

Suspect's Right to have someone Informed of the Fact of his Arrest and Detention; a Comparison of English and Turkish Laws and Practices and the Question of Human Rights and Fundamental Freedoms

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1. Introduction

After an individual is lawfully brought to a police station the next question which should be considered is what kind of protection is provided to suspects while they are kept and interrogated there. The European Convention on Human Rights and Fundamental Freedoms (hereafter the Convention) does not lay down detailed procedures which should be followed during the detention in the domestic law of the Contracting States. Rather it sets up four safeguards which should be complied with whilst suspects are detained for the purpose of interrogation. The right to have someone informed of the fact of arrest and detention is the first safeguard regarding the treatment of suspects whilst they are detained at the police station.¹ The second, third and fourth protections are the right to remain silent,² the right of access to a lawyer³ and the right to be free from the application of torture, inhuman and degrading treatment.⁴

However, in this article, the first safeguard, namely, the suspect's right to have someone informed of the fact of arrest and detention will be under consideration. This right has not been explicitly recognised in the provisions of the Convention. However, the Convention's Organs' interpretation of Article (hereafter Art.) 8 of the Convention, which protects an individual's right to respect for his family life, his home and correspondence, suggests that this right also covers a suspect's right to have informed someone of the fact of his arrest and detention.

The aim of this article is to examine the extent to which the Convention's standards regarding the suspect's right to have someone informed of the fact of his arrest and detention are reflected in the domestic laws and practices of

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1 Art.8 of the Convention.

2 Art.6(1) of the Convention.

3 Art.6(1),(3) (c) of the Convention.

4 Art.3 of the Convention.

England and Turkey. The Convention has been chosen as a yardstick because both countries are under a legal duty to ensure that their domestic laws conforms to standards set in it.⁵

To this end, first of all, the Convention's standards regarding the suspect's right to have someone informed of the fact of his arrest and detention will be set out. Secondly, the question of how the right in question is reflected in English and Turkish laws and practices will be examined. Similarities and contrasts between the two countries' laws and practices will be emphasised. It is believed that such comparison will shed some light on the kind of lessons which each system can take from other to ensure conformity with the standards of the Convention. Thirdly, the extent to which the standards set out by the Convention and its case-law about the right concerned is met in English and Turkish laws and practices will be explored.

2. Suspect's Right to have someone Informed of the Fact of his Arrest and Detention in the Convention (Art. 8 of the Convention)

Within the logic of the Convention, it is natural for a detained person to want to notify his predicament to his family or close friends, since the unexplained disappearance of a family member even for a short period of time may provoke great anxiety. Their worries as to his whereabouts will be allayed and he may be comforted by communicating with them, though it is possible that he can take the opportunity of alerting his partners in crime.

Hence, the Convention forces the Contracting States to afford this important right in their national laws to suspects by stipulating that "Everyone has the right to respect for his private and family life, his home and his correspondence".⁶ However, the right of suspect is not absolute in character thus it can be restricted by the police for the purpose of a criminal investigation if it is in accordance with the law and necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.⁷

So far, of the Convention Organs, only the Commission has had occasion to deal with the scope of the suspect's right to inform his relatives or to have his relatives informed of the fact of his arrest and detention.⁸ According to the

5 Arts.1 & 53 of the Convention.

6 Art. 8(1), the Convention.

7 Art. 8(2), the Convention.

8 *Appls. No. 8022/77, 8025/77, 8027/77, McVeigh, O'Neil and Evans v UK*, 18 March 1982 (1982) 25 Decisions & Reports 15.

Commission, a failure to allow persons arrested or detained to communicate with their spouses constitutes a denial of their "right to respect for private and family life and correspondence" guaranteed by Art. 8(1).⁹ However, the Commission recognises that especially if a terrorist suspect is allowed immediately to intimate the fact of his arrest to outsiders, there may be a risk that accomplices will be alerted and may escape, destroy or remove evidence or commit offences. The existence of such risks, in the view of the Commission, may justify refusing *for a time* to allow an arrestee to contact the outside world.¹⁰

As a general matter the Commission states that it agrees with the following statement in paragraph 147 of the Shackleton Report.¹¹

The effect on the family of the detained person must not be overlooked. Unless there are specific reasons, relating to the danger that accomplices will be alerted, the police should fulfil any request from the person detained that his family should be notified of his arrest and should be prepared to answer any reasonable request for information about him from his close relatives throughout the period.¹²

Hence, unless there is danger of accomplices being warned, and as a result, being able to escape, destroy or remove evidence or commit offences, failure to allow persons detained to make contact with their families and inform them as to their whereabouts cannot be justified as being "necessary" under Art. 8(2).¹³ However, the Commission does not state precisely how long the suspect's request to contact with outside world can be refused by the police on these grounds. The only informative expression used in this respect by the Commission is "for a time" which needs further interpretation by the Convention Organs.

What is more, the Commission requires that the authorities should put forward specific reasons why in a given case suspects' families were not allowed to be notified of their whereabouts. The reference in general terms to the nature of the risks which may arise from allowing such notification has been found unacceptable by the Commission.¹⁴

9 Ibid., paragraph 237, p. 52.

10 Ibid., paragraphs 238-239, p.53

11 Lord Shackleton, *Review into the Operation of the Prevention of Terrorism (Temporary Provisions) Acts 1974 and 1976* (of English Law), Cmnd. 7324, 1978

12 *McVeigh, O'Neil and Evans v UK*, supra no 8, paragraph 239, p.53

13 Ibid.

14 Ibid.

3. Suspect's Right to have someone Informed of the Fact of his Arrest and Detention in English and Turkish Laws

Whilst the legislatures of England and Turkey give wide powers to the police when suspects are kept at the police station, by providing certain *due process* safeguards to suspects, they try

- (i) to make police malpractice during the detention less likely,
- (ii) to minimise if not eliminate the coercive and oppressive atmosphere of the police station,
- (iii) to reduce the pressures of the detention on a suspect by whom even the shortest period of detention can be perceived as a torture and
- (iv) to reduce the level of isolation from which suspects might suffer and which in turn might lead to involuntary and false admissions.

One of these safeguards against powerful social and psychological forces operating in the detention room is to communicate with family or friends.

Exercise of this right can also provide an indirect method of obtaining a lawyer; a suspect may ask the person informed to arrange a lawyer, or the person may independently decide that such a lawyer is necessary. This right is also important for suspect to obtain the help of the person informed in initiating the *habeas corpus* process on his behalf.

a. English Law

During police custody, prior to interview, the detainee must be informed clearly by the custody officer¹⁵ that he has right to inform a third party of his arrest and detention.¹⁶ He also has to be informed that this is a continuing right which can be exercised at any stage during the period in custody.¹⁷

15 Under s.36 of PACE, the supervision and integrity of the detention system and the conditions which apply to it are the responsibility of a custody officer. PACE provides for there to be a custody officer (normally a sergeant) at every designated police station. At other police stations there must simply be someone able to take on the job if the need arises.

S.36(5) makes it plain that at designated police stations the investigative and custodial functions should be basically distinct and thus none of the functions of the custody officer can be performed by any officer who at the time when the functions fall to be performed is involved in the investigation of an offence for which that person is in police detention at that time.

16 Code, C, paragraph 3.1

17 Code, C, paragraphs 3.1 - 3.4. Quite apart from the oral notification of his right the suspect must be given written notice, which repeats it and his other rights. The suspect is asked to acknowledge receipt of this notice by signing the custody record and, if he refuses, the custody officer must note the refusal on the record. See, Code C, paragraph.3.2

Accordingly, a person who has been arrested and who is being held in custody at a police station has a right, if he requests, to have one friend, or relative or other person who is known to him or who is likely to take an interest in his welfare, told of his arrest and the place where he is being detained. This is to be done as soon as is practicable.¹⁸ If the request is granted notification will normally be by telephone since this is the best way of communicating "as soon as practicable".¹⁹ However, the argument of police convenience should not exclude the possibility of using an officer to visit the appropriate party.

The person chosen by the detainee is to be informed of the detainee's whereabouts at public expense, and if the detainee requests, on each occasion that he is taken to another police station.²⁰ If they too cannot be contacted, the detainee may choose up to two alternatives. If they too can not be contacted, the custody officer has discretion to allow further attempts until the information has been conveyed.²¹ As argued by Bevan and Lidstone, this is an unnecessary restriction on the clear wording of s.56(1) of Police And Criminal Evidence Act (hereafter PACE) and of doubtful legality. For the only reasons for denying the notification are set out in s.56(5) of PACE and annex B to the Codes of Practice (hereafter COP),²² Unless they apply, repeated calls to other persons must be made until successful.²³

If a friend or relative of a detainee, or a person with an interest in a detainee's welfare, asks where the detainee is then the information must be given provided that the detainee agrees and provided that the case is not one, involving a Series Arrestable Offence (hereafter SAO),²⁴ where the detainee is legitimately

18 s.56(1)

19 Code C, paragraph 5.1

20 Code C, paragraph 5.2

21 Code C, paragraph 5.13

22 The COPs add some operational flesh to the legislative skeleton set out in PACE and apply both to ordinary and terrorist suspects. The COP are primarily directed to the police. They do not bind the courts, but a court may take a breach into account in deciding whether to admit evidence against an accused in criminal and civil proceedings. Of the five COP, only Code C, which regulates the Detention, Treatment and Questioning of Persons by the Police, is relevant to this article.

23 Bevan, V. & Lidstone, K., *The Investigation of Crime*, 1991, p.357

24 Under s.116 of PACE, firstly, certain statutory and common law offences, such as treason, murder, manslaughter are always regarded as SAO. Secondly, the concept covers a list of statutory offences such as causing an explosion. Thirdly, any arrestable offence can be regarded as serious if its commission has led to or is intended or is likely to lead to; (a) serious harm to the security of the State or the public order; or (b) serious interference with the administration of justice or the investigation of an offence or offences; or (c) the death of any person; or (d) serious injury to any person; or (e) substantial financial gain to any person; or (f) and serious financial loss to any person.

being held incommunicado.²⁵ This latter qualification can have the effect both of isolating the detainee and of depriving his family of any information concerning his whereabouts. One would not have expected to find such a provision in a liberal society. At a bare minimum the police should be obliged to inform the detainee's family that he is safe in custody.²⁶

An officer of the rank of superintendent or above may authorise delay in giving notification of a suspect's detention. It is subject to a maximum period of 36 hours from the commencement of detention, save in the case of terrorism where a 48-hour maximum applies.²⁷ If delay is authorised, the detained person must be told the reason for it, and that reason must be noted on his custody record.²⁸ Where an authorised delay is brought to an end, the suspect must be informed that he is now at liberty to exercise the right.²⁹

Delay in notifying the person chosen by a detainee is only permitted in the case of a SAO where the officer has reasonable grounds for believing that telling that person will lead to interference with, or harm to, evidence connected with a SAO or interference with, or physical injury to, other persons; or will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or will hinder the recovery of property obtained as the result of such offence.³⁰ Notification may also be delayed where the SAO is either;

(a) a drug-trafficking offence and the officer has reasonable grounds for believing that the detained person has benefited from drug trafficking and that the recovery of the value of that person's proceeds of drug trafficking will be hindered by notifying the chosen person, or

(b) an offence to which part VI of the Criminal Justice Act 1988 (offences in respect of which confiscation orders may be made) applies and the officer has reasonable grounds for believing that the detained person has benefited from the offence, and that the recovery of the property obtained by that person from or in connection with the offence or of the pecuniary advantage derived by him from or in connection with it will be hindered by notifying the chosen person the exercise of the right.³¹

PACE also specifically states that the person's unqualified right to have someone informed of their arrest applies to those arrested or detained under the

25 Code C, paragraph. 5.5

26 Leigh, L.H., *Police Powers in England and Wales*, 1986, p.122

27 s.56(3)(11), PACE

28 s.56(6), PACE

29 s.56(9), PACE; See also, *Cochrane* [1988] Criminal Law Review 449

30 s.56(6), PACE

31 s.56(5), PACE

Prevention of Terrorism Act (hereafter PTA).³² In the case of terrorism, however, for delay there are two further criteria which are that; either there are reasonable grounds for believing that telling the chosen person will lead to interference with the gathering of information about the commission, preparation or instigation of an act of terrorism; or will make it more difficult to secure the apprehension, prosecution or conviction of any person in connection with the commission, preparation or instigation of an act of terrorism.³³

The real difficulty lies in the superintendent finding sufficient evidence to trigger delay of the notification in respect of each person identified by the suspect. It must be directed against a named person.³⁴ He may be able to do so for one but not another. Thus a blanket ban is not allowed. He must after all satisfy the more demanding test of 'reasonable grounds to believe'.³⁵ Much will depend on the police suspicions about a person to be contacted and the nature of the offence for which the person is detained.³⁶

In practice, as is seen in table 1 below, research indicates that a large percentage of detained persons do not even choose to exercise this right. It is suggested that after PACE about 25 % of suspects have been recorded as having requested intimations.³⁷ Very few instances of officially delayed intimations have been recorded; which is fewer than 1 %, but nearly 50 % of SAOs.³⁸

Table 1. Rate of requesting right to communicate

In Ordinary Cases	25 %
In Terrorism Cases	43 %

It has been found that intimations are at times delayed unofficially and intentionally.³⁹ It is suggested that informal delay in intimation may be deliberate, for example, when officers who wish to search premises wait to inform a suspect's family of arrest until they arrive to search his house. This is regarded as a good example of officers exploiting the flexibility of PACE

32 s.56(10), PACE

33 s.56(11), PACE

34 *R v Quayson* [1989] Criminal Law Review 218

35 s.56(5), PACE

36 Bevan & Lidstone, *supra* no 23, p.359

37 Coleman, C., 'Police Investigative Procedures: Researching the Impact of PACE' in Walker, C. & Starmer, K. (Editors), *Justice in Error*, 1993, p. 26

38 *Ibid.*, p. 27; See also, Bevan & Lidstone, *supra* no 23, p.361

39 Coleman, C., *supra* no 37, p.26

provisions which require that such procedure should be carried 'as soon as practicable'.⁴⁰

It appears from custody records that the police manage to contact the designated person in two-thirds of cases where notification is sought. Usually this is a parent or other relative (65 %) but a minority of cases either a friend (16 %) or a social worker (4 %).⁴¹

An independent inquiry into the working practices of the West Midlands Police Serious Crime Squad reveals that the denial of the information as to the whereabouts of those arrested and detained is a recurring theme.⁴² The inquiry in question has revealed that though suspects have been interviewed at different police stations all day the police have responded into the inquiries initiated by suspects' relatives by saying that "we know nothing about the suspect in question" or "we will find out where s/he is and ring you back".⁴³ Without question, the denial of this knowledge to suspects' relatives and friends would increase their anxiety let alone the suspects' own feelings of isolation and disorientation. This lack of knowledge on the part of suspects' families would also make difficult to arrange externally for any legal representation and it would prevent them from initiating the right to have checked the legality of arrest and detention procedure.

Another study which examines the detention of suspects in terrorism cases, as indicated in table 1 above, found that 43 % of suspects asked that someone be informed of their detention.⁴⁴ But this was carried out in well under half of these cases (38 %).⁴⁵ The main reason for non-contact is that the exercise of the right is delayed and the restriction is not lifted up to the time of release.⁴⁶ In around a third of cases (33 %) the delay was for less than six hours, but in over a quarter more than a day elapsed before the embargo on notification was raised. The maximum delay permissible of 48 hours was neared in 5 % of cases in which delays over 36 hours were authorised. In cases where notification was eventually made, on average just under 19 hours elapsed between the initial

40 Dixon, D., *et al.*, 'Safeguarding the Rights of Suspects in Police Custody' (1990) *Policing and Society* 115, at p.118

41 Zander, M., *The Police and Criminal Evidence Act*, 1990, p.104

42 Kayne, T., 'Unsafe and Unsatisfactory', *Report of the Independent Inquiry into the Working Practices of the West Midlands Police Serious Crime Squad*, 1991, p. 47

43 *Ibid.*

44 Brown, D., *Detention under the Prevention of Terrorism (Temporary Provisions) Act 1989: Access to Legal Advice and Outside Contact*, 1993, p.23

45 *Ibid.*, p.24

46 *Ibid.*, pp.25-27

request for notification and its execution.⁴⁷ In 5 % of the cases no grounds that fell specifically under one of the heads listed in PACE were stated. In 32 % of the cases, however, no grounds at all for authorising delay were listed on the custody record despite the fact that Annex B of the COP on police detention stipulates a recording requirement.⁴⁸

It is also reported that in some terrorist cases too individuals have telephoned police stations to inquire whether or not a friend or relative is being detained and the police have lied to them and have denied that the named person is being held.⁴⁹

b. Turkish Law

In this respect, Art.19(6) of the Constitution provides that Notification of the situation of the person arrested or detained shall be made to the next of kin, except in cases of definite necessities pertaining to the risks of revealing the scope and subject of the investigation compelling otherwise.

In similar terms, Art. 13(6) of Police Powers and Duties Act (hereafter PPDA) states that Relatives of the arrested person shall be notified without delay of the arrest and detention at the police custody provided that the purpose of the investigation is not endangered thereby.

In this respect, Code of Criminal Procedure (hereafter CCP) contains a complementary provision which obliges the police to tell the suspect that he has the right to inform *one of his relatives* of the fact of his arrest and where he is detained *before the commencement of the interrogation*.⁵⁰

Although the wording of the provisions of the Constitution and PPDA is unclear as to the question who is going to inform the relative of the suspect, the wording of CCP seems to suggest that unlike English law, the suspect himself is entitled to inform his relative in person rather than requesting its fulfilment by the police. Without question, this is much more preferable and reassuring for the person who is informed.

47 Ibid., p.26

48 Ibid.

49 Hillyard, P., *Suspect Community: People's Experiences of the Prevention of Terrorism Acts in Britain*, 1993, p.140

50 Art. 135(3), CCP. And yet, unlike PACE, the police are not obliged to inform the suspect that this is one of his continuing rights and this might be exercised at any stage during the period in custody. Again unlike PACE, the police or public prosecutors are not required to give written notices to the suspect about the explanation of his rights.

Again, by contrast with English law, under Turkish law, the classes of person whom a suspect is entitled to have contacted are not widely drawn. Even though the wording of the provision of PPDA implies that the suspect is entitled to communicate more than one person, CCP, in accordance with the Constitution, suggests that he has the right to communicate with only one of his relatives. Indeed, under CCP, the suspect may only request to inform *a relative* of his choice while under PACE the suspect may request to have a friend or relative contacted, or any other person who is known to him or who is likely to take an interest in his welfare. Thus, CCP reduces the number of individuals to one relative of the suspect's choice.

However, the more important point which should be stressed is that the police, both under the provisions of the Constitution and PPDA, may *deny* the exercise of such a right on the grounds that notification may create the "risk of revealing the scope and subject of the investigation" and may result in "endangering the purpose of the investigation". In contrast, under PACE, this right can only be *delayed* for a certain time for certain type of offences, if certain, relatively restrictively termed circumstances of s. 56 of PACE apply. Indeed, given the broad wording of circumstances in which the exercise of the right might be denied under the Arts. 19(6) and 13(6) of the Constitution and PPDA respectively, the police can *always* reject such a request.

What is more, by contrast with the right under s.56 of PACE, the law does not require that the police should have "reasonable grounds to believe" to be able to authorise the denial of the right. Apparently, the existence of *mere suspicion* as to the existence of the grounds, on which the right can be denied, in the minds of *ordinary police officers* seems to be regarded as sufficient to authorise the denial of the right. And there is no case law or any doctrinal view, in this respect, suggesting that the police must show sufficient evidence to trigger the denial against a specific person with whom the suspect requested to contact.

Furthermore, as opposed to PACE, the law does not require that if denial is authorised by the police the suspect should be told the reason for it and the reasons should be noted on his dossier. Thus, if denial is authorised the detained person will not be able to learn the reason for it. What is more, the law does not demand that there may be no further denial in permitting the exercise of the right once the risk for authorising denial ceases to subsist.

Even though the suspect must be informed about the existence of the right before the beginning of the first interrogation session under CCP, the wording of the relevant provision of PPDA seems to indicate that, if the suspect knows his right and requests to exercise it, the police are obliged to grant such

an opportunity to the suspect from the moment of arrest without delay unless the denial of the right is authorised.

If the request is granted the suspect must have the chance of informing his relative by telephone since it is the best way of informing "without delay". If the suspect cannot contact the relative he named the provisions of the Constitution, PPDA and CCP all indicate that he is allowed to make further attempts until the information is conveyed to one of his relatives. In this respect unlike the provisions of Code C of PACE, the police are not granted any discretion; they have no choice but to help the suspect in fulfilling his request without delay. However, in cases where the person is not contactable by telephone other means can be selected by the suspect such as writing a letter or requesting the dispatch of a police officer to the person to be notified.

Unlike English law,⁵¹ no provision in Turkish law states whether the police should give information in cases where a friend, relative, or person with an interest in the suspect's welfare contacts the police to inquire about the suspect.

Accordingly, both jurisdictions accept that under normal circumstances suspects should not be held incommunicado. However, in some circumstances the suspect's communication contact with outside world is regarded as not justifiable and denied for specific periods. The legislature, in both countries, seems to believe that suspects are most likely to co-operate with the police and reveal the truth if denied opportunity to consult with friends or family members.

In practice,⁵² in ordinary cases, generally, police officers ask the suspect shortly after he is brought to the station, whether he wants to inform one of his relatives about the fact of his arrest and detention. And, as is shown in table 2 below, in 56 % of cases, suspects exercise this right before the commencement of the questioning process. In the rest of the cases, either the police deny the exercise of such a right because of the complexity and seriousness of the crime for the entire period of detention or delay until they are satisfied that the exercise of such a right will not present any danger for the safety of the investigation or suspects. Similarly, in some cases, the suspect does not want to exercise such a right because either he does not want it to be known that he has been arrested or his relatives saw him while he was being arrested.

51 Code C., par 5.5

52 The data supplied here (about the implementation of this right in practice) has been extracted from the author's own research conducted in 21 ordinary police stations, 2 anti-terror departments and 3 gendarme stations of various Turkish cities and towns for the purpose of his PhD, which was submitted to the Law Faculty of the University of Leicester in England.

Table 2. The rate of exercising right to communicate

Police Stations	56 %
Gendarme Stations	13 %
Anti-Terror Departments	0 %

On the other hand the rate of exercise of this right is running at 0 % and 13 % in the anti-terror departments and in stations where gendarme officers operate respectively. Indeed, in terrorism cases, the police admit that they never permit the suspect to inform his relative about the fact of arrest and detention because of the seriousness of the crime. In gendarme stations the gendarmes allow the suspect to use his right rarely because of the way they operate. They suggest that in villages families are quite large and family ties are quite tight. If they learn that one of their relatives are arrested they all come to the station and apply pressure for their release.

Thus, in practice, especially in cases where the arrestee is a terrorist suspect and the crime concerned is a serious and complicated one and the individual concerned has been arrested by a gendarme officer, the rule has been eaten up by the exception. In practice, in most cases, though the classes of person whom a suspect is entitled to contact has been restricted by law simply to one of the suspect's relatives, the police readily assume that permission of the exercise of such a right will lead to

- (i) interference with the evidence,
- (ii) alerting of other persons suspected of having committed such an offence but not yet arrested for it,
- (iii) physical injury to other persons,
- (iv) the difficulty in gathering information,
- (v) the difficulty in securing the apprehension, prosecution or conviction of any person who has a connection with the offence in question.

In doing so, the police disguise their real intention by categorising the request of suspect to exercise his right under one of these grounds and deny the exercise of such a right to suspects. Hence, while PACE permits the police to *delay* the notification of the person chosen by the suspect in the case of serious arrestable offences in certain circumstances for a certain time, Turkish law allows the police to *deny* the suspect the same right;

- (i) regardless of the type of the offence in question,
- (ii) for the entire period of detention.

In practice, in view of the nature and complexity of the offence in question the existence of a general danger of revealing the scope and subject of the investigation and the existence of the possibility of endangering the purpose

of the investigation are regarded as sufficient by the police to authorise the denial of the right. Thus, in contrast to PACE, a blanket ban for the entire period of detention is allowed in Turkish law.

However, in general, in practice, in cases where the police have completed the investigation before the end of the detention time, suspects are permitted to contact their relatives without waiting for the expiry of detention limit. It should be stressed here that the suspect should be aware of the fact that the police can read and listen to what he says or writes. Because the law does not impose any obligation on the police to inform the suspect that his telephone conversations might be tapped and his letters might be read, this can be done without the knowledge of the suspect. The information obtained in this way might be given in evidence and the telephone call might be terminated or the postage of the letter might be prevented by the police if it is being abused. And yet, in contrast, paragraph 5.7 of Code C under PACE stipulates that if the issues specified above are present the suspect must be told beforehand.

The present author's observations also suggest that in terrorist cases and in cases where the offence in question is a serious and complicated one, friends and relatives of the suspect, who learned the facts of arrest and detention from their neighbours, eyewitnesses or the suspect's friends cannot learn for a considerable period of time in which police station or detention centre the suspect is kept and whether he is safe. This is so despite the fact that they make vigorous inquiries concerning the suspect's whereabouts by applying to every possible police station and to the authorities in the area, who are most likely to have information.

4. The Question of Compliance of English and Turkish Laws with the Standards of the Convention

Without question, in an area where interpretation has yet been given by the Court, the review of the Contracting Parties' legislation in terms of its conformity with the Convention is a particularly difficult task to undertake.

In the context of English law, s.56 of PACE does not afford the arrestees an unfettered right to contact with their families whilst they are being kept in police station. This right is subject to the police delay in certain circumstances. Under the present case-law of the Convention, the Commission seems to be ready to accept each ground enumerated by PACE for delay as necessary as long as it is specific and justifiable in a particular case. In this respect the interpretation of s.56 by the courts in England is consistent with the approach of the Commission. As will be recalled, the delay of s.56 requires the police to satisfy the test of 'reasonable grounds to believe' and prohibits a blanket ban on the restriction of this right.

However, it is believed that the possibility of restriction of this right up to 36 hours in respect of SAOs and up to 48 hours in respect of terrorism cases might prove to be problematic in future cases which will be brought before the Convention Organs. It should be stressed here that even though the Commission accepts that this right can be delayed on specific grounds as necessary under Art. 8(2), it seems to be reluctant to transform the time limit, in which this right might be suspended, into fixed terms. Notwithstanding the silence of the Convention in this respect, it is believed that, not only the period of 48 hours, but also the period of 36 hours appears to be a quite long time and probably in violation even given the margin of appreciation provided for the Contracting States.

The suggestions that these periods are maximum and rarely used in practice are not acceptable. As indicated above, the practice suggests that in terrorism cases 5 % of suspects are denied the right to have notified their arrest and detention for 48 hours, whilst the execution of notification of a request takes for 19 hours on average. In addition, in some cases, the facts of arrest and detention are deliberately hidden from suspects' families and friends and their inquiries about the whereabouts of suspects are not answered accurately by the police.

In the case in which the Commission has set up its jurisprudence, the suspect was denied his right for 45 hours and during which the interference with the right under Art.8(1) was not found to have been necessary for any purposes mentioned in Art.8(2).⁵³ The terms "*for a time*" used in this case by the Commission seem to indicate few hours (e.g. 6-8 hours) rather than days. Indeed, given the fact that such a right might have any practical value if it is used in the first hours of the arrest, this right should be construed restrictively.

For even if the denial of contact lasted only for a relatively short period, the unexplained disappearance of a family member may provoke great anxiety and it might be of great importance.⁵⁴ Moreover, the risk which might come out as a result of informing the family members or the suspect's friends or relatives, who might be members of a terrorist organisation or an organised criminal group, can be valid in relation to the first hours of the arrest. It ceases to be so once the detention has lasted a substantial number of hours and the absence of a family, or terrorist or organisation member becomes abnormal. In such a situation, if the wives and family or the suspect's friends are part of a terrorist or organised criminal organisation they will be led to suppose that the abnormal absence is probably caused by an arrest. Accordingly, they would then take the

⁵³ *McVeigh, O'Neil and Evans v UK*, supra no 8, paragraph 5, p.17

⁵⁴ *Ibid.*, paragraph 237, p.52

required security measures.⁵⁵ It is also possible that, in the case of an efficient terrorist or organised criminal organisation, an arrest would immediately be brought to the notice of organisers through the use of surveillance agents.⁵⁶

Therefore, the refusal to allow the arrestees contact with their families should not be considered justifiable under Art. 8(2) of the Convention after the expiry of a number of hours (e.g. 6-8 hours) following the arrest.⁵⁷

Accordingly, English law needs to be changed to bring it into conformity with the Convention to the effect that both ordinary and terrorist suspects cannot be prevented from having someone informed as to their whereabouts for more than a few (6-8) hours.

Otherwise the fact that a suspect may be held incommunicado for such a long time would be hardly an advertisement for Britain's commitment to civil liberties.⁵⁸ In this age of instant communication, the police have various means at their disposal to make their inquiries about, for example, whether telling the named person of the arrest will lead to interference with or harm to evidence, or whether it will lead to the alerting of other persons suspected of having committed the same offence within shorter period than 36 or 48 hours. It should also be remembered that, COP C (paragraph 5.6) makes it clear that the police may read any letter or interrupt any telephone call made for the purposes of informing a relative or friend. Therefore, it is believed, that this might enable them to prevent any interference with the police investigation.

Moreover, the law, which permits the police, in certain circumstances, to deny any information to the suspect's relative in cases where he telephones and asks whether the suspect is kept at that particular police station, violates Art.8(1) of the Convention. This is so as, in the view of the Commission, the police are obliged to fulfil any reasonable request for information about the suspect from his close relatives. English practice shows that the denial of knowledge of the fact of arrest and detention to suspect's relatives and friends is not a rarity. Such practices too are not in line with the requirements of the Convention.

As regards Turkish law, even though the same right is granted by Art. 19(4), and Art. 13(6) and Art. 135(3) of the Turkish Constitution, PPDA and CCP respectively, unlike their English counterpart, these provisions are not worded in great detail.

55 See, separate opinion of M.M.Klecker, Tenekides, Malchoir, and Carrillo, *ibid.*, p.57

56 *Ibid.*

57 *Ibid.*

58 Robertson, G., *Freedom, The Individual and The Law*, 1991, p.38

First of all, in principle, though both the Constitution and PPDA accept that the exercise of this right can be restricted by the police in cases where the exercise of this duty carries the risk of revealing the scope and subject of investigation and endangers the purpose of the investigation, they do not stipulate what these circumstances might be and how long this restriction can be applied.

The Turkish legislature, thus, contrary to the legality principle of the Convention, grants great discretion to the police by failing to specify the conditions and a time limit in which this right can be suspended. Although it is recognised by the case-law of the Convention that some degree of discretion is a necessity because of the difficulty of formulating a law to cover every eventuality, a law which confers a discretion must indicate the scope of that discretion with reasonable certainty. Vague and uncertain laws may lead to arbitrary and uneven application and in this case generality is lost. Thus, it is important that the boundaries of such an important right should be established by law and administrative authorities should not be allowed to interpret this right according to their own convenience. In the absence of the clearly specified restrictions according to which a right can be suspended it is quite difficult for the national courts and the Convention Agencies to decide as to whether any restriction is imposed in accordance with Turkish law. In defining the circumstances in which this right can be restricted, s.56 of PACE can be taken as an example.

As indicated, the Commission accepts that in certain circumstances, especially if the case in question is related to terrorism, the exercise of this right can be suspended. Yet, the Commission requires that the authorities should submit specific reasons as to why in a particular case the suspect's request to inform or to have informed his relatives has been denied or delayed for certain period of time. As permitted by the wording of relevant provisions of Turkish law and as often happened in practice, in the majority of the serious cases and almost in all terrorist cases, the police deny the exercise of this right by referring in general terms to the nature of risk which may arise from allowing such notification. Denial of this right without giving any specific reason clearly violates Art. 8(1) of the Convention.

Moreover, the Commission accepts that this right can be suspended "*for a time*" if the notification of the relatives as to facts of arrest and detention is likely to alert the accomplices and as a result they might escape or commit offences or they are likely to destroy or remove evidence. At this stage of the Convention's case-law it is not known what is meant by the expression of "*for a time*".

And yet, in this respect the practice clearly suggests that Turkish law is not in line with the interpretation of the Commission. Indeed, as permitted by the law, in practice, the police deny the exercise of this right automatically from the beginning for the safety of investigation until the expiry of detention time or until the investigation is completed even though the permitted detention has not expired, without paying too much regard to the consequences such permission might bring about.⁵⁹ This is so especially if the case in question is a serious or complicated one or related to terrorism. That might mean that the whereabouts of the suspect cannot be learnt by his relatives, in ordinary crimes for many (e.g. 24, 36, 48, 72) hours, in terrorist crimes for many (e.g. 4, 7 or 10) days. Given also the fact that the police do not start the detention clock as soon as the suspect arrives at the police station the actual time in which he has not had the opportunity of telling his wife or relative of the fact of arrest and detention might be much longer than the legally permissible limits. Without question, the practice of denying this right for more than few hours (e.g. 6-8 hours) such as 24 or 36 hours is not in conformity with Art. 8 of the Convention.

Therefore, as required by the Convention, not only the circumstances in which this right can be denied and but also for how long the right of suspects to notify their relative of their arrest and detention can be delayed should be clearly defined. And as suggested in the context of English law, the possibility of delay should not exceed a few (6-8) hours. So that, the exercise of such important rights should not be left to police convenience. Apparently, in specifying the time limit in which this right can be suspended, there is no lesson to be learnt from English law to bring the law into conformity with the Convention since its present formulation violates the Convention. So that, suspects, without undue delay, should have the chance of telling their relatives where and how they are so as to eliminate their anxieties and request their help in preventing their further unlawful detention.

What is more, the lack of any provision in Turkish law as to whether the police are obliged to give any information about the detainee to a relative or a friend with an interest in a detainee's welfare violates the Convention's legality principle. And also, especially in terrorism cases, the practice of denial of any information to the suspect's relatives throughout the detention period about the suspect's arrest and detention violates Art.8(1) of the Convention. Hence, there is a need to insert a provision to CCP to the effect that the suspect's relatives or friends cannot be prevented from having any information about the arrest and detention of the suspect.

59 Ibid.