A Raimondo v Italy (1994) 18 EHRR 237 the court held that article *6* did not apply to the proceedings which led to the applicant being placed under special police supervision.

60 The second aspect of the wording that is worth noting is that those parts of article 6 which refer to criminal proceedings make it clear that the essential feature of proceedings that have that character for the purposes of
g the Convention is that the person is "charged with a criminal offence". This expression is to be interpreted as having an autonomous meaning in the context of the Convention: *Adolf v Austria* (1982) 4 EHRR 313, 322, para 30. So careful attention must be paid to the meaning which has been attached to these words by the Strasbourg court. As is by now very well known, the case law has established that there are three criteria to be taken into account. They are not always stated in precisely the same language, but
C they are usually said to be (1) the classification of the proceedings under national law, (2) the nature of the offence and (3) the nature and degree of severity of the penalty: *Engel v The Netherlands (No 1)* 1 EHRR 647, 678-679, paras 82-83; *Benham v United Kingdom* 22 EHRR 293, 323, para 56.

61 The words "criminal charge" themselves suggest that the
D proceedings which they have in mind are not just proceedings where a "charge" is made. The question is whether they are proceedings which may result in the imposition of a penalty. This point emerges clearly from the French text of article 6(1), as Lord President Rodger pointed out in S *v Miller* 2001 SC 977, 988, para 21. It states that the matter which is to be determined must be either a dispute "sur ses droits et obligations de g caractere civil" or an "accusation en matiere penale". The words "en matiere penale" indicate it is envisaged that there will be a penal element.

The court seems to have had this point in mind when, in *Engel v The Netherlands (No 1),* at p 678, para 82, it asked itself when it was setting out the first criterion "whether the provision(s) defining the offence charged belong, according to the legal system of the respondent state, to criminal law, disciplinary law or both concurrently." In other words, proceedings involving a charge which is merely disciplinary in character will not fall within the ambit of article 6.

62 In *Oztiirk v Germany* (1984) 6 EHRR 409, 421, para 50 the court said that the first matter to be ascertained was "whether or not the text defining the offence in issue belongs, according to the legal system of the respondent state, to criminal law". In the continental systems the texts in
C question are likely to be found in a code, and there is often a separate criminal code which can readily be identified. As the Lord President observed in *S v Miller* 2001 SC 977, 988-989, para 21:

> "the very titles of such codes of criminal law will often reveal that they are indeed concerned essentially with 'matiere penale'. For instance, in France there is a 'code penale', in Italy a 'codice penale', in Spain a 'codigo penal' and in Germany a 'Strafgesetzbuch'. It follows that when, in such cases as *Oztiirk,* the court investgiates whether the text defining the offence belongs to criminal law, it is investigating whether the text belongs to an area of the law where proceedings can result in a penalty being imposed."