

may be particularly intrusive in its operation. Breach of such orders may result in penalties. Nevertheless, the injunctions are unquestionably civil.

The view that proceedings for an anti-social behaviour order under section 1 are civil in character is further supported by two important decisions. In *B v Chief Constable of Avon and Somerset Constabulary* [2001] 1 WLR 340 the question arose whether proceedings for a sex offender order under section 2 of the Act are civil. Section 2 is different in conception from section 1 in as much as an order can only be made in respect of a person who has already been convicted as a sex offender. On the other hand, its purpose is preventative “to protect the public from serious harm from him”. Lord Bingham of Cornhill CJ held, at p 352, para 25:

“The rationale of section 2 was, by means of an injunctive order, to seek to avoid the contingency of any further suffering by any further victim. It would also of course be to the advantage of a defendant if he were to be saved from further offending. As in the case of a civil injunction, a breach of the court’s order may attract a sanction. But, also as in the case of a civil injunction, the order, although restraining the defendant from doing that which is prohibited, imposes no penalty or disability upon him. I am accordingly satisfied that, as a matter of English domestic law, the application is a civil proceeding, as Parliament undoubtedly intended it to be.”

To the same effect was the detailed reasoning in *Gough v Chief Constable of the Derbyshire Constabulary* [2002] QB 459; an appeal [2002] QB 121.3. It was held that a football banning order under sections 14A and 14B of the Football Spectators Act 1989 do not involve criminal penalties and are therefore civil character.

It is concluded that proceedings to obtain an anti-social behaviour order are civil proceedings under domestic law.

• *The classification under article 6*

The question now arises whether, despite its domestic classification, an anti-social behaviour order nevertheless has a criminal character in accordance with the autonomous concepts of **article 6**. The fair trial guarantee under article 6(1) applies to both “the determination of a (person’s) civil rights” and “the determination of any criminal charge”. On the other hand, only the latter attract the additional protections under article 6(2) and 6(3). In so far as the latter provisions apply to “everyone charged with a criminal offence” it is well established in the jurisprudence of

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the European Court of Human Rights that this concept is co-extensive with the concept of the determination of any criminal charge: *Lutz v Germany* {1987} 10 EHRR 182. Germane to the present case is the minimum right under article 6(3)(d) of everyone charged with a criminal offence to examine or have examined witnesses against him or to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. If the proceedings under section 1 of the Act are civil within the meaning of article 6, this provision is applicable. If it is criminal, article 6(3)(d) is inapplicable. Before I examine directly in the light of European jurisprudence the question whether proceedings involve a criminal charge, it is necessary to make clear that this is not one of those cases where the proceedings may fall outside article 6 altogether. Examples of such cases are given by *Emmerson*