thus impossible, when applying the autonomous test from the Convention as to the general nature of the proceedings, to escape the conclusion that they are in respect of a criminal charge. Thus, the orders made in the instant proceedings on the basis that they were civil proceedings not subject to such safeguards should be quashed.

Having a shifting or varying burden of proof may impose on justices an almost impossible task, and could lead to the wholly undesirable practice of justices being asked about the approach they are going to adopt. A professional judge could mould proceedings to meet the particular dictates of the case more easily: see *Official Receiver v Stern* [2000] 1 WLR 2230, 2257–2258. Other issues also arise: the protections under the Police and Criminal Evidence Act 1984 would not apply and there could be profound problems regarding the weight to be given to identification evidence.

Rhodri Thompson QC for Liberty. There are fundamental implications in the development of criminal law involved in the use of anti-social behaviour orders. It is important that all the full protections of criminal procedure are maintained when people are in effect accused of criminal conduct. Under section 1(1)(a) of the Crime and Disorder Act 1998 a person with no previous convictions can be accused of conduct which could equally well have been prosecuted under section 5 of the Public Order Act 1986. An individual can thus be brought before the court for the first time under section 1(1)(a). The penalties that can be imposed are in reality much more severe than those under section 5 or under the procedure of binding over the keep the peace, which is a criminal matter under the convention: see *Steel v United Kingdom* 28 EHRR 603. The protections under criminal law are designed to protect the liberties of persons accused of such conduct. It is important that such protections exist and are changed only by the express will of Parliament. The analogies with sex offenders etc concern people who have already been convicted. It is quite different to impose a similar regime on someone who has no convictions. There is no objection to simple procedures to deal with public order disturbances. There is a long history of such powers see summary in: *Percy v Director of Public Prosecutions* [1995] 1 WLR 1382. The proper approach to anti-social behaviour is for principled changes in the criminal law to be made by Parliament. The alternative of regarding the matter as civil but reading in criminal protections on an "ad hoc" basis is conceivable but less desirable in that it left to the Courts to define the protections traditionally provided by the criminal law.

Section 3 of the Human Rights Act 1998 imposes on the courts a broad general duty to construe primary, as well as secondary, legislation to accord with Convention rights. In that respect the strong interpretive obligation imposed by section 3 necessarily subordinates the narrow intention of Parliament in the adoption of particular measures to its broader intention to avoid any implied inconsistency with protection of the Convention rights, even in primary legislation. Thus, section 3 introduces a degree of circularity into the position under domestic law, requiring the position under the Convention to be considered even in respect of the proper classification of anti-social behaviour orders in the Crime and Disorder Act 1998 under domestic law principles. Such orders should be construed as criminal if a civil classification would fail to provide all the protections required by the Convention under a criminal classification.