

“offence” within the meaning of article 5(1)(c). The commission stated in its opinion, at pp 615–616: A

“66. . . . The commission notes that under the domestic legal system, breach of the peace is not a criminal offence and binding over is a civil procedure. However, as the European Court of Human Rights has held [*Öztürk v Germany* (1984) 6 EHRR 409, 423–424, para 53]: ‘[T]here 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 . . . [The rule at issue] prescribes conduct of a certain kind and makes the resultant requirement subject to a sanction that is punitive . . . the general character of the rule and the purpose of the penalty, being both deterrent and punitive, suffice to show that the offence was, in terms of article 6 of the Convention, criminal in nature.’ B C

“67. The proceedings brought against the first applicant for breaching the peace also display these characteristics: their deterrent nature is apparent from the way in which a person can be arrested for breach of the peace and subsequently bound over ‘to keep the peace or be of good behaviour’, in which case no penalty will be enforced, and the punitive element derives from the fact that if a person does not agree to be bound over, he will be imprisoned for a period of up to six months. D

“68. In these circumstances, the commission considers the charge of breach of the peace to be a criminal offence and binding over proceedings to be ‘criminal’ in nature, for the purposes of article 6 of the Convention.”

The court stated, at pp 635–636:

“48. Breach of the peace is not classed as a criminal offence under English law. However, the court observes that the duty to keep the peace is in the nature of a public duty; the police have powers to arrest any person who has breached the peace or whom they reasonably fear will breach the peace; and the magistrates may commit to prison any person who refuses to be bound over not to breach the peace where there is evidence beyond reasonable doubt that his or her conduct caused or was likely to cause a breach of the peace and that he or she would otherwise cause a breach of the peace in the future. E F

“49. Bearing in mind the nature of the proceedings in question and the penalty at stake, the court considers that breach of the peace must be regarded as an ‘offence’ within the meaning of article 5(1)(c).”

105 The defendants’ principal submission in reliance on *Steel* was that both in proceedings for a breach of the peace and in proceedings for an anti-social behaviour order there was a two-stage process. First, there was a finding of a breach of the peace or a finding of anti-social behaviour and, secondly, there was imprisonment if the defendant refused to be bound over or if the defendant chose to disobey the anti-social behaviour order. Accordingly if binding over proceedings are criminal proceedings for the purposes of article 6 it follows that an application for an anti-social behaviour order is also a criminal proceeding within the meaning of article 6. G H

106 I am unable to accept the defendants’ submissions for the reasons given by Lord Phillips of Worth Matravers MR in his judgment in *McCann*