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**Legal response to protection
of right to communicate e
appropriate adults during
process of arrest or detention**

**Resposta legal à proteção do
direito de se comunicar e adultos
apropriados durante o processo
de prisão ou detenção**

Bassim Jameel Almusawi

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EXTRATERRITORIAL MECHANISMS, INTERNATIONAL
COOPERATION, AND PROTECTION OF VICTIMS
OF HUMAN RIGHTS VIOLATIONS

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Legal response to protection of right to communicate e appropriate adults during process of arrest or detention*

Resposta legal à proteção do direito de se comunicar e adultos apropriados durante o processo de prisão ou detenção

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Abstract

The present paper is undertaken to assess the progress that has been made regarding protection of basic legal rights during arrest or detention in English Law (England and Wales) & the European Convention on Human Rights. In so doing, it will, inter alia, deal in some depth with the right of a suspect to inform someone of his or her arrest or detention, and the right of a suspect who is a vulnerable or chilled to be accompanied by an appropriate adult during facing criminal proceedings. The paper evaluates the existing law and practice with regard to these two identified rights during arrest or detention in England & Wales and then evaluating these rights from the standpoint of European convention on human rights. The materials used in this study were relevant statutes such as legal articles, journals, international reports, case law, regulations, seminar papers, and electronic resources. The result showed that for the fulfillment of obligations under European Convention of Human Rights, such protection for these two identified rights is recognized & guaranteed under criminal justice system in England & Wales. Such recognition is often followed by specific provisions of laws or judicial decisions and level of proceedings is inviolable.

Keywords: criminal justice system; arrest; detention; due process; vulnerable suspect.

Resumo

O presente artigo é realizado para avaliar o progresso feito em relação à proteção dos direitos legais básicos durante a prisão ou detenção na lei inglesa (Inglaterra e País de Gales) e na convenção europeia sobre direitos humanos. Ao fazê-lo, abordará, inter alia, com alguma profundidade o direito de um suspeito informar alguém sobre a sua prisão ou detenção, e o direito de um suspeito vulnerável ou resfriado a ser acompanhado por um adulto adequado durante o processo penal. O artigo avalia a lei e a prática existentes em relação a esses dois direitos identificados durante a prisão ou detenção na Inglaterra e no País de Gales e, em seguida, avalia esses direitos do ponto de vista da convenção europeia sobre direitos humanos. Os materiais utili-

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zados neste estudo foram estatutos relevantes, como artigos jurídicos, periódicos, relatórios internacionais, jurisprudência, regulamentos, documentos de seminários e recursos eletrônicos. O resultado mostrou que, para o cumprimento das obrigações decorrentes da Convenção Europeia dos Direitos Humanos, tal proteção para esses dois direitos identificados é reconhecida e garantida pelo sistema de justiça criminal na Inglaterra e no País de Gales. Esse reconhecimento é muitas vezes seguido por disposições específicas de leis ou decisões judiciais e o nível do processo é inviolável.

Palavras-chave: Sistema de justiça criminal; Prisão; Detenção; Devido Processo

1 Introduction

People detained or arrested by police officers have a certain protection that include various safeguards during police procedures such as right to have someone informed of their arrest, and other legal rights protected by law. However, it is problematic that people with disabilities frequently need for increased protection in law and practice and it is a little attention may be given to how law enforcement officials treat people with disabilities during arrest and detention. Hence, they should be given additional legal protection, including the presence of an appropriate adult with them during criminal proceedings.

The safeguards of informing someone of an arrest or detention, and to have an appropriate adult have a cross-cutting influence on other rights during criminal justice system. The present paper will offer an analysis of these basic legal rights during arrest, detention in English Law (England and Wales) & the European Convention on Human Rights. In so doing, it will, *inter alia*, undertake to verify the adequacy of English criminal legal system in dealing with these identified rights to examine the extent to which there is compatibility between the procedural rights governing these rights and legal provisions under international standard entrenched under the European Convention on Human Rights.

The topic is relevant to International Law, because there is a common international requirement that the protection of a suspected person should be protected, particularly a person who is a vulnerable or with disa-

bilities. These rights are crystallized internationally, especially by the European Convention on Human Rights and the reflexes of how the subject, whether or not it is provided for in the Convention, has been operationalized by English law and the courts. In the same vein, present study may provide a review of the legal regime for protection a person facing criminal proceedings during an arrest & detention particularly a vulnerable suspect in English law & the European Convention on Human Rights to show better linking between national and global instruments under the protection due process efforts. The present paper also may motivate debate among legal experts and comparative legislation on the most effective criminal procedures that can be activated in protection human rights during criminal justice systems

These indicated rights were concern of the law & jurisprudence in England & Wales and the European Convention on Human Rights since many years ago. This article seeks to examine whether these rights have obtained due protection during operation of the criminal justice system in England and Wales. Then it will examine the European legal rules governing these rights during arrest or detention. For a full understanding of these rights emphasis will be laid on the jurisprudence of the European Court of Human Rights (ECtHR), which is illustrative and interprets the notion of human rights during criminal charge in very wide scope and provide full interpretations to the provision of the convention. These jurisdictions have been selected as they offer a rich option of main legal resources to assist a full analysis & purports an evaluation of these couple safeguards.

This article uses the model of legal analysis. It also evaluates the studies of scholars and publications that are appropriate to the topic, such as, rules, regulations, articles, seminar papers, and electronic materials and journals. The work examines primary sources, such as English law, and subjects them to analytical study the primary source on which the work basically relies is the European Convention on Human Rights, which is binding on England & Wales as a State Party. Critical analysis methods of the English law and the convention standards and the guidance of the European Court of Human Rights are adopted throughout this research.

The method of analysis of the cases is based on the development of criminal justice in the field of protec-

tion of persons with disabilities during the process of arrest and detention. This criterion has also been used in selecting certain relevant cases for the approach and the argumentative support whenever a person with disabilities involves with the criminal justice system as a person suspected. Statutory standards (relevant law: The police & Criminal Evidence Act, (PACE) 1984) have been conducted to test how criminal justice system protect people with disabilities during arrest and detention. it is concluded that From examining the legal norms in the European Convention on Human rights & English Law, it emerges that the rights of suspects particularly vulnerable persons in the Criminal Procedure are based on this notion of respect human rights, which were routinely infringed by criminal law enforcement personnel.

2 England and Wales

The scope of present paper is limited to examining the right of informing someone of an arrest or detention, and the right to have an appropriate adult during the process of arrest & detention. It should be made clear that, the rights during arrest and detention are not encompassed only these two rights considered in this paper. It is, however, not practical to attempt to investigate all these rights comprehensively. Rather, the discussion will focus on the extent to which these identified rights of a person under arrest or detention comply with the substantive commitments of England and Wales under the European Convention on Human Rights.

2.1 Right to communicate with someone during arrest or detention

A suspect whom police arrest may be kept in solitary confinement, and isolated from the outside world. Therefore, English and Walsh law provides that any person facing criminal proceedings has right to inform someone informed of their arrest and whereabouts “such right is often known as the right of intimation”.¹ By virtue

of this right, whilst at police station suspected persons could contact with any person who is likely to take an interest in their welfare a friend or relative or other persons known to them to be informed about their arrest and detention.² The right is available to any suspect as soon as possible, and hence a legal duty that lies on the shoulder of custody officer is that must promptly inform the suspect about the right to communicate. The custody officer should ask a suspect whether he wishes to exercise this right at public expense.³

Only one communication is allowed, however, if the suspect’s request with a called person is failed, up to two alternatives are allowed, then if either failed, the custody officer would have a discretion in this respect to take a decision thereby the suspect may be allowed to use further attempts.⁴ Likewise, if the police transfers the suspect to another place whom may be entitled same right again.⁵ Moreover, when the visitor comes at police station to meet the suspect, the custody officer has discretion about accepting or refusing such meeting.⁶ As well as, the code of practice draw attention the police about the necessity of answering positively suspect’s family member, his friend or like that whose question is related to the suspect’s whereabouts.⁷

The Police & Criminal Evidence Act (PACE Act) covered exercising delay of suspect’s right to intimation by police.⁸ It can be permitted by an officer of at least the rank of inspector who may authorise it for up to 36 hours from relevant time, in cases where a detainee in police station for an indictable offence. The delay must be confirmed in writing as soon as possible, even though was given orally at first. There are conditions justify the delay where the officer has reasonable grounds for believing that telling named person of the arrest would lead to one of bellow-

- Interference with or harm to evidence connected with an indictable offence;
- Interference with or physical injury to other person;
- The altering of other person suspected of

¹ DIXON, David; BOTTOMLEY, Keith; COLEMAN, Clive; GILL, Martin; WALL, David. Safeguarding the rights of suspects in police custody. *Policing and Society: An International Journal*, v. 1, n. 2, p. 114-140, jun. 1990. p. 116; CAP, Ed; LUQMANI, Jawaid. *Defending suspects at police station: the practitioner’s guide to advice and representation*. 3. ed. United Kingdom: Legal Action Group, 1999. p. 75.

² The police & Criminal Evidence Act, (PACE) s.56 (1).

³ Code of Practice, Code C para. 3.1.

⁴ Code of Practice, Code C para. 5.1.

⁵ PACE s.56(8).

⁶ Code of Practice, Code C para. 5.4.

⁷ Code of Practice, Code C para 5.5.

⁸ PACE s,56(2)(7).

having committed such an offence but not yet arrest for it; or

- Hindrance of the recovery of any property obtained as a result of such an offence.

If delay is authorised the detained person should be told a reason for it and that reason should be recorded on his custody record, then if that reason ceases to exist the custody office must enable him to use such right.

The arrested person has the right to talk to another person of his choice, over the phone for a reasonable period, and has the right to write messages or text messages to any other person. However, this right may be denied or delayed when an officer of the rank of inspector or above in an indictable offence considers that the use of this right may lead to one or more of the consequences listed in the Code of practice.⁹ In this respect, if communication is allowed, the detainee must be told that the letter or telephone call could be listened or read by police and it may be later used as evidence against him during forthcoming proceedings.¹⁰ The same provision would be followed where appropriate adult or an interpreter may make the telephone call or write the letter on behalf of the detained person.¹¹

By virtue of Code of practice any delay or deny to such suspect's right of communication which mentioned above must be justified and no longer than necessary.¹²

2.2 Appropriate adults

The Police & Criminal Evidence Act (PACE Act) affords a suspect at police station who is a juvenile, mental disordered or mentally handicapped the right to have appropriate adult that must be provided by police as soon as practicable.¹³ In addition, according to the

⁹ Code C, annex B, para.1 and 2 (Code C, para 5.6).

¹⁰ Code C para 5.7.

¹¹ Code C Note for Guidance 5A.

^{CAP} Ed; LUQMANNI, Jawaid. *Defending suspects at police station: the practitioner's guide to advice and representation*. 3. ed. United Kingdom: Legal Action Group, 1999. p. 75.

¹² Code C para. 5.7A.

¹³ The Police and Criminal Evidence Act 1984 Code C states that: "the police custody officer or custody staff shall determine whether the detainee is a juvenile and/or vulnerable and therefore requires an appropriate adult" (paragraphs 3.5); DEHAGHANI, Roxanna; BATH, Chris. Vulnerability and the appropriate adult safeguard: examining the definitional and threshold changes within PACE Code C. *Criminal Law Review*, n. 3, p. 213-233, 2019.; Miller v DPP [2018]

s. 38 of the Criminal Disorder Act 1998 (CDA), the sufficient appropriate adult must be provided by local authorities for their area. This section examines roll of appropriate adult, and who is eligible to occupy the position of the appropriate adults.

2.2.1 The appropriate adult for Juveniles

Qualified people: the definition of a person who can be an appropriate adult as Prof. Cape claims that 'amount to a hierarchy'.¹⁴ By virtue of PACE Act and CDA¹⁵, the person who can be appropriate adult may be:

- The parent or guardian of juvenile suspect, and if the juvenile in care, the appropriate adult will be care authority or voluntary organisation.
- A social worker;
- Failing either of the above, another responsible adult aged 18 or over who is neither a police officer nor employed by the police.

The above hierarchy is certainly correct so long as aims to looking after at juvenile suspect's welfare. As a result, whenever the members of family (parent or guardian) of the juvenile suspect most the others can reach to his welfare, they have priority to act as an appropriate adult. Thus, many of judicial decisions have recognised that, when considered the juvenile's family who could not attend to suspect's welfare disqualified to act as appropriate adult.¹⁶ Hence, the parent or guardian should attend at police station as appropriate adult and then a social worker if their attendance is not possible. After that if both unavailable, then could be a tend to third category that is adult aged 18 or over as noted above. In this connection, it is accurate in saying that parents should be provided to be acted as appropriate with their juvenile suspect at the police station to help him understand what is going on. However, there are exceptio-

EWHC 262 (Admin); [2018] Crim. L.R. 472.

¹⁴ CAP, Ed; LUQMANNI, Jawaid. *Defending suspects at police station: the practitioner's guide to advice and representation*. 3. ed. United Kingdom: Legal Action Group, 1999. p. 393.

¹⁵ Code C para. 1.7(a). the CDA s. 65(7).

¹⁶ R v Palmer, UK, the time September 1991. R v Morse [1991] Crime LR. 195.

nal conditions & situation render the appropriate adult might be other persons rather than his relative.¹⁷

The emergence of situations that could render the attendance of parents to be acted as appropriate adult with their juvenile suspect are inapplicable may lead to look at another alternative. The appropriate adult might be juvenile career or a trained person. In these situations police may favorite professional appropriate adult such as social workers. In this sense, during absence of juvenile's parents, a custody officer to protect the juvenile welfare wishes to cooperate with a professional appropriate adult particularly when taking into account the allowance time of detention. Another point in favor of a social worker to be acted as appropriate adult instead of juvenile's parents is that Sometimes the presence of parents at the police station may for some reasons take long time, which may negatively prolong the duration of detention as reported in many cases during process of arrest and detention.¹⁸

It could be claimed that in such situation, it is imperative to strike right balance between the welfare of a suspect and the right of parents to support their child when in trouble. Some studies have argued that, in many cases in which parents were deemed ineligible to exercise their right to be with their children at the police station, there was a clear infringement of their rights in this regard because their right to support their child when in trouble would be neglected.¹⁹

Whereas, one of the main arguments against above claim is that, the criterion of selecting who may act as appropriate adult may rely on choosing the right person to be on the side of the juvenile suspect to properly achieve his interest & welfare more than other persons.

Thus, it may be a valid decision by the police whenever they choose social workers to act as appropriate adults rather than parents without compromising their

rights when they are not ready to act as appropriate adults, as some studies have shown that family members sometimes express high levels of hostility and distress.²⁰ As well as, another obstacle that may be straggled by authorities is that parents are often unfamiliar with legal system due to a lack of knowledge with police procedures or police interviews. Furthermore, what is surprising is that family members sometimes assist police against the juvenile. What follows is, even in case of family members are present, may be prohibited from act as appropriate adults as long as they appear unsuitable. In light of the aforesaid, Buck et al are true when they claim that "social workers were more supportive and co-operative when acting as appropriate adult compared to family members".²¹

The rationale behind the concept inappropriate people is to create deterrence in society from the activities that may harm a juvenile suspect during facing criminal proceeding, as pointed out, even if people who are nominated to be appropriate adults are available may be prevented from doing so. That claim makes the PACE Act indicates the following examples that include but not exclusively people who are disqualified from act as appropriate adults, are either prevented or unsuitable:

- Estranged parents - an estranged parent who is objected from the juvenile, is not suitable to be appropriate adult.²²
- Interested parties - all persons nominated to be acting as appropriate adult should submit admissions in police station before acting as appropriate adult, including that not having a conflict of interest or involvement in a crime for which the juvenile is under arrest or detention at the police station.²³

¹⁷ DRAKEFORD, M. The Appropriate Adult. *Probation Journal*, v. 41, n. 3, p. 135-139, 1994; PIERPOINT, Harriet Louise. *Appropriate practice? a study of the role and co-ordination of volunteer appropriate adult for young suspects*. 2005. Thesis (Doctor of Philosophy) - College of Law, University of Plymouth, Plymouth, 2005. p. 45.

¹⁸ CAP, Ed; LUQMANI, Jawaid. *Defending suspects at police station: the practitioner's guide to advice and representation*. 3. ed. United Kingdom: Legal Action Group, 1999. p. 393-394.

¹⁹ DIXON, David; BOTTOMLEY, Keith; COLEMAN, Clive; GILL, Martin; WALL, David. Safeguarding the rights of suspects in police custody. *Policing and Society: an International Journal*, v. 1, n. 2, p. 114-140, jun. 1990. p. 119; WALINETS, S. You're on duty and you get a call from the police. *Social Work Today*, v. 30, p. 14-15, 1985.

²⁰ BUCKE, T.; BROWN, D. *In police custody: police powers and suspects' rights under the revised PACE codes of practice*. London: Home Office Research Study, 1997. p. 5-18; PIERPOINT, Harriet Louise. Reconstructing the role of the appropriate adult in England and Wales. *Criminology & Criminal Justice*, London, v. 6, n. 2, p. 219-237, 2006; BROWN, D.; ELLIS, T.; LARCOMBE, K. *Changing the code: police detention under the revised PACE: codes of practice*. London: Home Office Research Study, HMSO, 1992. p. 129.

²¹ BUCKE, T.; BROWN, D. *In police custody: police powers and suspects' rights under the revised PACE codes of practice*. London: Home Office Research Study, 1997. p. 18.

²² Code C Note for Guidance 1C. See also, DPP v Blake, 19 DPP v Blake [1989] 1 WLR 432.

²³ Code C Note for Guidance 1 C; Code C Note for Guidance 1 D; Code D Note for Guidance 1 A. for more details see Dpp v

- Lawyer who is at the police station to doing his official missions should not be appropriate adult because that is not same function or role of legal advice.²⁴

In light of the aforesaid, it could submitted that, the notion of appropriate adult in English legal system is based on the argument that preservation the rights of a juvenal suspect under the proceedings of arrest and detention is first important thing to be protected and preserved.

Role of the appropriate adult: the reason for the argumentative development from the discrimination of the concepts is that a person who is a juvenal suspect during arrest and detention has the same rights to the protection and assistance of the law as any other person, but often with taking into account his special needs in the field of juvenile justice.

All the laws and rules do not seem to fill in the vacuum of a general role of appropriate adult.²⁵ The Police and Criminal Evidence Act 1984 (PACE) & its codes of practice that are regulate all police powers and protect persons facing criminal proceedings and public rights do not elaborate the role of the appropriate adult for a juvenal suspect during arrest and detention. However, the role of the appropriate adult for a juvenal suspect during arrest and detention could be generally divided according phases of investigation for two categories at interview stage and other stages of investigations. In relation to the interview stage, the Code of Practice stipulates that, the appropriate adult should be available whenever the juvenile suspect is interviewed or asked to present or singe a written statement.²⁶ The police must inform the appropriate adults that they should assist and advise the juvenile ,so they could meet juvenile in private if they wish²⁷. During the interview, they must observe whether it is conducted adequately and fairly. Further, they should facilitate communication between the juvenile and interviewer. Hence, one may well sub-

mitted that the role of appropriate adult is during facing criminal proceedings in police station not be restricted by merely observation.²⁸

As mentioned above, the main intent of attending appropriate adult with juvenile suspect during process of arrest and detention is to reduce the risk of miscarriage of justice as a result of obtaining evidence from vulnerable suspects that, by virtue of their vulnerability, led to unsafe and unfair convictions. Therefore, in addition to their role at the interview stage, the role of appropriate adults extend to another stages of investigations. In general, they should note that juvenile suspect must not be questioned by an investigator without being instructed of his rights and to have legal assistance during presence appropriate adult.²⁹ They must be presence during juvenile is cautioned by police.³⁰ In this regard it should make clear that legal advice cannot be given by appropriate adults but they can notes the conduct of police in regard with providing help to get a solicitor. They have the role to speak to the juvenal suspect confidentially and in private. The police must facilitate such connections. Further, they must attend any procedures that are relevant with the Code D that specifically include criminal procedures of investigations and detention.³¹ Presence of appropriate adults is also one of the most significant rights of the juvenile in the event of charging whenever there are sufficient evidences against him.³²

2.2.2 The appropriate adult for mentally disordered and handicapped

Special provisions which appropriate adult is most notable of them, must be used if the Custody Officer has any suspicion, or is told in good faith that an adult suspect may be mentally disordered and handicapped.³³ A person who can act as appropriate adults should be qualified person to take his or her role to safeguard the interests of mentally disordered and handicapped persons detained or questioned by police officers.

MORRIS time 8th October 1990 in this case, it has been held that social worker who acted as the appropriate adult, involving in case as notified the police about theft for which the juvenile in detention. Therefore, he disqualified to be appropriate adult.

²⁴ Code C Notes for Guidance 1F; Code D Note for Guidance ID.

²⁵ CAP, Ed; LUQMANI, Jawaid. *Defending suspects at police station: the practitioner's guide to advice and representation*. 3. ed. United Kingdom: Legal Action Group, 1999. p. 395.

²⁶ Code C para 11.14.

²⁷ Code C para 3.12.

²⁸ Code C para 11.6. In this respect, see DPP v Blake [1989] 1 WLR 432.

²⁹ Code C para. 3.11.

³⁰ Code C para. 10.6.

³¹ Code D paras. 1.13; 1.14.

³² Code C para. 16.1.

³³ Code C, para. 1.4.

Qualified people: Interpretation of law regarding the appropriate adult may illustrate that he or she is one of the following³⁴:

- A relative, guardian or other person responsible for the care or custody of the mentally disordered and handicapped suspect;
- Someone who has experience of dealing with mentally disordered or mentally handicapped people but is not a police officer or employed by the police (such as an approved social worker as defined by the Mental Health Act 1983 or specialist social worker); or
- Failing either of the above, some other responsible adults aged 18 or over who is not police officer or employed by the police.³⁵

The definition of a person who can be an appropriate adult as with juvenile 'amount to hierarchy'.³⁶ Similarly, the persons who cannot be appropriate adult of juvenile the same as for mentally disordered and handicapped.

Role of the appropriate adult: As with juvenile suspect, according to PACE with accompanying Codes of practice appropriate adult must be present with the adult suspect who is mentally disordered and handicapped when interviewed by police or implicated in every criminal proceedings. Therefore, the custody officer should unless there are exceptional circumstances, notify the appropriate adult reasons and ground of arrest and detention of suspect and whereabouts, to present at police station to doing his role. Such information may assist an appropriate adult to participate effectively & adequately doing their task, namely: assisting a suspect to understand and use their rights. Assisting police in doing their task by any communication needs. In some cases, it may be necessary to appoint a eligible specialist (such as a mediator) to engaging with police to perform a formal valuation and possibly provide additional

communication support in the interests of protecting a suspect's rights.³⁷

Lastly, police could interrogate vulnerable groups whether juvenile and mentally handicapped or disorder, without attend appropriate adult so long as there are reasonable grounds which stand behind that. Hence, this delay may be legitimated if the rank of superintendent or higher thought that the delay could maintain persons from immediate risk of harm, or property from serious loss or damage.³⁸ In light of the foresaid, it could be submitted that the reform is crucial to improving protection for vulnerable groups who are children & mentally disordered & to treat them in a manner substantially different from a normal adults in the field of justice system.

3 The European Convention on Human Rights

The jurisprudence of the European Court on Human Rights (ECtHR) benefits from a rich store of case law dealing with the protection of a person facing criminal proceedings & his or her human rights. The continuing development of human rights in criminal procedurals under Strasbourg case-law can be devoted and arrayed as a guideline for criminal justice systems in order to identify the weaknesses for further improvements in these identified rights to be taken place in the future.

3.1 Interpretation of European Convention regarding right to communicate

The European Convention On Human Rights, is one of the significant an international instrument regarding the treatment of a suspect who is detained in police custody & kept incommunicado whose meaning is isolating the detainee from access to outside the world even from contacting with member of family or friends.

³⁴ *Crime and Disorder Act 1998 s.38(4)*; Codes of practice.

³⁵ Code C para. 1.7(b) and Code D para. 1.6(b).

³⁶ CAP, Ed; LUQMANI, Jawaid. *Defending suspects at police station: the practitioner's guide to advice and representation*. 3. ed. United Kingdom: Legal Action Group, 1999. p. 411.

³⁷ GUDJONSSON, Gisli. Psychological vulnerabilities during police interviews: why are they important? *Legal and Criminological Psychology, the British Psychological Society*, v. 15, p. 161, 2010.

³⁸ Code C paras. 11, 18; FENWICK, Helen. *Civil liberties and human rights*. 4. ed. United Kingdom: Routledge Cavendish Publisher, 2007. p. 1190; ZANDER, Michael. *Cases and materials on the english legal system*. 10. ed. United Kingdom: Cambridge University Press, 2007. p. 190-191.

However, it does not put particular text in this point in which one could recognize specific details about protecting a suspect's right to communication with his or her family during detention time. The illegality of preventing a detainee from access to outside the world and informing the other in fact of detention stems from different guarantees under contexts of the European Convention on Human Rights, most importantly is article (3) that concerns with treatment of a suspect, as well article (6) that concerns the right of fair trial as Nicola Duckworth claimed that:

Incommunicado detention denies detainees the right to fair trial. Such detention in itself may constitute cruel, inhuman or degrading treatment. It does not comply with international human rights standards [emphasis added] Allow all detainees to have their families notified of their detention and location.³⁹

The convention might cope the violence against present right under various its texts because indeed, a person facing criminal proceedings needs the right to communicate with other to obtain fairness of criminal procedure such as in respect of prepare to defense and to endure the interrogation. As long as the interesting here concerning with notification of the fact of detention to the suspect's family or friends, the sufficient article whose essence is to protect this right is article (8) of the convention which states that:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is 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.

The present author with the view that international instrument should not hesitate to put procedures by which international community can ensure that national governments action meet international standard of human rights, and oversee fully implement provisions included in the law on the rights of a person facing criminal proceedings.

³⁹ AMNESTY INTERNATIONAL. *Europe and Central Asia program director, time to end incommunicado detention in Spain*. 2009. Available at: <https://www.amnesty.org/en/latest/news/2009/09/spain-incommunicado-detention-e28093-out-sight-out-mind-20090915/>. Access in: 1 Apr. 2022.

However, it is suggested that even though the convention does not focus on the details of protecting the right to communicate during detention but by whose judicial body that is the European Court of Human Rights, made clear that the right of detainee for notification his family or friend is the binding nature. In most comprehensive indication, it has been recognised that relatives of detainee should be informed of the arrest and place of detention. Thusly, article (8) whose purpose is to guarantee the right to respect for private and family life and correspondence is breached whenever the detainee is prevented from his right to communicate with his partner meanwhile under detention.⁴⁰

In light of the aforementioned, even though the right of detainee to communicate with family or friends is not expressly texted in the convention it is implicitly guaranteed by the convention. It is made clear that procedure whose mission is to protect this right should be granted by member of states like the context of Anglo-Welsh law done when is expressly stated on this right of a suspect, as has already been seen above.⁴¹

The authorities must take care to respect right to communicate of a person under an arrest or detention in a manner that also respects the rights and freedoms of the communicated persons. In spite of that right is generally guaranteed by Convention, it is not absolutely. In other word, the right of detainee to contact with his

⁴⁰ Mc Veigh, O ' Neil and Evans v UK, 18 March 1982.

⁴¹ Section 56 of PACE Act. The Declaration of the Principle of Detention Adopted by the United Nations General Assembly on December 9, 1988, Principle 16 expressly indicates that: "1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody. 2.If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of state of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of intergovernmental organization. 3.If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians. 4. Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may, however, delay a notification for a reasonable period where exceptional needs of the investigation so require".

family or friends could be fettered for reasonable period of time by public authority on reasonable grounds such as national security. In respect of these reasons which stand behind the delay of the suspect's right of communication, the convention in the article (8) made clear that the suspect's right of communication could be restricted. It has been pointed out that:

in accordance with the law and necessary in a democratic society in the interest 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.⁴²

As well, it is worth to take into account the possibility of omitting communication upon suspect's own reasons, for example such notifying may harm his reputation. The European Court of Human Rights also considers that the suspect's right to notify a third person can be subject to some delay whenever such notification may raise some caveats such as alerting accomplices in the investigated crime especially terrorism crimes, removing or destroying evidence or causing the commission of more crimes.⁴³

Although the Convention sometimes accepts delaying in periods of the suspect's right to notify a third person in such circumstances it is noteworthy that in the case of delay this right must be surrendered with following guarantees, the public authority should mention grounds that stand behind of such delay, the period of delay should be precluded at no longer than absolutely necessary, the delay of the right of suspect to contact with his relative or friend must be looked at as exceptional under urgent circumstances. Also, an authority or a person who is in duty to take such a decision of delay should clearly indicate all reasons in written form. Lastly, on the first appearance to the detainee before the court the decision not to permit notification should be promptly reviewed by the judicial authority.⁴⁴

⁴² ECHR art.3 and 6; for details see: Otamendi v Spain, App no 47303/08 (ECtHR, Judgment 16 October 2012); WILSHER, Daniel. Right to liberty e security. In: PEERS, Steve; HERVEY, Tamara; KENNER, Jeff; WARD, Angela (ed.). *The EU charter of fundamental rights: a commentary*. Oxford: Hart publishing, 2014. p. 121-152.

⁴³ Mc Veigh, O 'Neil and Evans v UK, 18 March 1982, para. 238-239.

⁴⁴ EVANS, Malcolm D; MORGAN, Rod. *Preventing torture: a study of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment*. Oxford: Clarendon Press, 1998. p. 265.

3.2 Interpretation of European Convention regarding right to Appropriate Adult

The European Convention on Human Rights in relation with providing a vulnerable suspect who cannot understand or cope the criminal proceedings during an arrest or detention due to his age or status such as juvenile or suffering from mental disordered or mentally handicapped, with right to have appropriate adult during criminal proceedings, does not explicitly or specifically stipulate on this right within its body. However, it is noteworthy that such provisions can be invoked through different contexts of the convention such as protection of the freedom and liberty by article (5), right to fair trial by article (6), protecting a suspected person from torture and other degrading and inhumane treatment, by article (3), and the right of family in article (8). All these articles throughout the convention support any protection well-being of indicated suspect within criminal proceedings.

In the view of the present author, the convention empowers the national laws across members' states for supporting any welfare regarding vulnerable suspects. In other word, the European Convention on Human Rights by virtue of foregoing articles adopts adequate protection to those who are a vulnerable suspect and also the convention promotes policies relating to respect these fundamental rights. Currently, in its case law the European Court of Human rights deems it is essential that vulnerable suspects have the right to have appropriate adult during criminal proceedings, who are not solely presence but also must involve in hearing and following the procedures through effective participation.⁴⁵ Accordingly, vulnerable suspects' participation in procedures probably cannot be done or achieved unless the investigation authority must provide them with assisted appropriate adult who can be a social worker or a member of family.⁴⁶ More specifically, in respect of juveniles or children could be held accountable for their criminal or illegal actions and of the ambit parental obligations and liability. In this context, attention should be paid to Children's rights within criminal jus-

⁴⁵ ECtHR, 16 December 1999, T. v United Kingdom, (no. 24724/94). ECtHR 5 June 2004, S.C v United Kingdom, (no. 60958/00).

⁴⁶ SPRONKEN, Taru; ATTINGER, Marelle. *Procedural rights in criminal proceedings: existing level of safeguards in the European Union*. 2009. Available at: <https://ssrn.com/abstract=1440204>. Access in: 1 Apr. 2022.

tice. It has been rightly pointed out that “Children may only be deprived of their liberty as a last resort and for the shortest appropriate period of time”.⁴⁷ Thus coordination between public authority and parents or local administration must provide protection to a vulnerable suspect against denying his rights throughout criminal proceedings. The refusal of the investigation authorities to allow a detainee to receive visits by, family members, may violate provisions of the convention towards endorsing vulnerable suspect’s rights which have been promoted by the jurisdiction of the European Court of Human rights.

In many cases, the court considered the United Nation Convention on the Rights of Child (UNCRC) which came into force on 2 September 1990 as “a tool in making judgments on the European Court of Human rights”.⁴⁸ As a result, even if there are no specific articles provide special support to vulnerable suspects regarding appropriate adults, it can be submitted that provisions established within national and international laws to respect rights of vulnerable suspect in the criminal justice system would be promoted under the jurisprudence of the convention, and most obviously of these is an obligation to provide appropriate adults during proceedings.

4 Conclusion

This work has argued that the two identified rights have been adopted full protection under the European Convention on Human Rights & criminal justice system in England & Wales. The present paper comprises two sections which concern the two identified guarantees of a person facing criminal proceedings under criminal justice system in England & Wales, and then, an attempt has been made to focus on particular issues in light of the European Convention on Human Rights and recent developments of the due process standard under the European Court of Human Rights. The rights of

a person facing investigation authorities in the pre-trial stage of criminal proceedings: the right to inform someone of an arrest or detention, third party access right (the appropriate adults) that focuses specifically on the rights and interests of children during facing criminal charge have been focused on, in present work.

The paper reaches the conclusion that a progress in the human rights of a person facing criminal proceedings is an important milestone in England & Wales towards enhancement of the rule of law including provisions of law & case law relevant to the right to inform someone of an arrest or detention and third party access right that is the appropriate adults. The role of the appropriate adult in spite of the fact that it facing a number of practical obstacles it has been built on the welfare of the vulnerable suspect while coping criminal proceedings and such practical obstacles have been overcome.

A right of detainee to communicate with family or friends is not expressly texted in the European Convention on Human Rights, and yet the research has identified that the right is implicitly guaranteed by the convention. It is important to note that international instruments are silent on concepts. In this sense, it would be interesting to insert a suggestion that it has been previously seen under the cited jurisprudence of the Convention a suspect, in general, shall have a right to due process of law.

In the same vein, vulnerable suspects shall have a right to due process with notable recognition being given to their degree of vulnerability. They shall have the right to have appropriate adult during criminal proceedings, who are not solely presence but also must involve in hearing and following the procedures through effective participation & participation in procedures cannot be achieved unless the investigation authority must provide appropriate adult who can be a social worker or a member of family to assisting the suspect to cope the criminal proceedings. The preceding sections of this article have detailed the provision of the two identified rights in English criminal justice system. The system cannot work in harmony with binding international standards under European Convention on Human Rights unless

⁴⁷ THE COUNCIL OF EUROPE. *Handbook on European law relating to the rights of the child*. Luxembourg: European Union, 2017. Available in: https://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child_en.pdf. Access in: 10 Apr. 2022.

⁴⁸ NACRO. *Proportionality in the youth justice system: reducing offending by looked after children*. 2012. Available at: <https://www.nacro.org.uk/wp-content/uploads/2012/05/reducing-reoffending-by-looked-after-children.pdf>. Access in: 9 Apr. 2022.

these human rights of persons facing criminal proceedings are respected.

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