

“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.”

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

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“offence” within the meaning of article 5(I)(c). The commission stated in its A opinion, at pp 61 5-616:

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 [*Ozturk v Germany* (1984) 6 EHRR 409, 4x3-424, para 53]: ‘[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. 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.]’

“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.

“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 63 5-636:

“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.

“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(r)(c).”

The defendants’ principal submission in reliance on *Steel* was that both in proceedings for a breach of the peace and in proceedings for an antisocial behaviour order there was a two-