



Univerza v Mariboru

Fakulteta za varnostne vede



CENTRAL EUROPEAN
PROFESSORS' NETWORK

Dissemination event

ONLINE PUBLIC TRIBUNE

»Pandemic, State, and the Rule of Law«

In honor of International Human Rights Day

Microsoft Teams, Thursday, 9 December 2021, at 4 PM

Summary

The Slovenian authorities responded to the outbreak of the COVID-19 pandemic, *inter alia*, with measures and restrictions on fundamental rights that are comparable to those in most other European countries. Due to the COVID-19 crisis, a public health emergency was declared by the government in March 2020. It was revoked in the summer of 2020, reintroduced in the autumn of 2020, and revoked again in spring 2021. Disruptions to daily interaction, education and work; restrictions on freedom of movement from, into and within the country; prohibitions on gathering in public places; mandatory use of face masks in enclosed public spaces and other restrictions and prohibitions similar to those in other European countries were introduced and sanctions imposed for their violations. The legality and constitutionality of measures imposing restrictions on fundamental rights have been constantly challenged in the courts. Simultaneously, some legal experts have warned that Slovenia has been witnessing disproportionate and harmful restrictions on the fundamental rights with devastating consequences for the entire legal system. As in many other countries, protests against the measures and the government that gradually became permanent revealed the COVID-19 emergency as a moment of political suspension and heightened social confrontation. The pandemic, efforts to contain it, and the current situation in the country and society were debated in more detail at the Public Tribune which was held online on Thursday, 9 December 2021. The event was organised by the Department of Law and the Department of Policing and Security Studies of the **Faculty of Criminal Justice and Security of the University of Maribor**, as a dissemination event within the international research project on the interpretation of fundamental rights in Europe, coordinated by the **Ferenc Mádl Institute of Comparative Law**. The Public Tribune was carried out on the initiative of Professor Benjamin Flander, the Head of the Department of Law at the FCJS UM and a member of the **Central European Professors' Network**.

At the Public Tribune, the pandemic and the authorities' efforts to mitigate and limit its consequences were explored in public health, philosophical, constitutional and public safety perspectives by five professors of the University of Maribor. After a brief welcome note by **Professor Andrej Sotlar**, the Dean of the FCJS UM, **Assistant Professor Maja Modic**, the moderator, announced the first speaker **Professor Ivan Eržen**, a lecturer at the Faculty of Health Sciences and Faculty of Organizational Sciences of the University of Maribor and former Director of the National Institute of Public Health. Professor Eržen emphasized that an early response of the Slovenian political and health authorities, despite the relative unpreparedness for the sudden outbreak of a public health emergency, was balanced and successful, as the country recorded a relatively small number of infected persons and few deaths due to the COVID-19. In the early stages of the COVID-19 pandemic, in terms of mortality rate, Slovenia was at the very top of the list of countries with the lowest rate. According to Professor Eržen, unfortunately, this did not last long. After a good start, Slovenia continued its encounter with the COVID-19 pandemic significantly worse. Unprepared for the second wave of the pandemic, the country (i.e. the authorities which changed in the meantime) reacted quite distracted and chaotic, by taking increasingly stringent measures to curb the pandemic. According to Professor Eržen, some government measures were clearly incomprehensible, excessive, and disproportionate in the eyes of epidemiologists and other public health experts. Slovenia was one of the few countries in which the authorities adopted

stricter measures with more restrictions on the fundamental rights of citizens than suggested by the epidemiologists. Professor Eržen explained that it is usually so that the profession proposes strict and "idealistic" measures to curb the spread of infections and the disease, and then only some of these measures are actually enforced by the decision-makers. In Slovenia, however, the opposite was true - the authorities adopted restrictions that the profession would never have proposed because they were meaningless, unnecessary, and excessive. He explained that epidemiologists from the National Institute of Public Health did not and would not propose measures that obviously interfered too much with the lives of citizens. This was, *inter alia*, the reason for the clashes between experts from the institute and those who took over the professional management of the pandemic as members of the newly established government advisory group. Professor Eržen revealed that already in March 2020 the government has excluded the National Institute of Public Health from the decision-making process, although it should have a key role according to regulations and the national plan to tackle the pandemic. Noteworthy, Professor Eržen was removed from the position of Director of the National Institute of Public Health after giving an interview in the magazine Mladina. After that, he no longer had any influence on proposing and adopting measures to curb the COVID-19 pandemic.

In Slovenia, the role of the National Institute of Public Health in the event of a pandemic outbreak is clearly defined in the relevant legal and other documents. However, as Professor Eržen explained, the government decided that it did not need experts in the field of epidemiology and public health and set up a group of experts from other disciplines such as virology, surgery, and emergency medicine, who had no experience in the field of the pandemic management. The government almost overnight discarded the professional potential of the National Institute of Public Health, which the state had been building for decades. According to Professor Eržen, the government decided to ignore about a hundred experts from the National Institute of Public Health and work on their own, with the help of experts selected and appointed to the advisory expert group. In the circumstances of the outbreak of a new unknown infectious disease, the government replaced the entire platform and left the responsible tasks to experts with no expertise and experience with this field in their work so far. According to Professor Eržen, this was certainly a precedent on a global scale. He compared this incomprehensible act of the government with the situation that would arise if he had been approached by an acquaintance who just occupied the position of decision-maker and invited by him to the surgical department of the largest hospital in the country.

According to Professor Eržen, the described situation is still present, although some members of the government advisory group have changed in the meantime. He emphasized that he understood that experts in this group have a sick patient in front of their eyes and that they, therefore, propose all measures that could possibly prevent infection. In the view of Professor Eržen, this is understandable, but it should be considered that such an approach to managing public health cannot and will not be effective in a long term. It should be borne in mind that there are many other patients besides those suffering from COVID-19. As a result of the current approach to pandemic management, in the view of Professor Eržen access to health care in many other areas has been severely curtailed. He also drew attention to incorrect or poor communication with citizens, who should be informed in an appropriate way without threats that the number of interpersonal contacts should be kept to a minimum. He highlighted that at the beginning of the pandemic, when representatives of the National Institute of Public Health still had influence, they had to obtain government permission for every statement they made in the media.

Professor Eržen believes that the government's decision to paralyze the National Institute of Public Health soon after the outbreak of the pandemic and to appoint a group of advisers directly responsible to the government was wrong. He pointed out that the experts from the National Institute of Public Health did not know what COVID-19 would bring, but they had knowledge and experience that could certainly benefit the state and the authorities if it relied on them. He expressed disappointment over the

development of events during the pandemic in Slovenia. He also drew attention to the decisions of the Constitutional Court, which found that some government measures did not have an appropriate legal basis. However, there is a feeling that regardless of the decisions issued by the Constitutional Court, the executive branch of state power insists on the approach it has been practicing since the beginning of the pandemic. Over the past decade, experts from the National Institute of Public Health have sought to amend the Communicable Diseases Act to better regulate the action in the case of a pandemic, but this has never become a priority of the government and the legislature. According to Professor Eržen, smart authorities could quickly amend the existing legislation, which was found unconstitutional by the Constitutional Court. The current government tried to do it but failed. Nevertheless, Professor Eržen is happy that the number of patients and deaths of those with COVID-19 has recently started to decrease.

The second speaker was a distinguished **Associate Professor Friderik Klampfer** from the Faculty of Arts of the University of Maribor. Teaching ethics, professional ethics and political philosophy, Professor Klampfer's research focuses on issues such as moral responsibility, ethics of psychiatric treatment, philosophical methodology, and research ethics. With a hint of humor, Professor Klampfer expressed the hope that the event organizer will not regret inviting him as his speech was going to be a promotion of philosophy as an important stakeholder in the debate on the pandemic and its consequences. In contrast, according to his observation, with rare exceptions, the importance of philosophy when it comes to the debate on and understanding of the pandemic is in most cases minimized or even denied. He drew attention to the fact that philosophy has a "reputation" of useless science and pointed to the most common reservations about philosophical reflection on the pandemic. For example, it is usually said, according to Professor Klampfer, that "the house is on fire and therefore there is no time to philosophize" and that "philosophy would be at least useful, if not harmless if it knew how to limit itself, but it is not capable of it". According to him, a frequent criticism of philosophers is that they are the opposite of their pioneer Socrates, who knew he knew nothing. Today's philosophers, however, are convinced of the opposite, namely that they know and that no one else knows better than them. It is widely believed that everyone has their own opinion on the things that philosophers discuss, and that is why we do not need philosophers at all.

Despite the above, Professor Klampfer estimated that in the last year and a half in Slovenia the views of philosophers on the pandemic have been quite influential in the public debate. He highlighted several books published on and around the pandemic by fellow Slovenian philosophers, including Tomaž Grošovnik, Renata Salecel, Marija Švajncer, Slavoj Žižek, and others. He pointed out that philosophers almost without exception argue that the pandemic, and especially the fight against it, is fundamentally and irreversibly changing human society. Professor Klampfer, who also published several articles on this topic and gave an interview for one of the Slovenian newspapers, highlighted the controversial column "What Socrates would have to say?" written by his fellow philosopher Gorazd Kocijančič. The column was also published as a foreword to the monograph which agitated against the one-sided perception of the pandemic. Kocijančič problematized the official narrative regarding the pandemic (i.e. that the COVID-19 is a dangerous contagious disease and that the measures taken by the authorities to control it are necessary and justified) and expressed opposition to certain measures aimed, in his view, at destroying democracy. According to Kocijančič, we are in the middle of a social revolution that has nothing to do with the disease. The COVID-19 pandemic is a conspiracy, he claims, as almost all revolutions in human history have conspired. Professor Klampfer concluded that being a philosopher by profession is not in itself a guarantee that such an individual will be able to limit himself to the things he actually understands. He pointed out that the aforementioned monograph contains contributions by authors most of whom would probably be classified as skeptics, conspiracy theorists, or even members of the anti-vaccination movement. According to Professor Klampfer, the given example clearly demonstrates that similar to the general Slovenian public, philosophers are also divided when it comes to the pandemic and issues related to it.

For the rest of his speech, Professor Klampfer raised the ethical dilemmas and questions that are asked on a daily basis about the COVID-19 pandemic and require philosophical consideration. According to him, a philosophical question is, *inter alia*, a fundamental question with which the authorities face when adopting legal measures to contain the spread of the virus. Namely, the question of where the limits are that cannot be crossed in restricting fundamental rights in the name of ensuring public health and safety, and which fundamental rights should be given the priority. Among the fundamental dilemmas, which are also philosophical in nature, he also singled out searching for the balance between the right to life and health on the one hand, and other fundamental rights that are massively restricted by the authorities on the other. He was skeptical about the correctness of reasoning that if the restrictions of movement and gathering of people are not as strict as possible this can in itself be the cause of many infections and deaths. In his opinion, when adopting measures to curb the pandemic, a balance must be constantly sought between the various constitutionally protected values. And many harmful consequences of anti-virus measures on the people in general and the youth, in particular, must also be taken into account in this search. The consequences of the pandemic and measures to contain it must be assessed as comprehensively as possible.

Professor Klampfer also addressed the issue of trust and distrust in science and the problem that arises when scientists do not have a unified position on a particular issue or they simply do not have the answers as in the case of Omicron, the latest variant of the new coronavirus. In this regard, he noted the importance of a healthy degree of doubt in authorities, including scientific authorities, and pointed to what is currently manifested as an “inflation of doubt”, a kind of absolute doubt in everything, even in the findings of science. He noted that doubt was once an attribute of the critical attitude of a thinking individual. During the pandemic, however, we are witnessing the inflation of the unreasonable doubt which paves the way to spreading misinformation and false news. The question that concerns everyone in the current social situation is how to protect oneself from this information chaos.

In the concluding part of his speech, Professor Klampfer once again referred to government measures to curb the pandemic. He assessed that, in addition to questioning their constitutionality and legality, the broader question of their legitimacy and the legitimacy of the authority adopting these measures should also be raised. According to Professor Klampfer, measures must be taken in a democratic and transparent decision-making process, they shall pursue legitimate goals, their benefits must outweigh the social damage caused by them, and the burdens and benefits of measures must be equitably distributed among the population.

Associate Professor Benjamin Flander, the initiator of the public tribune, thanked those present for taking the time to attend despite the late afternoon. He especially thanked both guests Professor Eržen and Professor Klampfer and Professor Sotlar, the Dean of the Faculty of Criminal Justice and Security, for his introductory words. He also thanked Professor Modic for her great help in organizing the event. He explained that the fact that the Public Tribune has seen the light of day was mainly a consequence of two things: his participation in an international research project and membership in the Central European Professors' Network. In his speech, Professor Flander addressed the constitutional aspects of the COVID-19 pandemic. More precisely, he provided a brief assessment of the case law of the Slovenian Constitutional Court. Professor Flander pointed out that since the beginning of the pandemic the Constitutional Court has received over a thousand petitions and requests to review the constitutionality and legality of measures and that we could say with a bit of exaggeration that it has become a "court for COVID-19". The petitioners have been challenging in particular government ordinances as well as the provisions of the Communicable Diseases Act, which are the statutory basis for the adoption of measures by executive regulations. According to Professor Flander, the Constitutional Court issued some important decisions, while making compromises, both good and less good ones. From the adoption of its first decision onward, the Constitutional Court was also the target of critics from both left and right. When the Constitutional Court issued a decision regarding Art. 39 of

the Communicable Diseases Act, the lawyers from the right staged an uncompromising attack on the Constitutional Court on a private TV channel controlled by the largest government/parliamentary party. On another occasion, the former head of the government's legislative services who is an international lawyer stated that during the pandemic, the Constitutional Court took on a tragic role in relation to the state and its citizens. Furthermore, the current prime minister and the minister of interior wrote on Twitter that "the majority in the Constitutional Court will be co-responsible for anyone who falls ill or dies in the future due to COVID-19", and "that in the constitutional judges are not only top lawyers but also top epidemiologists and political supporters". Professor Flander drew attention to the fact that in decisions relating to the most exposed COVID-19 measures, the Constitutional Court in most cases did not find that the measures themselves were unconstitutional. On the contrary, it found that some measures were not based on the Communicable Diseases Act, while finally the Court also found unconstitutional the statutory basis (i.e. Art. 39 of the Communicable Diseases Act) for most of these measures. Professor Flander explained that the latter was received with great relief by government representatives, as the Communicable Diseases Act was passed in the early 1990s by their political opponents on the left. However, Professor Flander emphasized that in some cases the Constitutional Court found unconstitutional the measures themselves, not their statutory basis. Such was, for example, the Court's decision regarding the government ban on the protests and the restriction of protests to ten participants. Also unconstitutional was the government's insistence on closing schools for children with special needs.

Professor Flander went on to point out that in almost all cases, the review of constitutionality was proposed by individuals, not entities that can request the review (for example, the Ombudsman, courts, etc.). One of the rare exceptions was the request of the Police Union of Slovenia to review the constitutionality and legality of the VR (vaccinated-recovered) requirement for performing work at the employer's premises for certain public servants. According to Professor Flander, this was one of the most controversial government measures taken in Slovenia so far. Professor Flander explained that in the cases initiated by individuals the first question posed to the constitutional judges was whether the petitioners had the legal interest in the constitutional review. While the vast majority of petitions were rejected by the Constitutional Court, only a handful of initiatives have been found admissible and accepted for substantive consideration. Such was, for example, the petition for the review of the constitutionality and legality of the restriction on movement to the municipalities of one's residence. In this case, the Constitutional ruled by 8 votes to 1 that the petitioner succeeded to demonstrate the legal interest and found the petition admissible. Professor Flander explained that, according to the Constitutional Court Act and the previous court practice, three prerequisites must be fulfilled for the legal interest to be demonstrated. First, the petitioner should receive an individual legal act; second, challenging such an act, the petitioner should exhaust all regular and irregular legal remedies and, finally, when filing the petition for the review of the constitutionality of general legal act he/she should challenge the individual legal act with a constitutional complaint. The majority of constitutional judges ruled that it cannot be required from the petitioner to violate the allegedly unconstitutional or illegal provisions (i.e. to commit a minor offence) if this is the only way how he/she can receive an individual legal act to be able to exhaust all legal remedies and challenge it with a constitutional complaint. The Constitutional Court has taken the position that in such cases it is not necessary to file a constitutional complaint against an individual act for the petitioner to demonstrate the legal interest. In addition, the Constitutional Court ruled that the petition, in this case, opened an important precedent constitutional issue of a systemic nature, on which the court has not yet had the opportunity to decide. This was also the reason why the Constitutional Court found the petition admissible. By the same decision, the Constitutional Court rejected the petitioner's proposal to suspend the implementation of the provisions of the ordinance regarding the restriction of movement to municipalities of residence but suspended the provisions stipulating that this measure stays valid until revoked by the government.

Professor Flander indicated that the Constitutional Court issued its final decision in this case in August 2020. It ruled by 5 votes to 4 that the government ordinance restricting people's movement to the territory of the municipalities of their residence was consistent with the Constitution. According to him, this case is a typical example of Dworkin's "hard case". There was no legally "correct" decision in this case. In other words, a legally "correct" decision, in this case, could go one way or another. In this case, the assessment of the (un)constitutionality and the choice of the legal arguments depended on the personal (moral, aesthetic, etc.) preferences and characteristics of judges; ruling, in this case, was not a professional legal matter in the strict sense. In such cases, according to Professor Flander, the proportionality test ceases to be a tool that is supposed to lead to a constitutionally correct decision (i.e. to the "correct" weighing of constitutional rights/values). The proportionality test becomes hollow instead, it turns into a means of justifying a majority decision (whatever it is). According to Professor Flander, that is precisely what makes constitutional adjudication such a unique form of judicial decision-making. Professor Flander added that the Constitutional Court invalidated the suspended provision of the government ordinance. It ruled that the government should review the urgency and effectiveness of the measures taken on a weekly basis, taking into account the opinion of the epidemiologists and that on this basis it should extend or eliminate the measures.

Finally, Professor Flander also briefly addressed the decision by which the Constitutional Court found unconstitutional certain provisions of Art. 39 of the Communicable Diseases Act. In a separate opinion, one of the constitutional judges described this decision as "perhaps the most important decision of the year". Professor Flander explained that in this decision the Constitutional Court found the challenged provisions unconstitutional with a postponed effect of annulment. Despite the fact that the Constitutional Court has found these provisions unconstitutional, the government was able to take further measures on their basis. Professor Flander argued that the Constitutional Court established with this decision a strange situation of "constitutional unconstitutionality" of Art. 39. While the decision may look schizophrenic, according to Professor Flander it was a good compromise as it was and still is perhaps the best possible (the least bad) decision of the Constitutional Court considering the seriousness of the public health situation and extreme controversies surrounding the COVID-19 measures.

Professor Branko Lobnikar, Head of the Department of Policing and Security Studies of the Faculty of Criminal Justice and Security of the University of Maribor, presented the main characteristics of the Slovenian police response to the COVID-19 pandemic. He emphasized that talking about police activity during the pandemic was a big challenge for him and that the three speakers before him outlined very well the situation in which the police found themselves. As a sociologist, he noted that COVID-19 has made a far-reaching and irreversible change in society. It is probable, according to Professor Lobnikar that we will not return to the time before the COVID-19 pandemic. Not because of the pandemic itself, but mostly because of the way society reacted to the pandemic. According to Professor Lobnikar, the police are also part of this process all over the world, not only in Slovenia. If we compare Slovenia in this respect with the world, we cannot say in his opinion that the Slovenian police is something special, neither for good nor for bad. Professor Lobnikar recalled the consultation of police chiefs, which he attended in March 2020, at which participants agreed that action in case of violations of the COVID-19 measures falls within the domain of health inspection and that the tasks and powers of the police in the circumstances of public health emergency are limited. In his opinion, this view turned out to be utopian, which is especially true for the Slovenian police. In many countries, the police have gradually taken on an almost central role in taking action in relation to COVID-19 measures. In responding to the COVID-19 pandemic, police have acquired tasks that do not match their original tasks and powers. Protecting public order, ensuring the safety of people and their property, and preventing and investigating crimes and misdemeanors are tasks for which, according to Professor Lobnikar, police officers are primarily trained. In the circumstances of mass restrictions on the movement and gathering of people, mandatory use of face masks, quarantining, and general confinement of public life ("lockdowns"), police officers as law enforcers found themselves in a difficult position. The police as an organization and police

officers as public employees found themselves between Scylla and Charybdis of the authorities on the one hand and the people on the other. According to Professor Lobnikar, the police have forgotten that they have two masters, in addition to the government also citizens, whom it is obliged to protect and serve. Within the framework of its tasks and powers, the police are obliged to carry out the measures adopted by the executive branch, but in some places, they have more or less obviously forgotten that they must also serve their other master - the citizens. The legality of the implementation of police tasks is a necessary but not sufficient condition - in order for the police to carry out their mission in a democratic society, it must also gain the trust of citizens. In a democratic society, the police must also take into account the wishes and expectations of the people. In reality, according to Professor Lobnikar, the reaction of some states to the public health emergency was based on the doctrine of “consenting policing”, while other states’ reaction was quite authoritarian and repressive to the new social situation and so was the reaction of their police. He cited the British police as an example of the police resorting to the first approach and pointed out the French and Slovenian police as two examples of the police enforcing COVID-19 measures with high levels of repression. He also explicitly mentioned Indian police and scenes of beatings of people on the streets shown by some TV channels.

Professor Lobnikar also pointed to another process that took place during the pandemic. New tasks and powers had to be taken over not only by the police but also by municipal warden services, private security companies, and other stakeholders responsible for ensuring security. A novelty pointed out by Professor Lobnikar is the introduction of new technologies in the implementation of supervisory tasks of the police and other actors for providing security. On the other hand, in some countries such as Serbia, police officers performed civil protection and assistance tasks for the population, for example in the form of food delivery during the general closure. In the conclusion of his speech, Professor Lobnikar reiterated that the nature of police work had changed greatly during the pandemic. The most striking change is the shift from a modern approach to policing in democratic societies based on consensual solutions to secure social safety problems to a historically original and primary way of policing based on “law and order” mentality, cold enforcement of social rules and consistently punishing those who break these rules. As an example, he cited the Slovenian police and their duty to implement 64 different bans and restrictions set by government ordinances, and while implementing them they imposed 13,000 fines on violators worth five million euros. According to Professor Lobnikar, this was reflected in public opinion and the trust of the people in the police, which fell sharply during the COVID-19 pandemic and reached its lowest level ever. This, in turn, was reflected in the moral of police officers who perform police duties on a daily basis. Professor Lobnikar concluded that he understands the pandemic as a social mimicry of the life we have lived in recent decades, but despite, that he is neither a pessimist nor an optimist regarding our future. This is also true of his attitude towards the police. In his opinion, the discontinuity in the thinking of police activity, which will most likely be a consequence of the pandemic, may also be an opportunity for changes in the understanding of the police and police work for the better, not necessarily for the worse.

The last speaker was **Assistant Professor Miroslav Žaberl**, a lecturer in criminal law at the Faculty of Criminal Justice and Security of the University of Maribor, an expert in the field of use of police powers and instruments of restraint, former police officer, and former Director of Police Directorate at the Ministry of Interior. In his contribution to the Public Tribune, Professor Žaberl focused on the Slovenian police, their role during the COVID-19 pandemic, and the current situation in the police organization, which he generally assessed as very bad. He reminded that the speakers before him pointed out COVID-19 measures that were not necessary and proportionate or did not have an appropriate statutory basis, and the numerous prohibitions and restrictions imposed by the Slovenian police while implementing these measures. He also drew attention to the fact that the current government has poorly communicated the necessity of certain restrictions, often with the threats directed to the citizens. Furthermore, he pointed out the media coverage of the representatives of the current authorities, whom themselves did not respect the measures prescribed by government decrees, thus setting a very bad example for the

citizens. Such "slips" of those in power caused dissatisfaction, distrust, and the feeling of being second-class citizens among the people. Professor Žaberl argued, that the police, as a repressive body, found themselves in these circumstances between Scylla and Charybdis, as has been already pointed out by Professor Lobnikar. The police found themselves between the expectations of citizens on the one side and government representatives on the other. As an example, he pointed out the Prime Ministers and the Minister of the Interior, who expressed on Twitter on several occasions the expectation of how harsh the police should act in the event of violations of the COVID-19 measures by participants in the protests, which have become permanent in Slovenia. Professor Žaberl drew attention also to the fact that the time of COVID-19 pandemic was also the time of personnel purges in the Slovenian police. He reminded that in that period, the police did not have a director general at all, but two acting directors. This, in his opinion, also influenced lower-level police chiefs, who became increasingly servile to the leading politicians with public offices. According to Professor Žaberl, the aforementioned developments in the Slovenian police organization contributed to certain activities of the police and concrete examples of the implementation of police tasks and powers, which were pointed out by the Ombudsman and NGO's as questionable from the point of view of legality and legitimacy. Professor Žaberl, like Professor Lobnikar before him, pointed out that taking action on the basis of government ordinances prescribing measures to curb the pandemic is not the original duty of the police. Thus, the police had to take over some of the tasks of the Health Inspectorate and found themselves under constant pressure from the government representatives to act effectively and strictly in the event of violations of government ordinances. Professor Žaberl recalled a scene from one of the first protests when a photo of a protester and a police officer, who has been taking care of the safety of the participants at the protests. The police officer was then severely criticized by representatives of the government for his support of the rioters. As an example of controversial police action, Professor Žaberl pointed out carrying out identification procedures against people who intended to take part in the protests. According to him, in the police and misdemeanor legislation for such cases, there is a basis for warnings and nothing more. He further pointed out giving fines by the police to citizens who read the Constitution in the Republic Square (in front of the parliament building), eat in public places with face masks put aside, and write with chalk on the sidewalks. According to Professor Žaberl, the police officers on the ground received instructions from their bosses that they should impose fines and use instruments of restraint strictly according to the law and that this led to cases of repressive police action when it was not necessary. Professor Žaberl also paid attention to the analysis, which showed that the action of the police in the areas of different police administrations was very different. The probability that a citizen will be fined for violating certain COVID-19 measures was significantly higher in the area of certain police administrations than in the area of other police administrations. According to Professor Žaberl, this indicates, on the one hand, that those police officers on the ground were confused and did not always know when and how to act when it comes to the implementation of COVID-19 measures, and, on the other hand, that some police administrations (i.e. their superiors) did not succumb to the pressure from politics. Last but not least, Professor Žaberl also pointed to the violence at one of the protests, where the police were obliged to take action and prevent violent acts of certain individuals. In practice, however, they used the instruments of restraint against the crowd indiscriminately, which meant that tear gas was also used against peaceful protesters and even against the citizens who were not participants in the protests. Professor Žaberl concluded that the Slovenian police had lost the reputation and trust among citizens it had been building for three decades in less than a year. He expressed the belief that if the police were allowed to do what they can and need to do, the slips that we have witnessed would not happen and the reputation of the police would not be as damaged as it is.

The introductory presentations of the speakers were followed by a discussion, which Professor Eržen was unable to attend. Thus, Professor Modic first passed the floor to Professor Klampfer who acknowledged that he finds it difficult to add something relevant to what has been said in the speakers' contributions. He was surprised by Professor Flanders' point that, in the case of the constitutional review

of the prohibition of movement outside the municipality of people's residence, any decision of the Constitutional Court would be legally correct. He acknowledged that even in philosophy, there are cases with unsolvable moral dilemmas in which the individual, in any case, acts wrongly or both participants in the discourse are right or it is not possible to say which of them is right. Professor Klampfer wondered if there are several such "hard cases" in law and if such cases multiplied precisely because of the legal dilemmas and issues brought about by the pandemic. He also wondered if the specific political situation in Slovenia and the circumstance in which the COVID-19 measures have been taken also contributed to such "hard cases" becoming more common. He asked himself if such cases are partly the reason for the general dissatisfaction of the public with the Constitutional Court and wondered how we could explain to people in the most appropriate way that some decisions of the Constitutional Court are of such a nature that they can be right and wrong at the same time. Professor Flander replied that Professor Klampfer had posed a serious challenge to him, which would have been much easier if he had more time to answer. He explained that the fact that the Constitutional Court is the judicial forum that faces the so-called "hard cases" more often than other courts is indisputable in law and legal theory. However, this became even more apparent during the pandemic and with regard to measures to contain it. Professor Flander believes that closer monitoring of events in the Slovenian Constitutional Court reveals the true nature of the court's decision-making in such cases. The ratio of votes of constitutional judges, which was close in favor of government measures in the first COVID-19 related decisions (in addition to the aforementioned decision he pointed out the decision on the proposal to suspend the provisions of the government ordinance on night curfew), later changed, as some judges "switched" to the other side. Since then, there has been almost no decision in which the Constitutional Court would not find unconstitutionality of the government measures, although only exceptionally unconstitutionality of the measures themselves (in most cases the measures lacked or were not based on an appropriate statutory basis). According to him, with more thoughtful and careful action by the government, some of the unfavorable decisions could be avoided. Professor Flander reiterated that the assessment and choice of legal arguments in such cases depends on the personal preferences of the judges, not on their professional legal judgment in strict sense. In such cases, the line between judges who are more "liberal" and those who are more "conservative" is drawn even clearer than usual. According to Flander, this is typical of constitutional adjudication in all developed legal environments. There are also countries that do not know such divisions, but these are countries that lag behind in the development of the rule of law and democracy. Professor Flander has recently spoken to a constitutional lawyer from Belgrade who ascertained that such an example is Serbia. This country has a monolithic Constitutional Court, which throughout the pandemic more or less unanimously approved most of the government measures. The situation in Slovenia and in many other European countries differs significantly from the situation in Serbia and some other Central and Eastern European countries. Professor Flander pointed out that in the articles he had published on the subject, one of his theses was that the decision of the Constitutional Court ultimately depended on what individual constitutional judges gave more weight to the illusion of freedom and the illusion of security. In such decisions, the test of legitimacy and proportionality is only a form that the Constitutional Court fills in with arguments that should support the majority decision, whatever it may be. However, as already said, Professor Flander is convinced that there is nothing wrong with this. This is a normal situation because that is precisely why constitutional adjudication is such a special form of judicial reasoning. Professor Flander noted that through the constitutional discourse, which in its decisive part takes place in the constitutional courts, there is something that could be called a cultural struggle. Namely, a clash of different ideas and visions on how to organize and legally regulate human society, and at this particular period of time also a cultural struggle over what way to deal with the pandemic and its consequences is most appropriate. According to Professor Flander, the fact that the actors of the constitutional discourse in Slovenia are well aware of this was shown by the hysterical reaction of some "liberal" lawyers to the proposal of the President of the Republic to appoint Professor Rok Svetlič as a constitutional judge. Liberal-minded lawyers were so intimidated by the fact that the



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parliament could appoint a conservative constitutional judge, that they tried in every possible way to discredit the candidate.

Professor Lobnikar, who also took part in the discussion, added that as an expert he has a clear position on what police activity should look like during the pandemic and that he is convinced that citizens also have a clear position on this. The problem that has arisen is the far-reaching changes we are witnessing because of the pandemic. This problem is so much bigger, according to him, because people are afraid of change and we are currently experiencing this change very intensely. Whether this is a cultural struggle, a struggle for access to society's resources, or merely a process of social change is a question he does not want to answer. He is convinced that, on a global and local level, due to the aforementioned changes, we have begun to lose the community we knew before the outbreak of the COVID-19 pandemic. People are moving away from the public to the private, which is understandable given the pandemic containment measures. According to Professor Lobnikar, the pandemic is obviously not a time for people to come together, but quite the opposite; it is a time marked by a high level of social entropy, as Emile Durkheim would say.

The concluding thought was given by Professor Žaberl. He appealed to the authorities and the government to allow the police to carry out their tasks in accordance with the principles of the police profession and their operational autonomy. Thus, the security of citizens and the state would be ensured, and the current situation where everyone is dissatisfied would be avoided.