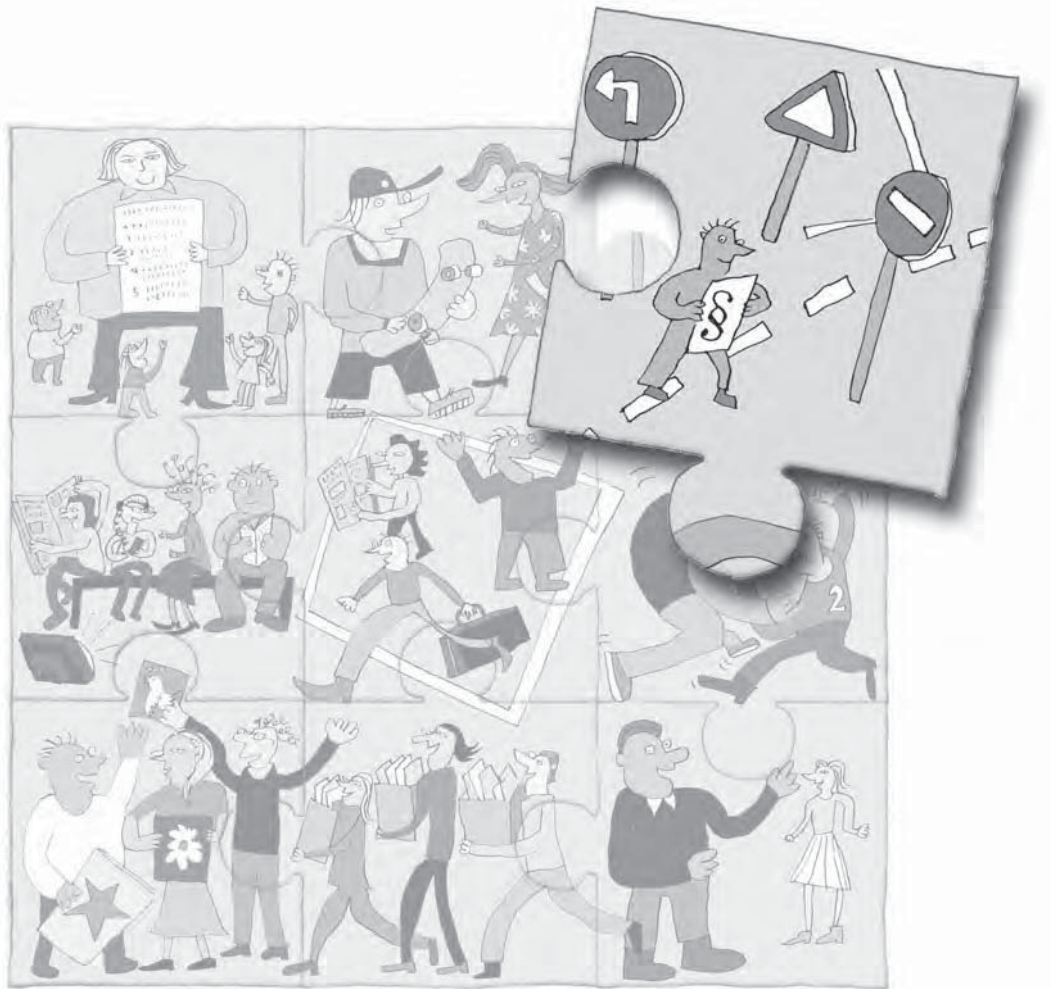


UNIT 8

Rules and law

What sort of rules
does a society need?



8.1 Good law – bad law

What makes a good law?

8.2 At what age?

How should the law apply to young people?

8.3 You make the law

How do you deal with young offenders?

8.4 Rules of evidence

What evidence should count in a court of law?

UNIT 8: Rules and law

What sort of rules does a society need?

Laws of some kind are essential for the fair and efficient running of any society. Laws apply in all situations, to everyone within the community of a country – although there are certain groups, such as children, who are not affected by some laws until they reach a certain age.

One of the ways in which the law can be divided up is into what is known as civil and criminal law. Civil law provides a way of settling disputes between individuals and groups of people. Criminal law covers behaviour that the state has decided must be discouraged or prevented.

Laws can never be perfect, however. They are human creations and sometimes need changing. They may become out of date, ineffective or be simply unfair on certain groups in society.

Law can never be divorced from politics. For it is within political systems that laws are made and changed. In a democratic political system it is important that all citizens are able to have an equal say about this. It is also important that the law is applied equally to all citizens, and that no one is above the law. This concept is sometimes known as the rule of law.

Finally, laws should comply with human rights. This is important in order to make sure that laws are fair and that they are not abused as a means of oppression or dictatorship. Most democratic systems therefore rely on written constitutions that provide a human rights framework that stands above the laws of the country. Some countries have also established constitutional courts to decide whether laws are in line with the constitution or not.

Learning for Education for Democratic Citizenship and Human Rights

Through this series of lessons students will:

- develop a greater understanding of the concept of law and its importance in a democratic society;
- recognise that the main purpose of law is to help people and protect society;
- develop a greater respect for the idea of the rule of law;
- find out more about the legal system in their own country.

UNIT 8: Rules and law

What sort of rules does a society need?

Lesson title	Objectives	Student tasks	Resources	Method
Lesson 1: Good law – bad law	To be aware of and understand the factors that determine what makes a good law.	To discuss school rules and identify what makes a good school rule. To discuss laws and identify what makes a good law. To examine critically an area of law in their country, e.g. laws on alcohol. To propose and justify their own new school rule or law.	Two cards for each student – one labelled with a letter “A” (in green), the other with a letter “B” (in red). Handout – Laws on alcohol in our country Markers and a large sheet of paper for each group of 4-6 students. Flip chart or a large piece of paper for display in class.	Small group work and class discussion.
Lesson 2: At what age?	To examine how the law applies to young people.	To work out the legal ages at which young people become entitled to take part in different adult activities. To consider how appropriate the current law is for young people.	Three large signs labelled “A”, “B” and “C” put up on three different walls of the classroom. Copies of student handout 8.1 – one for every two students. Marker pens and a large piece of paper each for group of 4-6 students.	Pair work, small group work and class discussion.
Lesson 3: You make the law	To examine the question of whether young people who have broken the law should be punished at all, and if so, how.	To consider the different factors that come into play when deciding what is a fair punishment for a crime.	A copy of the story and extra information for the teacher	Small group work and class discussion.
Lesson 4: Rules of evidence	To understand the rules of evidence in a court of law.	To consider the kind of evidence that should count in a court of law and the kind of evidence it would be wrong to use.	Discussion cards (student handout 8.2) for each group of 4-6 students	Small group work and class discussion.

8.1 Background information for teachers

Integration, not criminalisation

Thomas Hammarberg, Commissioner for Human Rights, Council of Europe

In most European countries, teenagers are not dominant in the overall crime statistics. Also, juvenile crime rates remain more or less stable from year to year across our continent.

This does not mean that the problem is insignificant. A worrying trend reported from several countries is that some crimes committed by young offenders have become more violent or otherwise more serious. This is a warning signal in itself. (...).

There are two different trends for the moment in Europe. One is to reduce the age of criminal responsibility and to lock up more children at younger ages. The other trend is – in the spirit of the UN Convention on the Rights of the Child – to avoid criminalisation and to seek family-based or other social alternatives to imprisonment.

I am going to argue for the second approach. In that I am supported not only by the UN Convention but also by the European Network of Children's Ombudspersons. In a statement [in] 2003 no less than 21 national ombudspersons stressed that children in conflict with the law are first and foremost children who still have human rights.

They proposed that the age of criminal responsibility should not be lowered but raised – with the aim of progressively reaching 18 – and that innovative systems of responding to juvenile offenders below that age should be tried with a genuine focus on their education, reintegration and rehabilitation.

The Convention of the Rights of the Child – ratified by all European states – asks governments to establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law. The treaty does not spell out at which precise age the line should be drawn. However, the Committee monitoring the implementation of the Convention has expressed concern about the low age in several countries. In most European states, children are held criminally responsible between 12 and 15 or 16, but there are also examples of age limits as low as seven, eight and 10.

Though the message of the Convention on the Rights of the Child is that criminalisation of children should be avoided, this does not mean that young offenders should be treated as if they have no responsibility. On the contrary, it is important that young offenders are held responsible for their actions and, for instance, take part in repairing the damage that they have caused.

The question is what kind of mechanism should replace the ordinary criminal justice system in such cases. The procedures should recognise the damage to the victims and it should make the young offender understand that the deed was not acceptable. Such a separate juvenile mechanism should aim at recognition of guilt and sanctions which rehabilitate.

It is in the sanction process that we find the difference to an ordinary criminal procedure. In juvenile justice there should be no retribution. The intention is to establish responsibility and, at the same time, to promote reintegration. The young offender should learn the lesson and never repeat the wrongdoing.

This is not easy in reality. It requires innovative and effective community sanctions. In principle, the offender's parents or other legal guardian should be involved, unless this is deemed counter-productive for the rehabilitation of the child. Whatever the process, there should be a possibility for the child to challenge the accusations and even appeal.

An interesting procedure for "settlements" has been introduced in Slovenia. There, a case of an accused juvenile can be referred to a mediator if this is agreed by the prosecutor, the victim and

the accused. The mediator then seeks to reach a settlement which would be satisfactory to both the victim and the accused and a trial can thereby be avoided.

One aspect should be further stressed: the importance of a prompt response to the wrongdoing. Delayed procedures – which [are] a problem in several European countries today – are particularly unfortunate when it comes to young offenders whose bad actions should be seen as a cry for immediate help. (...)

Thomas Hammarberg, Commissioner for Human Rights, Council of Europe, excerpt from “The human rights dimension of juvenile justice”, a presentation given at the Conference of Prosecutors General of Europe, Moscow, 5-6 July 2006. Source: <http://www.coe.int/t/commissioner/>

8.2 Background information for teachers

Convention on the Rights of the Child

Adopted by the General Assembly of the United Nations on 20 November 1989

“Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”

“Article 40

- (...) 3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
 - (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
- 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”

Source: Rolf Gollob/Peter Krapf: *Exploring children’s rights. Lesson sequences for primary schools.* EDC/HRE, Vol. V, Strasbourg 2007, pp. 77ff.

For further reading: Cyndi Banks, *Criminal justice ethics*, Thousand Oaks, 2004. A PDF version of Chapter 5, The Purpose of Criminal Punishment, is available at <http://www.sagepub.com>.