens may use gas spray if the conditions for the use of physical force are fulfilled and if they are unable to use any other less stringent instrument of restraint (Lavtar, 2017). As a result of this amendment the issues not regulated with sufficient clarity in accordance with the »ZORed« (2006) were resolved. Under this amendment, the instruments of restraint are classified by severity level and the use of physical force, means of cuffing and restraining and gas spray is clarified better. Their application must be based on concrete cases, whereby an instrument of restraint should be used causing the smallest possible consequences (Lavtar, 2017).

Article 16 of the »ZORed« (2006) was amended by listing the powers, the use of which must be reported by municipal wardens to their superior officer.

In addition to the amendments, Article 28a was added referring to the records of the use of instruments of restraint. It states that municipal warden services shall keep records to be retained for two years. The information processed in the records include the data on the municipal warden who used the instrument of

restraint, the data on the person against whom the instrument of restraint was used and the information on the incident (»ZORed-A«, 2017).

The »ZORed« (2006) is a framework law defining the work of municipal wardens. The scope and tasks performed by officials authorised to perform municipal warden services are also set out in other laws and regulations. These laws are amended and give more and more powers to municipal wardens. The »ZORed-A« (2017) has brought about conceptual changes resulting in coordination of specific provisions from other laws by amending certain articles relating to the supervision of the use of powers of municipal wardens or articles regulating the conditions for performing the duties of a municipal warden. Nevertheless, municipal wardens still use the »ZNPPol« (2013) for the application of specific powers and comply with the conditions set out therein (Lavtar & Kečanović, 2017). In view of this, the first hypothesis may be confirmed since the »ZORed-A« (2017) has clarified more appropriately certain ambiguities of the »ZORed« (2006). The amendment to the legislation is considered useful by arranging in a comprehensive and systematic manner the organisation and determining the scope, tasks, and powers of municipal warden services (Lavtar, 2017).

As indicated above, the right of an individual to personal security is a relative right, meaning that it is limited by the rights and liberties of other people (Flander & Tičar, 2019). As a consequence, situations arise in the legal system where an individual's right to personal security is in conflict with other rights of other people. Municipal wardens must also pay attention to this concept of understanding safety at the local level.

Even though the duties and responsibilities of municipal wardens are increasing, municipal wardens continue to control primarily the municipal roads where they ensure safety and smooth traffic flow. Moreover, they ensure safety on municipal public space areas, protect public property, the natural and cultural heritage and maintain public order. The municipal wardens' powers should, therefore, be understood as the right and duty to perform the tasks as authorised officials on behalf of the state or a local community, whereby they should also consider specific principles and the manner in which the police powers are exercised (Dvojmoč, 2017).

However, both in theory and practice the general feeling is that the main reason why local communities prescribe penalties and introduce municipal warden services with the relevant powers in accordance with the regulations is to fund municipal budgets rather than perform their principal function, i.e. to ensure citizens' safety and security. If in any specific case such allegations turn out to be true the question arises as to the legitimacy and legality (Meško et al., 2016) of municipalities defining minor offences and prescribing sanctions (Tičar et al., 2020).

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