56 The second point is that it would not be inconsistent with a finding *A* that the proceedings under section 1(1) of the Crime and Disorder Act 1998 were civil proceedings for your Lordships to hold that the standard of proof to be applied was that which is required in criminal proceedings. In *Constanda v M* 1997 SC 217 the ground on which the child had been referred to a children's hearing was that he was exposed to moral danger in terms of section 32(2)(b) of the Social Work (Scotland) Act 1968. The Court of Session held that, as the whole substratum of the ground of referral was that the child had performed certain acts which constituted criminal offences, the commission of these offences had to be proved to the criminal standard. This was despite the fact that the proceedings before the sheriff were civil proceedings, and in the absence of any rule laid down by the Act which required the criminal standard to be applied in any case other than where the child had been referred under section 32(x)(g) on the ground that *c* he had committed an offence.

Classification under the Convention

57 The fact that the proceedings are classified in our domestic law as civil proceedings is not conclusive of the question whether they are of that character for the purposes of article *6* of the Convention. It provides no D more than a starting point, as the question has to be examined in the light of the common denominator of the legislation of the contracting states: *Engel v The Netherlands (No 1)* 1 EHRR 647, 678, para 82.

58 The examination must begin with the wording of article *6* itself, and in particular with the opening sentence of article 6(1). It provides:

> "In the determination of his civil rights and obligations or of any F criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Then there are the opening words of article 6(3) which provides that everyone "charged with a criminal offence" is to have the minimum rights which are set out in that article. F

59 There are two aspects of the wording of article *6* that I think are worth noting before I turn to the authorities. The first is that, for article *6* to apply at all, the proceedings must be capable of being classified either as proceedings for the determination of the person's "civil rights and obligations" or as proceedings for the determination of a "criminal charge" against him. But it would be wrong to approach the article on the assumption that all that is in issue is the question as to which of these two *C* descriptions better fit the nature of the proceedings. It is not a straight choice between one description and the other. It is possible that the proceedings which are in issue in a given case will fit neither description. In *Albert and Ee Compte v Belgium* (1983) 5 EHRR 533, 539, para 25 the court observed that there are some cases which are not comprised within either of these categories and which thus fall outside the ambit of article 6(1).

For example, in *Ravnsborgv Sweden* (1994) 18 EHRR 38 the court held that article *6* did not apply to proceedings where the applicant had been fined for making improper statements in written observations before the Swedish courts. The proceedings were regarded as being outside the ambit of article *6* because they were disciplinary in character: p 52, para 34. In