A in relation to the second and third criteria the European Court stated in *Ozturk,* at pp 423-424, para 53:

> "according to the ordinary meaning of the terms, there generally come within the ambit of the criminal law offences that make their perpetrator liable to penalties intended, inter alia, to be deterrent and usually consisting of fines and of measures depriving the person of his liberty . . .
>
> *B* the general character of the rule [of law infringed by the applicant] and the purpose of the penalty, being both deterrent and punitive, suffice to show that the offence in question was, in terms of article 6 of the Convention, criminal in nature."

102 The complaints against the defendants under section 1 of the 1998 Act do not allege the commission of criminal offences for which punishment

C is sought. The fact that the backgrounds to the complaints were the alleged commission of a number of criminal offences does not mean that the complaints constituted charges of criminal offences. In 5 *v Miller* 2001 SC 977, the Inner House was considering section 52(2) ^) of the Children (Scotland) Act 1995 which provides that a child may be in need of compulsory measures of supervision where he "has committed an offence", and Lord President Rodger stated, at pp 989-990, para 23:

> "In my view, once the procurator fiscal has decided not to proceed with the charge against a child and so there is no longer any possibility of proceedings resulting in a penalty, any subsequent proceedings under the 1995 Act are not criminal for the purposes of article 6. Although the reporter does indeed intend to show that the child concerned committed an offence, this is not for the purpose of punishing him but in order to establish a basis for taking appropriate measures for his welfare. That being so, the child who is notified of grounds for referral setting out the offence in question is not thereby 'charged with a criminal offence' in terms of article 6."

103 In relation to the third criterion, I consider that the making of an *F* anti-social behaviour order does not constitute a punishment or penalty

imposed on the defendant. In my opinion the magistrate who heard the complaint against the defendant Clingham was correct when in the case stated for the opinion of the High Court he stated:

> "These were civil proceedings of an injunctive nature imposing no penalty on the appellant but providing such measure of restraint as the court may find necessary to protect members of the public from his misbehaviour."

104 The defendants relied on the decision of the European Commission of Human Rights ("the commission") and of the European Court in *Steel v United Kingdom* 28 EHRR 603. In that case some of the applicants who had been charged with a breach of the peace were committed to prison for refusing to agree to be bound over to keep the peace. The applicants complained (inter alia) that their rights under article 5 and article 6(3)(a) had been violated. In considering the claims of the applicants both the commission and the European Court expressed the opinion that, notwithstanding that breach of the peace is not classified as a criminal offence under English law, breach of the peace must be regarded as an