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"This is not fair!" – fair trial

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Topic

Analysis of various aspects of the right to fair trial.

Context

The Activity Plan is designed for a group of maximum 30 young people at the age of 16 and older. It might be applicable in history (esp. 20th and 21st century), social science, civic education and similar courses or during workshops at events like a Human Rights Day at school.

Aim

The participants get an understanding of the meaning and importance of specific elements that constitute a fair trial.

Learning Outcome

Participants are able to name the crucial elements constituting a fair trial.

Participants understand and are able to explain the various aspects of the right to fair trial.

Participants are able to analyse and discuss real life cases of violations of the right to fair trial.

Participants' present general rules that should apply to every trial in order to be considered fair.

Material & Equipment Needed

Short passages describing cases of violations of the right to fair trial (Material A below).

Duration

90 minutes

Activity Plan Overview (Process):

Introduction (25 min.):

Interactive quiz/survey (10 min.):

The teacher asks the students a couple of questions on the statistics concerning the right to fair trial in order for them to get a grasp on the scope and importance of the problem. He asks the students to guess:

1. How many countries have signed international agreements requiring them to provide fair trials? (over 90%)[1]
2. How many people are currently being detained around the globe waiting for a trial? (3 mln)[2]
3. What percentage of human rights violations found around the world do unfair trials make up? (40%)[3]

The teacher writes down the students suggestions on the board, and after they answer all three questions, provides them with correct answers. If possible, it might be a good idea to create an online quiz (kahoot.it or other available), display it on the board, and have the class solve it together.
After the quiz is completed and the correct answers provided, the teacher asks a willing/selected student to sum it up by drawing conclusions based on the information.

Short discussion (15 min.)

The teacher initiates a short discussion on the students' understanding of the right to fair trial, especially the word "fair" in this context:

1. Is the trial fair only if the results of it are considered fair by all parties involved? Will this ever be the case?
2. If not the result – what else then do we judge the fairness of a trial on? (process)
3. What should the process of a trial look like to be considered fair?

Main part (50 min.):

A. Group work (20 min.)

Participants get together in groups of maximum six (five groups' altogether).
Each group receives a short passage describing cases of violations of the right to fair trial (Material A below).

The task of each group is to discuss the cases, answering the additional questions included in their materials, and to present their case and the conclusions of their discussion to the rest of the class.

[1] https://www.fairtrials.org/right-fair-trial accessed on 01.12.2018.
[2] Ibidem.
[3] Ibidem.

B. Presentation of group work (30 min.)

Presentations of group work followed by brief whole-class discussions on each of the cases.

Final part (15 min.):

The plenum compares the findings and discusses them. They state what they have learned from the exercise.

The teacher uses the fishbone diagram method to collect all the rules of fair trial his students came up with. He sketches a fishbone diagram on the board and writes "Fair Trial" in its "head". The students suggest ideas for the rules of fair trial to be written next to the major and minor fishbones, justifying their answers. These are the rules they discovered during group work, but also new ones they find important.

Further Reading and Resources:

- → Council of Europe website, The right to fair trial: https://www.coe.int/en/web/impact-convention-human-rights/right-to-a-fair-trial
- → Amnesty International website, www.amnesty.org
- → "The right to a fair trial. A guide to the implementation of Article 6 of the European Convention on Human Rights", Nuala Mole, Catharina Harby, available at: https://rm.coe.int/168007ff49
- → Fiction books:
  - "To kill a mocking bird" by Harper Lee
  - "The trial" by Franz Kafka
  - "The Ox-Bow Incident" by Walter Van Tilburg Clark
- → Movies:
  - "12 angry men", directed by Sidney Lumet
  - "To kill a mocking bird", directed by Robert Mulligan
  - "The verdict", directed by Sidney Lumet
  - "In the name of the father", directed by Jim Sheridan
  - "Sacco and Vanzetti", directed by Giuliano Montaldo
  - A list of other interesting titles: https://www.imdb.com/list/ls009538688/

Homework Ideas:

1. Find out about other aspects of the right to fair trial that were not discussed in class. Make sure you are able to explain the meaning and importance of each of them.
2. Should everyone have all their rights to a fair trial fulfilled or are there exceptions? Justify your answer.

Material A on the following pages:

Case 1

There was a dispute between Roma and non-Roma residents in nearby villages in the district of Plăieşii de Jos, Harghita County, Romania. On 6 June 1991 a fight started in Plăieşii de Sus (one of the villages in the district) between four Roma and a night-watchman. Following the events, a crowd made up of non-Roma villagers assaulted and beat up two Roma men in a revenge attack, fatally injuring one of them. On 8 June 1991 a public notice was displayed by the non-Roma residents on the outer limit of the Roma settlement informing the inhabitants that on 9 June 1991 their houses would be set on fire. The Roma informed the police and village officials. However, the local authorities failed to intervene, preferring instead to "advise" the Roma to leave their homes for their own safety. The following day the Roma villagers fled their homes and sought refuge in a nearby stable belonging to the local farming cooperative while an organised group of non-Roma villagers destroyed all the Roma houses.

The Harghita County Police Department, under the supervision of the Miercurea Ciuc District Prosecutor's Office started an investigation into the events. Some of the Roma from the hamlet who were questioned by the investigation team were able to give the names of possible suspects. The final report concluded that the destruction by arson was caused by the fight on 6 June 1991 and the fact that the Roma were in the habit of putting their animals to graze on land belonging to non-Roma villagers.

The local authorities are said to have expressed the opinion that the Roma themselves, or the "Gypsies" as they put it, "are to blame for what happened" as "they steal for a living and are aggressive towards other people".

On 27 June 1996 the Prosecutor's Office of the Harghita County Court closed the investigation on the ground that the prosecution of the offences was statute-barred. Its decision was upheld, upon the filed complaint, in a decision of 9 October 1998 of the Prosecutor's Office at the Supreme Court of Justice.

The latter also found that the offences had been committed "as a result of serious acts of provocation by the victims" and considered that, given the large number of persons involved, it had been impossible to identify the perpetrators of the attack[4].

1. Was the case of Roma villagers examined properly by the local authorities?
2. Were they given a fair trial?
3. What general rule should be adopted to avoid similar situations in the future?
4. What could be done to rectify the situation?

[4] https://www.coe.int/en/web/impact-convention-human-rights/-/failure-to-investigate-attack-on-roma-settlement-leads-to-local-reforms

Case 2

Oleksandr Volkov was a Supreme Court judge in Ukraine. In December 2007, Mr Volkov was elected to the post of member of the High Council of Justice ("the HCJ"), but did not assume the office as he was not allowed to take the oath of office in Parliament. In December 2008 and March 2009 respectively, two members of the HCJ, R.K. and V.K. - who was elected president of the HCJ in March 2010 - conducted preliminary inquiries into possible misconduct by Mr Volkov. They concluded that he had reviewed decisions delivered by Judge B., his wife's brother, on several occasions – some of them dating back to 2003 - and that he had made gross procedural violations when dealing with cases involving a limited liability company, some of his actions dating back to 2006. Following these inquiries, V.K., as President of the HCJ, submitted two applications to Parliament for dismissal of Mr Volkov from the post of judge. Mr Volkov said he had done nothing wrong, and the case against him had been rigged. His legal representative argued that Mr Volkov had been the victim of political corruption. Parliament voted for his dismissal, and Mr Volkov was removed from office in 2010. Parliament voted for his dismissal for "breach of oath", and Mr Volkov was removed from office in 2010.

Mr Volkov challenged his dismissal before the Higher Administrative Court ("the HAC"), which found that the HCJ's application to dismiss him following V.K.'s inquiry had been lawful and substantiated. The HAC further found that the application following R.K.'s inquiry had been unlawful, because Mr Volkov and his wife's brother had not been considered relatives under the legislation in force at the time. However, the HAC refused to quash the HCJ's acts taken in that case, noting that under the applicable provisions it was not empowered to do so[5].

1. Was the case of Mr Volkov examined properly by the Ukrainian authorities?
2. Was he given a fair trial?
3. What general rule should be adopted to avoid similar situations in the future?
4. What could be done to rectify the situation?

[5] https://www.coe.int/en/web/impact-convention-human-rights/-/reinstatement-of-judge-said-to-be-the-victim-of-political-corruption

Case 3

Fatma Ormancı lives in Kahramanmaraş, Turkey. Her husband was killed in 1991, when terrorists raided the village of Kahramanmaraş and killed all of the male inhabitants. A year later Mrs Ormancı brought a case against the Ministry of Internal Affairs (MoIA), claiming that the State had breached its responsibility to protect the life and security of its citizens. She requested the court to award her compensation for damage in respect of her husband's death.

On 29 April 1992 the case was notified to MoIA. A month later MoIA submitted its observations. On 16 June 1992 they were sent to Mrs Ormancı. On 22 June 1992 Mrs Ormancı submitted her response, which was sent to MoIA on 20 August 1992. Another month later MoIA submitted additional observations. On 21 February 1994 the Ankara Administrative Court declared itself incompetent by reason of the place and sent the case file to the Gaziantep Administrative Court.

On 22 December 1994 the Gaziantep Administrative Court gave an interim decision in which it requested information from different administrative authorities, and appointed an expert to calculate the amount of pecuniary damage Mrs Ormancı had sustained. Between 20 and 7 March 1995 documents requested from the Land Registry, the Elbistan Social Aid, the security forces, the Social Security Institution, the Elbistan District Governor's Office the Kahramanmaraş Gendarmerie Command and were deposited. On 4 April 1995 the court requested the birth records of the Ormancı family from the Elbistan birth registry. On 5 June 1995 the files were submitted to the court. On 4 September 1995 the case file was sent to an expert. On 22 September 1995 the expert's report was submitted to the court. On 19 June 1996 the Gaziantep Administrative Court awarded Mrs Ormancı compensation together with interest from the date of the action.

On 9 December 1996 MoIA appealed to the Supreme Administrative Court against the decision. On 13 February 1997 Mrs Ormancı submitted her observations. On 28 March 1997 the case file was received by the Supreme Administrative Court. On 10 November 1997 the public prosecutor at the Supreme Administrative Court gave his opinion. On 10 March 1998 the Supreme Administrative Court upheld the decision of the first-instance court and Mrs Ormancı was paid the amount awarded to her earlier[6].

1. Was the case of Mrs Ormancı examined properly by the Turkish authorities?
2. Was she given a fair trial?
3. What general rule should be adopted to avoid similar situations in the future?
4. What could be done to rectify the situation?

[6] https://www.coe.int/en/web/impact-convention-human-rights/-/legal-reforms-to-tackle-delays-in-getting-justice

Case 4

DMD GROUP is a company which was established in 1997 and is based in Trenčin, Slovakia. In September 1998 the company sought enforcement before Martin District Court of a financial claim against a major company involved in arms production. At first the claim succeeded in the Slovakian courts. However, on 30 June 1999, the newly appointed President of the District Court reassigned the case to himself as a judge. On the very same day he ordered that the claim should fail, in a decision which was only two pages long and which could not be appealed.

DMD GROUP brought a constitutional complaint contesting, among other things, that its right to a hearing by a tribunal established by law had been violated by the President of the District Court assigning the case to himself. The company alleged in particular that the President of the District Court had intervened in its case for political reasons, due to a power struggle between economic groups. In January 2003 the Constitutional Court found that there had been no violation of Article 48 § 1 (which provides that no one may be deprived of his or her lawfully appointed judge) of the Constitution. It notably concluded that the reassignment had taken place in the context of modifications to the District Court's 1999 work schedule in order to ensure the equal distribution of cases concerning enforcement proceedings and in compliance with the applicable rules.

Between 1 March and 15 July 1999, a total of 348 cases were reassigned between various Sections of the District Court. Of that total, 49 cases were reassigned to the Section of the President of the District Court. He made further amendments to the work schedule throughout 1999, taking effect in June, August and October 1999[7].

1. Was the case of DMD GROUP examined properly by the Slovakian authorities?
2. Were they given a fair trial?
3. What general rule should be adopted to avoid similar situations in the future?
4. What could be done to rectify the situation?

[7] https://www.coe.int/en/web/impact-convention-human-rights/-/suspicions-of-a-biased-judge-lead-to-reforms-to-protect-a-fair-legal-system

Case 5

In 1995 Mr Millan, an Andorra national, became acquainted with one J.P., who knew and colluded with one A.G. to smuggle tobacco from the Principality of Andorra to France and Spain. Towards 10 p.m. on 22 March 1995 Mr Millan accompanied J.P. to A.G.'s home. From there all three travelled together in a car registered in Mr Millan's name to a place known as "Coll d'Ordino". On the way there, J.P. and A.G. had an altercation. At "Coll d'Ordino" J.P. asked A.G. to get out of the car and to carry on the discussion in a nearby wood. He took a 0.22 calibre rifle from the boot of the car, and once in the wood, shot A.G. several times and killed him. Mr Millan witnessed the scene and, allegedly after being threatened by J.P., helped him to hide the body in the car before setting fire to the car. Immediately afterwards, J.P., a Spanish national, left Andorra and Mr Millan was arrested by the police, and charged by the public prosecutor with concealing a body.

In a judgment of 22 November 1995, following adversarial proceedings, in which Mr Millan was represented by a lawyer, and a hearing in public, the *Tribunal de Corts* of Andorra found him guilty of an aggravated case of concealing the body (of a murder victim) and sentenced him to six years' imprisonment. At the hearing Mr Millan argued that he could not stand trial until the principal offender had been tried in Spain and that the investigating judge had refused to seek the additional evidence he had requested; in particular, he had refused to send letters rogatory to the Spanish authorities with a view to questioning J.P.

Mr Millan appealed against that judgment to the Andorra Higher Court of Justice. He maintained that the trial court had erred in its assessment of the evidence and had failed to take sufficient account of the conclusions of the psychiatric reports on him or to apply the presumption of innocence. In a judgment of 3 April 1996 the Andorra Higher Court of Justice upheld the impugned judgment and dismissed the appeal. It declared in its decision that the judgment of the trial court contained an accurate and objective description of the offence that had been made out.

Mr Millan wanted to lodge an appeal with the Andorran Constitutional Tribunal, claiming that his trial had been unfair. According to the law, he first had to get permission from the State Counsel's Office. In a reasoned decision of 26 April 1996 Principal State Counsel of the Principality of Andorra refused[8].

1. Was the case of Mr Millan examined properly by the Andorran authorities?
2. Was he given a fair trial?
3. What general rule should be adopted to avoid similar situations in the future?
4. What could be done to rectify the situation?

[8] https://www.coe.int/en/web/impact-convention-human-rights/-/an-end-to-government-control-over-the-right-to-appeal-to-the-constitutional-tribunal

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