

# Non-conviction based confiscation and the second aspect of the presumption of innocence under Article 6(2) ECHR

New Journal of European Criminal Law

1–23

© The Author(s) 2025



Article reuse guidelines:

[sagepub.com/journals-permissions](https://sagepub.com/journals-permissions)

DOI: 10.1177/20322844251384137

[journals.sagepub.com/home/nje](https://journals.sagepub.com/home/nje)**Johan Boucht** 

BI Norwegian Business School, Norway

## Abstract

In recent years, non-conviction based confiscation (NCBC) schemes, which enable confiscation without a conviction (or sometimes prosecution) of a criminal offence, have proliferated in Europe, and worldwide. These schemes expand the reach of confiscation but have largely been found compliant with the European Convention of Human Rights (ECHR). In some recent cases, the European Court of Human Rights (ECtHR) has scrutinised NCBC schemes through the presumption of innocence under Article 6(2) ECHR, but not in its most common form, but in its second reputational aspect. Where the defendant has been acquitted in previous criminal proceedings, or where those proceedings have been discontinued, the reputational aspect of the presumption of innocence requires that the subsequent proceedings must not impute criminal liability on the individual. This article analyses the relationship between the second aspect of the presumption of innocence under Article 6(2) ECHR and NCBC. It is suggested, *inter alia*, that a distinction should be made between NCBC proceedings in which the assets can be linked to a specific offence and cases where this is not the case.

## Keywords

Non-conviction based confiscation, ECHR, presumption of innocence, proceeds of crime

## Introduction

In recent years, non-conviction-based confiscation (NCBC) schemes, which enable confiscation without a conviction, or prosecution, of a criminal offence, have proliferated in Europe, and worldwide. An increasing number of jurisdictions, including the EU, view them as an important additional tool for disrupting serious and organised economic crime. While only a handful of jurisdictions in Europe had implemented NCBC schemes a decade or so ago (notably

---

### Corresponding author:

Johan Boucht, BI Norwegian Business School, Nydalsveien 9, Oslo 0442, Norway.

Email: [johan.boucht@bi.no](mailto:johan.boucht@bi.no)

the United Kingdom, Ireland, Italy and Bulgaria), today, this list has grown and keeps on growing.

This development can be seen against an increased focus in Europe in recent years on the vast fortunes that serious (organised) economic crime generates, and the threat against society that it represents, impacting the economy, the integrity of financial systems and public trust.<sup>1</sup> The pressure placed on states by the FATF (Financial Action Task Force) to implement NCBC schemes in accordance with its Recommendation No. 4 is another important factor.<sup>2</sup> In the EU, the recent Directive on Confiscation and Asset Recovery (2024/1260/EU) now requires member states to implement NCBC in accordance with Articles 15 ('Non-conviction based confiscation') and 16 ('Confiscation of unexplained wealth linked to criminal conduct').<sup>3</sup> The scope of the 2014 Directive has thus been considerably expanded.<sup>4</sup> The contracting states to the Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism (CETS no. 198) are also currently in the process of negotiating an additional protocol to the Convention with the purpose of enabling, *inter alia*, the introduction of non-conviction-based confiscation procedures.<sup>5</sup>

Many of the expansions of confiscation law seen over the years in Europe, including NCBC, have been scrutinised under the European Convention of Human Rights (ECHR). Contested issues have included mandatory (automatic) confiscation, the reversed burden of proof, the use of statutory presumptions, confiscation without establishing a link between the assets and the offence that allegedly generated them, third-party confiscation, the relationship between preventative and punitive confiscation, and so on. The complaints to the European Court of Human Rights (ECtHR) have mainly been raised under Articles 6, 7 and Article 1 ECHR-P1 and have typically focused either on the substantive content of a particular scheme or on the proceedings

- 
1. See, for example, Eurojust, 'Annual Report 2023', section 3.8. On the scope of economic crime in Europe, see, for example, S Hulme, E Disley and EL Blondes (eds), 'Mapping the Risk of Serious and Organised Crime Infiltrating Legitimate Businesses' (Final report, European Commission 2021), which estimates that the annual revenues of the nine main criminal markets in the EU (illicit drugs, THB for sexual exploitation, smuggling of migrants, MTIC fraud, illicit waste, illicit wildlife [European eels only], illicit firearms, illicit cigarettes, card payment fraud, cargo theft and ATM physical attacks) ranged from €92 to €188 billion (with a mid-point of €139 billion) in 2019.
  2. See the FATF Recommendations (updated June 2025) <<https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>>. Last accessed 15.10.2025.
  3. See Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation (COM(2022) 245 final, 25 May 2022). See also Commission Staff Working Paper, Analysis of non-conviction based confiscation measures in the European Union (SWD(2019) 1050 final, 12 April 2019). The implementation deadline for the directive is 23 November 2026.
  4. The EU Commission wanted to establish an NCBC scheme at the EU level already through its former confiscation directive (2014/42/EU), but the proposals put forward turned out to be too hard to swallow for some member states. See COM (2012)0085 final. In the end, what remained of the Commission's proposal on NCBC was placed in Article 4(2) of the 2014 Directive.
  5. See Council of Europe, Terms of reference of the Committee of Experts on Criminal Asset Recovery (PC-RAC), 1 January 2024–31 December 2025.

in which confiscation was ordered. Many of these issues have now been resolved in the Court's case law.<sup>6</sup>

In some recent cases, the ECtHR has scrutinised the compatibility of NCBC proceedings, which have been initiated after either the acquittal of the defendant in preceding criminal proceedings or the discontinuation of those proceedings, through the lens of the presumption of innocence under Article 6(2) ECHR.<sup>7</sup> However, rather than focusing on the compatibility of the confiscation proceedings with the presumption of innocence in its most common form, which guarantees procedural safeguards during criminal proceedings, the court has assessed the NCBC proceedings through the presumption of innocence in its second 'reputational' form. This second aspect of the presumption of innocence, which comes into play after the initial criminal proceedings have concluded, requires that the subsequent confiscation proceedings must not impute criminal liability to the individual. The Court has therefore focused not on the proceedings in themselves, but on their relationship with prior criminal proceedings which, for one reason or another, were discontinued or in which the defendant was acquitted.

In view of the increased use of NCBC schemes in Europe (not the least through Articles 15 and 16 of the EU's Confiscation and Asset Recovery Directive (2024/1260)), this is an important development in ECHR law. This article considers the implications of the second aspect of the presumption of innocence under Article 6(2) ECHR on NCBC proceedings in the light of this recent development. Particular attention is drawn to the schemes stipulated by Articles 15 and 16 in the EU Directive. The article focuses on the confiscation of proceeds of crime, but the arguments may apply to other forms of confiscation *mutatis mutandis*.

## What is non-conviction based confiscation?

'Non-conviction based confiscation' is a commonly used term in the international discussion, but it is not always used in a uniform way. Sometimes NCBC is used to denote confiscation proceedings within the context of, and in conjunction with, criminal proceedings which have been discontinued for one reason or another, for example because the offence was statute-barred or the

- 
6. On Article 6, see, for example: *Phillips v. the United Kingdom*, No. 41087/98 (ECtHR, 5 July 2001), *Geerings v. the Netherlands*, No. 30810/03 (ECtHR, 1 March 2007); *Telbis and Viziteu v. Romania*, No. 47911/15 (ECtHR, 26 June 2018), *Rummi v. Estonia*, No. 63362/09 (ECtHR, 15 January 2015), *Silickiene v. Lithuania*, No. 20496/02 (ECtHR, 10 April 2012) and *Gale v. The United Kingdom*, No. 25092/12 (ECtHR, 1 July 2025); on Article 7, see, for example: *Welch v. United Kingdom*, No. 1744090 (ECtHR, 9 February 1995), *Dassa Foundation and others v. Lichtenstein*, No. 696/05 (ECtHR, 10 July 2007), *Balsamo v. San Marino*, Nos. 20319/17 and 21414/17 (ECtHR, 8 October 2019), *Episcopo and Bassani v. Italy* (Nos. 47284/16 and 84604/17 (ECtHR, 19 December 2024) and *Garofalo and Others v. Italy*, Nos. 47269/18, 47426/18, 47793/18 (ECtHR, 21 January 2025); on Article 1 ECHR-P1, see, for example: *AGOSI v. the United Kingdom*, No. 9118/80 (ECtHR, 24 October 1986), *Arcuri and others v. Italy*, No. 52024/99 (ECtHR, 5 July 2001), *Andonoski v. the former Yugoslav Republic of Macedonia*, No. 16225/08 (ECtHR, 17 September 2015), *Ismayilov v. Russia*, No. 30352/03 (ECtHR, 6 November 2008), *Gogitidze and others v. Georgia*, No. 36862/05 (ECtHR, 12 May 2015), *Yordanov and others v. Bulgaria*, Nos. 265/17 and 26473/18 (ECtHR, 26 September 2023), and *Isaia and Others v. Italy*, Nos. 36551/22, 36926/22, 37907/22 (ECtHR, 25 September 2025).
  7. See *Episcopo and Bassani v. Italy*, Nos. 47284/16 and 84604/17 (ECtHR, 19 December 2024) and *Cosovan v. the Republic of Moldova (No. 2)*, No. 36013/13 (ECtHR, 8 October 2024).

defendant has died. Under this kind of scheme, confiscation can be ordered if a nexus is established between the identified offence and the assets in question, in spite of the absence of a criminal conviction. It follows, that the criminal offence that was subject to the criminal proceedings still constitutes a focal point in the subsequent NCBC proceedings. Examples of such a scheme is Article 15 of the EU Directive (2024/1260) and the Norwegian criminal confiscation scheme.<sup>8</sup>

NCBC can also be understood more broadly. For example, the FATF refers to NCBC as ‘confiscation through judicial procedures of criminal property in circumstances where no criminal prosecution or conviction is required’.<sup>9</sup> The World Bank seems to endorse a similar approach.<sup>10</sup> In these cases, NCBC not only encompasses cases where no conviction is attained because the criminal proceedings were discontinued, but also where the defendant was never indicted or prosecuted in the first place, for example because he or she is a fugitive, where the assets are found but the owner/perpetrator is unknown, or where the defendant has been acquitted on grounds of insufficient evidence. In this broader sense, NCB confiscation may not require the existence of any identified criminal offence at all so that confiscation might be ordered wholly independently of any criminal proceedings relating to a particular offence. These schemes can be either criminal or civil in nature.<sup>11</sup> An example of the former is civil recovery under the UK’s Proceeds of Crime Act 2002 Part 5 and the Irish Proceeds of Crime Act 1996, while examples of the latter are Article 16 of the EU Directive 2024/1260 and the Swedish NCBC scheme.<sup>12</sup>

To achieve a precise analysis, not the least of its relationship with the ECHR, it is important that the meaning and function of the NCBC concept is clearly delineated. In an earlier paper, I presented a typology which distinguished between four ‘generations’ of confiscation schemes depending on their proximity to the predicate offence.<sup>13</sup> Under this typology, the first generation of schemes refers to so-called ‘ordinary criminal confiscation schemes’, which require that the property can be directly linked to identified criminal conduct that the defendant has committed.<sup>14</sup> The second generation refers to extended criminal confiscation schemes, which require a trigger conviction as a prerequisite for confiscation, but where the assets liable to confiscation do not have to be linked to any identified offence.<sup>15</sup> The third generation schemes comprise rules on non-conviction based confiscation; these proceedings can be initiated regardless of any criminal proceedings or prosecution relating to an identified offence, or any established connection between the assets

8. Norwegian Penal Code section 67.

9. The FATF Recommendations (February 2025), 132.

10. See W Grant and others, *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture* (Stolen Asset Recovery (StAR) Initiative; World Bank Group 2009), 14–5.

11. Criminal NCBC proceedings can be either contingent on a suspicion into a relevant catalogue offence existing, or general in its application whereby it applies to all cases in which the court is satisfied that the property is or represents proceeds of crime. An example of the former is German NCBC scheme (under section 76a Strafgesetzbuch [StGB]), while the Swedish scheme (Swedish Penal Code chapter 36 section 4) is an example of the latter.

12. See Swedish Penal Code chapter 36, section 4.

13. See Johan Boucht, ‘Asset Confiscation in Europe – Past, Present, and Future Challenges’, *Journal of Financial Crime* 26 (2019) 526, 548, section 3.

14. See, for example, Article 12 of EU Directive 2024/1260.

15. See, for example, Article 14 of EU Directive 2024/1260. For a recent extensive analysis of extended confiscation in the EU, see Elżbieta Hryniewicz-Lach, *Extended Confiscation of Illicit Assets and the Criminal Law. National and EU Perspectives* (Routledge 2025).

and such an offence. Alternatively, and possibly more appropriately, this form of NCBC can be denoted ‘non-conviction based *independent* confiscation’. The fourth-generation schemes, unexplained wealth orders (UWO), refer to schemes which reverse the burden of proof regarding the origin of the assets onto those who are considered to hold unexplained wealth, without requiring neither a trigger conviction nor any other link with identified criminal conduct.<sup>16</sup> UWOs can therefore be seen as an extension of NCB independent confiscation schemes.

While the first-generation schemes require a direct link between an identified criminal offence and the assets liable to confiscation, a common denominator for the latter three generations is that they all target unexplained wealth. It follows, that no link between the assets and the identified criminal offence that generated them has to be established.<sup>17</sup>

While both approaches can be termed non-conviction based, they differ from each other in a structural sense. Under this typology, an NCBC scheme which requires that a link is established between the assets liable to confiscation and some identified criminal conduct, constitutes in essence a first-generation confiscation scheme, albeit that it expands the availability of confiscation beyond an actual conviction on procedural grounds. They will therefore henceforth be categorised as ‘non-conviction-based ordinary confiscation’. NCBC, which operates independently of any criminal proceedings pertaining to a particular criminal offence, and indeed of any link to identified criminal conduct, is, in contrast, denoted as ‘non-conviction based independent confiscation’ (the third generation of confiscation schemes). This distinction will be used in the analysis in the Section ‘NCBC and the second aspect of the presumption of innocence under Article 6(2) ECHR’.

## The presumption of innocence under Article 6(2) ECHR

Article 6(2) ECHR safeguards the right to be ‘presumed innocent until proved guilty according to law’. The presumption of innocence is a cornerstone of the fair trial guarantees in criminal proceedings. In the context of a criminal trial, the presumption of innocence, in its so-called ‘first aspect’, acts as a procedural guarantee, imposing requirements in respect of, *inter alia*, the burden of proof<sup>18</sup>; legal presumptions of fact and law<sup>19</sup>; the right to silence and the privilege

---

16. UWMs (Unexplained Wealth Mechanisms) are not necessarily confiscation schemes as such. For example, a UWM under Part 8 of the UK’s Proceeds of Crime Act (2002) is considered an investigative measure, which enables the reversal of the burden of proof in subsequent civil recovery proceedings. In contrast, a UWM under sections 11–14 of the Western Australia’s Criminal Property Confiscation Act 2000 constitutes a confiscation scheme in its own right, making the respondent liable to pay to the State an amount equal to the amount specified as the assessed value of the respondent’s unexplained wealth.

17. It may be noted that the ECtHR has in some cases required that a link of some kind must be established between the assets and the criminal conduct that allegedly generated them. In *Yordanov and others v. Bulgaria*, Nos. 265/17 and 26473/18 (ECtHR, 26 September 2023), the Court required (at para 124) that ‘the domestic courts provided some particulars as to the offences, criminal or administrative, in which the assets subject to forfeiture were alleged to have originated, and showed in a reasoned manner that there could be a link between such offences and the assets in question’ in order to counterbalance certain onerous features of the Bulgarian confiscation scheme (such as a reversed burden of proof, a wide scope of application). This approach has been confirmed in later case law, see *Cosovan v. the Republic of Moldova* (No. 2), No. 36013/13 (ECtHR, 8 October 2024), para 40.

18. *Barberà, Messegue and Jabardo v. Spain*, 10590/83 (ECtHR, 6 December 1988), para 77.

19. *Salabiaku v. France*, No. 10519/83 (ECtHR, 7 October 1988), para. 28.

against self-incrimination<sup>20</sup>; the extent to which a conviction can be based solely on the silence of the defendant<sup>21</sup>; and premature expressions, by the trial court or by other public officials, reflecting an opinion that the defendant is guilty before they have been proved guilty according to law.<sup>22</sup> The overarching purpose of this aspect of the presumption of innocence is to prevent unrightful convictions.<sup>23</sup>

For the first aspect of the presumption of innocence to apply, the proceedings in question must amount to a ‘criminal charge’. Whether this is the case, will be assessed under the so-called ‘Engel criteria’ developed by the Court: the classification of the proceedings under national law, their essential nature and the type and severity of the penalty that the applicant risked incurring.<sup>24</sup> As the focus of this article is on the second aspect of the presumption of innocence, these criteria will not be considered in depth here. However, it may be noted that case law from the ECtHR suggest that confiscation proceedings relating to the proceeds of crime will in many instances not constitute a ‘criminal charge’ under Article 6(2) (nor a ‘penalty’ under Article 7).<sup>25</sup> This is the case particularly where a link can be established between the assets and some unlawful conduct that generated them and the purpose can be said to have been to deprive the persons concerned of unlawful profits.<sup>26</sup> In these cases, the purpose of confiscation will be restorative, resembling restitution under civil law, rather than punitive.

20. *Saunders v. the United Kingdom*, No. 19187/91 (ECtHR, 17 December 1996), para 68.

21. *Murray v. UK*, No. 18731/91 (ECtHR, 8 February 1996), para. 47.

22. *Minelli v. Switzerland*, No. 8669/79 (ECtHR, 25 March 1983) and *Allenet de Ribemont*, No. 15175/89 (ECtHR, 19 February 1995), para 35.

23. The purpose of the provision is important, because the Court considers both the context and the object and purpose of the relevant provision when establishing the rights guaranteed by the Convention. See *Magyar Helsinki Bizottság v. Hungary*, No. 18030/11 (ECtHR, 8 November 2016, para 119).

24. See *Engel v. the Netherlands*, Nos. 5100/71, 5101/71, 5102/71 (ECtHR, 8 June 1976), para. 82. See, for example, DJ Harris and others, *Law of the European Convention on Human Rights* (5th edn, OUP 2023), 380–82.

25. This does not rule out that the presumption of innocence in its first aspect may be applicable. For an example of this, see *Geerings v. the Netherlands*, No. 30810/03 (ECtHR, 1 March 2007). In *Phillips v. the United Kingdom*, No. 41087/98 (ECtHR, 5 July 2001), para 35, the Court found that the extended confiscation proceedings brought against the defendant under the UK’s Drug Offences Act 1986 did not constitute a criminal charge for the purposes of Article 6(2); the confiscation proceedings were considered to form part of the sentencing process, which made Article 6(2) ECHR inapplicable as Article 6(2) has ‘no application in relation to allegations made about the accused’s character and conduct as part of the sentencing process, unless such accusations are of such a nature and degree as to amount to the bringing of a new “charge” within the autonomous Convention meaning’. However, the criminal limb of Article 6(1) ECHR did apply, as this article applies throughout the proceedings in their entirety, but it was not violated. Regarding the applicability of the first aspect of the Article 6(2) on NCBC, see Johan Boucht, ‘Civil Asset Forfeiture and the Presumption of Innocence Under Article 6(2) ECHR’, *New Journal of European Criminal Law* 5 (2014) 221, 255. It also follows that *ne bis in idem* (Art. 4 P7-ECHR) is unlikely to become an issue in confiscation cases as this requires that both proceedings are criminal in nature.

26. See, for example, *Dassa Foundation and others v. Liechtenstein*, No. 696/05 (ECtHR, 10 July 2007), *Yordanov and others v. Bulgaria*, Nos. 265/17 and 26473/18 (ECtHR, 26 September 2023), para 124 and *Episcopo and Bassani v. Italy*, Nos. 47284/16 and 84604/17 (ECtHR, 19 December 2024), paras 73–7, *Gale v. the United Kingdom*, No. 25092/12 (ECtHR, 1 July 2025), paras. 83–85 and 88–89. It may be noted, *obiter dictum*, that the reference to ‘actual enrichment’ by the ECtHR in *Welch v. United Kingdom*, No. 1744090, (ECtHR, 9 February 1995) and *Dassa Foundation and others v. Liechtenstein*, No. 696/05,

However, the Court has over time also developed a ‘second aspect’ of the presumption of innocence under Article 6(2), which comes into play after the criminal proceedings have concluded, either with an acquittal or a discontinuance of those proceedings.<sup>27</sup> The development of this aspect has been motivated by the need to ensure that the first aspect of the presumption of innocence guaranteed by Article 6(2) ECHR is practical and effective. It can be justified in view of privacy considerations, that is, the need to respect a previous non-finding of criminal liability. The general aim of this second (or reputational) aspect of the presumption of innocence is thus to protect individuals who have been acquitted of a criminal charge (or in respect of whom criminal proceedings have been discontinued) from being treated by public officials and authorities as though they are in fact guilty of the offence charged. To some degree, the protection afforded under Article 6(2) may overlap with the protection afforded by Article 8.<sup>28</sup> The second aspect of the presumption of innocence has been used in respect of statements made in the context of subsequent proceedings, *inter alia*, in cases relating to a victim’s compensation claims subsequent to an acquittal,<sup>29</sup> and a former accused’s claims for defence costs or compensation claims for detention on remand.<sup>30</sup> In some cases, it has been applied also to statements contained in the same decision pronouncing the acquittal or the discontinuance of the proceedings, for example where a court which terminates proceedings because they are statute-barred simultaneously quashes acquittals handed down by the lower courts while ruling on the guilt of the person concerned.<sup>31</sup>

For Article 6(2) ECHR to apply, the first set of proceedings must constitute a ‘criminal charge’ in the meaning of Article 6.<sup>32</sup> Under the Convention, a ‘charge’ exists ‘from the moment that an individual is officially notified by the competent authority of an allegation that he has committed a criminal offence, or from the point at which his situation has been substantially affected by actions taken by the authorities as a result of a suspicion against him’.<sup>33</sup>

---

(ECtHR, 10 July 2007) could be read as a reference to the distinction between the net and gross principles when the confiscated amount is calculated. However, a reading of these cases together suggests that the reference to ‘actual enrichment’ does not as a main rule denote the net principle, but whether a link can be established between the assets liable to confiscation and the offence that generated them. See also the Courts reasoning in *Episcopo and Bassani v. Italy*, Nos. 47284/16 and 84604/17 (ECtHR, 19 December 2024), paras 74 and 76 and *Cosovan v. the Republic of Moldova (No. 2)*, No. 36013/13 (ECtHR, 8 October 2024), para 32, which further supports this interpretation. However, in *Garofalo and others v. Italy*, No. 47269/18 (21 January 2025), para 133 the Court suggests that a confiscation orders, which is “more extensively directed at proceeds of crime, including their product” might nevertheless be considered a punitive measure. This might refer to confiscation orders that target, for example, the entire amount of the financial instruments acquired in a case of market abuse or the entire value of a contract obtained through bribery.

27. See *Allen v. the United Kingdom*, No. 25424/09 (ECtHR, 12 July 2013), para 93.

28. See, for example, *Pasquini v. San Marino (No. 2)*, No. 23349/17 (ECtHR, 20 October 2020), para 49.

29. *Orr v. Norway*, No. 31283/04 (ECtHR, 15 May 2008).

30. See, for example, *Sekanina v. Austria*, No. 56568/00 (ECtHR, 11 February 2003).

31. See *G.I.E.M. v. Italy*, Nos. 1828/06, 34163/07, 19029/11 (ECtHR, 28 June 2018), para 317 and *Cleve v. Germany*, No. 48144/09 (ECtHR, 15 January 2015), para 56.

32. See *Gogitidze v. Georgia*, No. 36862/05 (ECtHR, 12 May 2015), para 126 and *Garofalo and others v. Italy*, Nos. 47269/18, 47426/18, 47793/18 (ECtHR, 21 January 2025), para 145–46.

33. See *Simeonovi v. Bulgaria*, No. 21980/04 (ECtHR, 12 May 2017), para 110. See also Harris and others, *Law of the European Convention* (n 24) 382–84.

The case law relating to this aspect of Article 6(2) has developed gradually and the guiding principles have not been altogether accessible. Whether the presumption of innocence in its second aspect is violated depends on two inquiries: the first concerns the applicability, or scope, of Article 6(2), while the second, provided that Article 6(2) applies, concerns whether, in view of all the circumstances of the case, the subsequent ruling by the national court was compatible with the presumption of innocence enshrined in Article 6(2).<sup>34</sup>

For Article 6(2) to apply, the applicant must first demonstrate the existence of a connection (or ‘link’), between the concluded criminal proceedings and the subsequent (non-criminal) proceedings.<sup>35</sup> The purpose of this inquiry is to establish whether the subject matter of the subsequent proceedings is so closely connected with the criminal proceedings that Article 6(2) ought to be applicable to those proceedings.

In previous case law relating to, for example the accused’s obligation to bear court costs, a former accused’s request for defence costs, and compensation for detention on remand, the court inquired into whether the subsequent proceedings were ‘a consequence and the concomitant of’, or a ‘direct sequel to’, the criminal case.<sup>36</sup> A sufficient link could also be established by the language used by the court in the subsequent proceedings. This was the case where the reasoning contained ‘a statement imputing criminal liability to the former accused’.<sup>37</sup> This latter approach has been used, for example, on proceedings related to compensation claims lodged by the victim following an acquittal of the defendant.<sup>38</sup>

In *Allen v. the United Kingdom*, a case concerning a refusal by the national court to award compensation following a reversal of applicant’s conviction of a criminal offence, the Grand Chamber extended the scope of Article 6(2) beyond those categories and held that not only must the absence of a criminal conviction be preserved in any other proceedings of whatever nature but also the operative part of an acquittal judgement must be respected by any authority referring directly or indirectly to the criminal responsibility of the party (at para 102).

Regarding the meaning of the required link, the Grand Chamber explained:

Such a link is likely to be present, for example, where the subsequent proceedings require examination of the outcome of the prior criminal proceedings and, in particular, where they oblige the court to analyse the criminal judgment, to engage in a review or evaluation of the evidence in the criminal file, to assess the applicant’s participation in some or all of the events leading to the criminal charge, or to comment on the subsisting indications of the applicant’s possible guilt.<sup>39</sup>

34. See *Allen v. the United Kingdom*, No. 25424/09 (ECtHR, 12 July 2013), para 119.

35. *Ibid*, para 104.

36. *Sekanina v. Austria*, No. 56568/00 (ECtHR, 11 February 2003), para 30, *Hammern v. Norway*, No. 30287/96, (ECtHR, 11 February 2003), para 46 and *O v. Norway*, No. 29327/95 (ECtHR, 11 February 2003), para 38.

37. See *Ringvold v. Norway*, No. 34964/97 (ECtHR, 11 February 2003), para 38, *Y v. Norway*, No. 56568/00 (ECtHR, 11 February 2003), para 42, *O.L. v. Finland*, No. 61110/00 (ECtHR, 5 July 2005), *Mouillet v. France*, No. 27521/04 (ECtHR, 13 September 2007). In this case the first and second inquiry will resemble each other.

38. See, for example, *Orr v. Norway*, No. 31283/04 (ECtHR, 15 May 2008).

39. *Allen v. the United Kingdom*, No. 25424/09 (ECtHR, 12 July 2013), para 104. See also *Nealon and Hallam v. the United Kingdom*, No. 32483/19 (ECtHR, 11 June 2024), para 122.

If a sufficient link is considered to exist, it must be assessed whether Article 6(2), in view of all the circumstances, was complied with. The ECtHR has not had a consistent approach to this inquiry.<sup>40</sup> In older case law, the court distinguished between subsequent civil cases for compensation from the state for unjust prosecution of an acquitted defendant and other cases, such as compensation to the victim after an acquittal.<sup>41</sup> In the former cases, a strict standard applied if the defendant had been acquitted on substantive grounds. It followed, that ‘even the voicing of suspicion regarding the accused’s innocence’ once an acquittal had become final, was sufficient for a violation.<sup>42</sup> In the latter cases, a violation required that the subsequent decision contained ‘a statement imputing criminal liability to the respondent party’.<sup>43</sup> This latter standard also applied to other types of cases, for instance, disciplinary sanctions,<sup>44</sup> cases about the loss of public housing<sup>45</sup> and the loss of the right to child visitation.<sup>46</sup>

In *Allen v. the United Kingdom*, the Grand Chamber went some way to consolidating the norms regarding the application of the second aspect of Article 6(2) ECHR, while still upholding the division regarding the applicable norm in the two kinds of cases. However, the Court (at para 126) importantly observed that ‘even some unfortunate language’ would not be decisive of a violation. This made it clear that an unfortunate phrasing would not necessarily in itself be enough to violate the presumption of innocence.

In the subsequent judgement *Nealon and Hallam v. the United Kingdom*, which concerned the refusal of compensation by the national courts for a miscarriage of justice following the quashing of the applicants’ criminal convictions as ‘unsafe’, the Grand Chamber abolished the distinction between the two norms, which was still upheld in *Allen*. All cases were, accordingly, now to be assessed under the same norm. The Grand Chamber explained:

Consequently, henceforth, regardless of the nature of the subsequent linked proceedings, and regardless of whether the criminal proceedings ended in an acquittal or a discontinuance, the decisions and reasoning of the domestic courts or other authorities in those subsequent linked proceedings, when considered as a whole, and in the context of the exercise which they are required by domestic law to undertake, will violate Article 6 § 2 of the Convention in its second aspect if they amounted to the imputation of criminal liability to the applicant.<sup>47</sup>

The Grand Chamber also reaffirmed (at para 168) that Article 6(2) will not prohibit courts from assessing cases, which are based on the same facts as the criminal proceedings that were discontinued or in which the defendant was acquitted, on a general basis:

---

40. See *Allen v. the United Kingdom*, No. 25424/09 (ECtHR, 12 July 2013), para 125.

41. See *N.A. v. Norway*, No. 27473/11 (ECtHR, 18 December 2014), para 42.

42. *Sekanina v. Austria*, No. 56568/00 (ECtHR, 11 February 2003), para 30, *Allen v. the United Kingdom*, No. 25424/09 (ECtHR, 12 July 2013), para 122.

43. *Ringvold v. Norway*, No. 34964/97 (ECtHR, 11 February 2003), para 38, *Allen v. the United Kingdom*, No. 25424/09 (ECtHR, 12 July 2013), para 123.

44. *Celik (Bozkurt) v. Turkey*, No. 34388/05 (12 April 2011), paras 34–7.

45. *Vassilios Stavropoulos v. Greece*, No. 35522/04 (27 September 2007), para 40.

46. *O.L. v. Finland*, No. 61110/00 (ECtHR, 5 July 2005).

47. *Nealon and Hallam v. the United Kingdom*, No. 32483/19 (ECtHR, 11 June 2024), para 168.

The protection afforded by Article 6 § 2 in its second aspect should not be interpreted in such a way as to preclude national courts in subsequent proceedings – in which they are exercising a different function to that of the criminal judge, in accordance with the relevant provisions of domestic law – from engaging with the same facts as were decided in the previous criminal proceedings, provided that in doing so they do not impute criminal liability to the person concerned.

It follows, that regardless of whether the criminal proceedings in question ended in an acquittal or a discontinuance, the decisions and their reasoning in the subsequent proceedings, when considered as a whole and taken within the context of the exercise that they are required by domestic law to undertake, will violate Article 6(2) if they amount to the *imputation of criminal liability to the individual*.<sup>48</sup> According to the Court, '[t]o impute criminal liability to a person is to reflect an opinion that he or she is guilty to the criminal standard of the commission of a criminal offence . . . , thereby suggesting that the criminal proceedings should have been determined differently'.<sup>49</sup> In examining the compliance of a statement or decision with Article 6(2), it is crucial to have regard to the nature and context of the proceedings in which the statement was made or the decision was adopted.<sup>50</sup>

In EU law, the presumption of innocence is guaranteed in Article 48 of the Charter of the Fundamental Rights of the European Union (CFR). In accordance with Article 52(3) of the Charter, the meaning and scope of this provision shall as a minimum be the same as those laid down by Article 6(2) ECHR.<sup>51</sup> Peers and others argue that this means that ECHR rights 'should be taken into consideration as an interpretative tool rather than a direct standard of legality review of EU secondary legislation', but that 'the safeguards in the ECHR provide an absolute floor below which EU Member States and EU institutions must not fall'.<sup>52</sup> It should follow from the reflection in Article 48(1) CFR of the rights set out in Article 6(2) ECHR that the reputational aspect of the presumption of innocence will apply also under the EU Charter.<sup>53</sup> The following analysis will therefore be directly relevant also for the relationship between Article 48(1) CFR and Articles 15 and 16 of the Directive on Confiscation and Asset Recovery Directive (2024/1260).

---

48. *Nealon and Hallam v. the United Kingdom*, Nos. 32483/19 and 35049/19 (ECtHR, 11 June 2024), para 168–69.

49. *Ibid*, para 168.

50. *Bikas v. Germany*, No. 76607/13 (ECtHR, 25 January 2018), para 47.

51. This is confirmed in Explanations relating to the Charter of Fundamental Rights, OJ C 303, 14 December 2007, at Article 48, the which states: 'In accordance with Article 52(3), this right has the same meaning and scope as the right guaranteed by the ECHR'. See also Directive 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings.

52. See S Peers and others (eds), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2021), 1417.

53. *Ibid*, 1432. In this context, reference can also be made to Article 4 of the Directive 2016/343/EU on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings.

## **NCBC and the second aspect of the presumption of innocence under Article 6(2) ECHR**

### *Initial remarks*

In this section, I will consider the implications of the second aspect of the presumption of innocence for subsequent confiscation proceedings. As in many other cases involving the second aspect of the presumption of innocence, the language used by the court in the subsequent proceedings will be vital in this context. In *Cosovan v. the Republic of Moldova*, the ECtHR aptly observed that ‘extra care ought to be exercised when formulating the reasoning in a confiscation decision after the discontinuation of criminal proceedings’.<sup>54</sup>

For Article 6(2) ECHR in its second meaning to apply, the first set of proceedings must, as noted above in the Section ‘The presumption of innocence under Article 6(2) ECHR’, constitute a ‘criminal charge’ in the meaning of Article 6 to which the presumption of innocence can relate.<sup>55</sup> Without such prior proceedings, an inquiry into the second aspect of the presumption of innocence will be meaningless. In the context of confiscation, this means that the application of the second aspect of Article 6(2) will be limited to cases where confiscation proceedings are initiated following the discontinuation of a criminal investigation against the defendant for lack of evidence, an acquittal of the defendant in court or the discontinuation in court of the criminal proceedings for some other reason, for example the death of the defendant or that the offence is statute-barred.

In the Section ‘What is non-conviction based confiscation?’, a distinction was made between NCBC proceedings in which the existence of an identified criminal offence to which the assets can be linked is a prerequisite for confiscation (eg where the respondent is dead or where the offence is statute-barred) and so-called ‘independent NCBC proceedings’, which are wholly autonomous of any criminal proceedings. It was argued, that while both are non-conviction based in a functional sense, the first can more appropriately be understood as an extension of ordinary criminal confiscation schemes (the first generation of confiscation schemes), while the latter can be denoted independent NCB confiscation (the third generation of confiscation schemes). I will rely on this distinction in the following analysis. Moreover, for the purpose of the analysis, I will assume that there is a first set of proceedings which constitute a ‘criminal charge’ within the meaning of the ECHR. Whether the NCBC proceedings are civil or criminal will not be further considered as this would not seem to be of direct relevance for the purpose of this article.

### *Non-conviction based ordinary criminal confiscation proceedings subsequent to discontinued criminal proceedings*

*Applicability of Article 6(2).* For the presumption of innocence in its second aspect to apply, a sufficient link must first be established between the subsequent confiscation proceedings and the first set of criminal proceedings. The guidance provided by the ECtHR as to when such a link exists is somewhat vague. As noted in the Section ‘The presumption of innocence under Article 6(2)

---

54. *Cosovan v. the Republic of Moldova (No. 2)*, No. 36013/13 (ECtHR, 8 October 2024), para 36. See also *Fleischner v. Germany*, No. 61985/12 (ECtHR, 3 October 2019), paras 64 and 69.

55. See, for example, *G.I.E.M. v. Italy*, Nos. 1828/06, 34163/07, 19029/11 (ECtHR, 28 June 2018), para 314.

ECHR', the Grand Chamber observed in the *Allen* case that a link is likely to be present where, for example:

the subsequent proceedings require examination of the outcome of the prior criminal proceedings and, in particular, where they oblige the court to analyse the criminal judgment, to engage in a review or evaluation of the evidence in the criminal file, to assess the applicant's participation in some or all of the events leading to the criminal charge, or to comment on the subsisting indications of the applicant's possible guilt.<sup>56</sup>

The core of inquiry therefore seems to be an overall assessment, in view of all circumstances, of whether there is such proximity factually and/or legally between the two sets proceedings, in terms of content, structure, functions, language and time, and independence, to warrant the application of Article 6(2).

As is often the case in the Court's case law, the existence of a single critical feature may not in itself suffice to create a sufficient link. For example, that the confiscation matter is dealt with in the same proceedings and in the same judgement as the criminal issue will not necessarily in itself warrant the application of Article 6(2).<sup>57</sup> Neither should the court's reliance on the same evidence in both the criminal case and the confiscation case necessarily in itself mean that a sufficient link exists.<sup>58</sup> Indeed, in the *Nealon and Hallam* case, the Grand Chamber explicitly observed that Article 6(2) does not preclude national courts in subsequent proceedings, in which they exercise a different function to that of the criminal judge, from engaging with the same facts as were decided in the previous criminal proceedings.<sup>59</sup> This seems to suggest that it must be permissible for the court to rely on the same evidence without necessarily engaging Article 6(2). The same should apply in relation to the mere fact that the prosecutor appears as the state's litigant in both sets of proceedings.

The ECtHR's reference in *Nealon and Hallam* to the 'function of the judge' in the subsequent proceedings suggests that the purpose of those proceedings will be relevant compared to that of the prior set of criminal proceedings.<sup>60</sup> If the court in the subsequent proceedings will assess the defendant's participation in some or all of the events leading to the criminal charge, or comment on the subsisting indications of the defendant's possible guilt for the purpose of imposing punitive confiscation, a link between the two may exist solely on this ground. That the focus of the subsequent proceedings is not to establish criminal liability or impose punitive sanctions, but merely to impose a restorative confiscation order which is restricted to neutralising the gain obtained through criminal conduct, which thus resembles restitution in civil law, may, in contrast speak against the

56. *Allen v. the United Kingdom*, No. 25424/09 (ECtHR, 12 July 2013), para 104.

57. See, for example, *N.A. v. Norway*, No. 27473/11 (ECtHR, 18 December 2014), para 43, where the Court held that the co-handling of the issues 'was a natural consequence of the fact that the two matters had been pursued in the course of the same proceedings and could not of itself bring the matter within the ambit of Article 6 § 2'.

58. See *Gale v. The United Kingdom*, No. 25092/12 (ECtHR, 1 July 2025), para. 95.

59. *Nealon and Hallam v. the United Kingdom*, Nos. 32483/19 and 35049/19 (ECtHR, 11 June 2024), para 169.

60. See also *Ringvold v. Norway*, No. 34964/97 (ECtHR, 11 February 2003), para 38.

existence of a link.<sup>61</sup> This should be the case also where the purpose of the confiscation order is preventative, that is, to prevent the use of assets originating from an unlawful act or to prevent the use of property for the purpose of committing further offences.<sup>62</sup>

Where several critical features are simultaneously present, the likelihood that a link exists as an accumulated effect of those features will increase. For example, in the *Cosovan v. Moldova (No. 2)* case, the special (NCB) confiscation order against the applicant was made within the prosecutor's decision to discontinue the investigation, directly following that decision, and by reference to the evidence gathered in the investigation proceedings. This was sufficient to make Article 6(2) applicable.<sup>63</sup> In other words, the accumulated effect of the same evidence as in the criminal investigation being relied upon in conjunction with the fact that it was the prosecutor who, directly following his decision to discontinue the criminal investigation, himself ordered confiscation, was sufficient to create the requisite link. With the ECtHR's words in *Hammern v. Norway*, it might be said that the confiscation claim in the *Cosovan* case therefore 'not only followed the criminal proceedings in time, but was also tied to those proceedings in legislation and practice, with regard to both jurisdiction and subject-matter'.<sup>64</sup> In other words, unless the defendant had committed the offence, which was the basis for the confiscation claim, there would have been no confiscation.

The usual features of an NCBC ordinary confiscation scheme taken together, that is, that the subsequent confiscation proceedings are contingent on the existence of the criminal proceedings relating to a particular offence, that the same prosecutor acts as a litigant for the state in both proceedings, that the confiscation case is determined on the basis of evidence from the criminal trial by the same court, sitting largely in the same formation,<sup>65</sup> and in the same proceedings, support a proposition that a sufficient link between the two sets of proceedings is likely to exist, making Article 6(2) applicable.<sup>66</sup>

If confiscation was to be ordered in separate proceedings, so that the claim would be assessed by a different court formation, the likelihood of a sufficient link might decrease. However, considering the formative function of the criminal conduct in question, and the assessment of the defendant's participation in the relevant events, on the outcome of the confiscation proceedings, it still seems likely that a sufficient link would be considered to exist.

Even where there would not be a structural link between the proceedings, a sufficient link may exist where the reasoning in the subsequent proceedings contain incriminating language.<sup>67</sup> The

---

61. See *Dassa Foundation and others v Liechtenstein*, No. 696/05 (ECtHR, 10 July 2007), *Ulemek v. Serbia*, No. 41680/13 (ECtHR, 2 February 2021), para 53 and *Gale v. The United Kingdom*, No. 25092/12 (ECtHR, 1 July 2025), para 94. For an analysis on the purpose of confiscation, see Johan Boucht, *The Limits of Asset Confiscation: On the Legitimacy of Extended Appropriation of Criminal Proceeds* (Hart Publishing 2017), 96–115.

62. See *Balsamo v. San Marino*, Nos. 20319/17 and 21414/17 (ECtHR, 8 October 2019), para 73.

63. *Cosovan v. the Republic of Moldova (No. 2)*, No. 36013/13 (ECtHR, 8 October 2024), para 20.

64. *Hammern v. Norway*, No. 30287/960 (ECtHR, 11 February 2003), para 46.

65. *ibid.*, para 45.

66. See also *Episcopo and Bassani v. Italy*, Nos. 47284/16 and 84604/17 (ECtHR, 19 December 2024), although the Court in this case did not directly comment on the applicability of Article 6(2), but went straight to discussing whether Article 6(2) was complied with.

67. See *N.A. v. Norway*, No. 27473/11 (ECtHR, 18 December 2014), para 49–50. In this case, the ECtHR did not find that 'the decision and reasoning on compensation were incompatible with, and "set aside," the applicant's acquittal'. Therefore, Article 6(2) did not apply. See also *Y v. Norway*, No. 56568/00 (ECtHR, 11 February 2003).

assessment of whether Article 6(2) is applicable, and whether it has been complied with, will in this case merge into one. For a discussion on this aspect with respect to NCBC, see below in the Section ‘Compliance with Article 6(2)’.

*Compliance with Article 6(2).* Where a sufficient link has been established so that Article 6(2) ECHR applies, the next question is whether Article 6(2) has been complied with. Some of the relevant considerations for assessing the existence of a sufficient link will be relevant also in this context. Two scenarios can be distinguished.

*The first scenario.* The first scenario is where the confiscation scheme requires that a conviction could have taken place in the first set of criminal proceedings, that is, had it not been for the discontinuation of the proceedings, the defendant would have been convicted.

A scheme of this kind is stipulated by Article 15 of the EU’s Asset Recovery and Confiscation Directive (2024/1260). The first paragraph sets out that confiscation must be made possible where criminal proceedings have been initiated, but could not be continued, because of illness, absconding or death of the suspected or accused person, or where the limitation period for the relevant criminal offence has expired after the initiation of criminal proceedings. The second paragraph requires that confiscation is ordered in these cases ‘where, in the absence of the circumstances set out in paragraph 1, it *would have been possible* for the relevant criminal proceedings *to lead to a criminal conviction*’ [emphasis added here]. The reference to ‘conviction’ and the phrasing ‘would have been possible’ suggest that the provision applies where the defendant would have been convicted had it not been for the discontinued criminal proceedings.

In *Episcopo and Bassani v. Italy*, the ECtHR considered a similar scheme under Article 6(2).<sup>68</sup> The relevant Italian NCBC scheme enabled the courts to order confiscation where the predicate offence was statute-barred, provided that the first set of proceedings had resulted in a conviction. Under Italian law (Article 322 of the Criminal Code), it was a formal requirement for confiscation that there was a ‘conviction’. The ECtHR observed that the applicant was convicted at first instance and that, on appeal, that finding of liability had been left substantially unaltered. The requirement of a ‘conviction’ was therefore satisfied, and the confiscation of the applicant’s assets was ordered. The applicant argued that the domestic courts, in ordering confiscation, had thereby in effect found him guilty of the crimes he had been accused of despite a declaration that those crimes had become statute-barred, and had thus violated Article 6(2).

According to the ECtHR, the requirement of a criminal ‘conviction’ as a necessary precondition for confiscation, accompanied by a finding by the national court that the first-instance conviction had been left unaltered on the merits, constituted clear indicators that the confiscation was ordered because the applicant was considered criminally liable. Furthermore, the ECtHR observed that ‘the domestic courts did not merely assess the unlawful origin of the confiscated assets: on the contrary, it was explicitly stated that the first applicant was criminally liable’ (at para 133). In the Court’s view, the findings of the domestic courts therefore reflected an opinion that the applicant was guilty of the offence in question and that, had it not been for the discontinuance of the proceedings, he would have been convicted. Consequently, in ordering the confiscation of his assets, the domestic courts had imputed criminal liability to the first applicant in violation of Article 6(2).

68. *Episcopo and Bassani v. Italy*, Nos. 47284/16 and 84604/17 (ECtHR, 19 December 2024). The applicant was charged with aggravated fraud in obtaining public funds and other related crimes.

It is not clear if the ECtHR's reference to a 'conviction' denoted merely the establishment of an objective criminal act ('criminal conduct') or included the mental elements of the offence as well ('criminal offence'). However, a reading of the *Episcopo and Bassani* case alongside the *Cosovan v. the Republic of Moldova (No. 2)* case provides some insight into this. In the *Cosovan* case, a criminal investigation was initiated against the applicant on charges of practising illegal commercial activity, but they were subsequently discontinued by the prosecutor because the offence was time-barred. Nonetheless, confiscation of the estimated proceeds of crime from the offence was still ordered under the Moldovan rules on 'special confiscation'. Special confiscation was a preventative measure, which could be ordered even when criminal liability or a criminal sanction had not been established or imposed. The provision was directed against property rather than a person, and the measure was intended to prevent the use of assets originating from an unlawful act. Confiscation was not affected by the expiry of the statute of limitation. In the applicant's case, the confiscation order was limited to the actual amount of enrichment he had obtained from the unlawful conduct, without reflecting any level of subjective guilt (para 32).

The ECtHR emphasised that the legal basis for the confiscation order related to goods obtained from an 'unlawful act' as opposed to goods obtained from the 'commission of a criminal offence', which also contains a statement of subjective guilt. Against this background, 'the reasoning provided in the domestic authorities' decisions was not concerned with the assessment of the applicant's criminal guilt but with the origin of the goods subject to confiscation' (at para 39). Moreover, in view of previous case law which pointed at the need under the Convention to provide some particulars as to the unlawful conduct which has allegedly resulted in the acquisition of the disputed money which shows a link between that conduct and the assets at issue,<sup>69</sup> it was not unreasonable for the authorities to provide such an assessment. It followed, that there was no violation of Article 6(2) ECHR.

In its assessment the Court placed considerable weight on the distinction between 'unlawful conduct', that is, the objective act violating the Criminal Code, and assets deriving from the commission of a 'criminal offence', in which the necessary mental elements (in this case intent) have been established. Although the Court in the *Cosovan* case did not directly consider this distinction with regard to the concept of a 'conviction', it would nevertheless seem to be relevant in this context. Unless criminal liability is objective under a particular provision, there can be no conviction unless both the objective and subjective elements of the offence are made out. A 'conviction' can therefore be distinguished from establishing 'unlawful', or 'criminal conduct'.<sup>70</sup> Against this background, there would seem to be a notable tension between Article 6(2) ECHR and a domestic confiscation scheme which requires a (potential) 'conviction' as prerequisite for confiscation in subsequent proceedings following the discontinuance of the criminal proceedings.<sup>71</sup>

For the same reason, the wording of the second paragraph of Article 15 of the EU Directive ('it would have been possible for the relevant criminal proceedings to lead to a criminal conviction') appears to be potentially problematic under Article 6(2). Indeed, Article 15 does not explicitly state

---

69. See particularly *Yordanov and others v. Bulgaria*, Nos. 265/17 and 26473/18 (ECtHR, 26 September 2023), paras 123–24.

70. 'Unlawful conduct' differs from 'criminal conduct' in the sense that not only criminal acts may give rise to confiscation.

71. It cannot be ruled out that such a scheme might in fact of itself be incompatible with Article 6(2) ECHR. However, it is difficult to firmly conclude on this point in view of the ECtHR's ruling in *Episcopo and Bassani and Cosovan (No. 2)*. See also further analysis below.

whether the term ‘conviction’ requires both the objective and subjective elements of an offence to be made out, or whether it suffices that unlawful (or criminal) conduct is established to order confiscation. However, the use of the term ‘conviction’ in the English version of the Directive (see for example Recitals 26, 29, 30 and, particularly 48, which refers to ‘all elements of the criminal offence’ in conjunction with a reference to ‘conviction’) support an interpretation whereby both the subjective and objective elements need to be established. This is also supported by the other language versions of the Directive. For example, the Finnish, German and Swedish versions all refer to a ‘criminal conviction’ in Article 15 in their respective languages (‘rikostuomio’, ‘strafrechtlichen Verurteilung’, ‘fällande dom’) which, in view of what was said above as well as the systematic structure of criminal responsibility in those countries, suggests that both the objective and subjective elements of the offence need to be made out.<sup>72</sup>

It would, however, not seem necessary for my purposes here to seek to establish the true meaning of the Directive in this regard. Instead, it suffices to indicate that this point should be considered by the member states when Article 15 of the Directive is transposed into national law, and when this national law is applied in specific cases. Implementing Article 15(2) in a way which limits confiscation to cases where a ‘criminal conviction’, in the sense that both the objective and subjective elements of the offence are established, would have been reached, would seem to create a notable tension between the confiscation scheme and the second aspect of the presumption of innocence under Article 6(2) as interpreted by the ECtHR.<sup>73</sup>

- 
72. The Finnish version: ‘rikosoikeudellinen menettely olisi voinut johtaa rikostuomioon’, the German version: ‘zu einer strafrechtlichen Verurteilung für eine Tat hätte führen können’ and the Swedish version: ‘hade kunnat leda till en fällande dom’.
73. The applicability of the doctrine on equivalent protection (the so-called ‘Bosphorus presumption’) under ECHR law might become an issue in this context. When complying with obligations as members of an international organisation to which the state has transferred a part of its sovereignty, for example when applying EU law, the contracting states to the ECHR remain bound by the obligations of the Convention (see *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland*, No. 45036/98 (ECtHR, 30 June 2005), para 153). However, where the relevant organisation ‘protects fundamental rights, as regards both the substantive guarantees offered and the mechanisms controlling their observance, in a manner which can be considered at least equivalent to that for which the Convention provides’ (that is to say not identical but ‘comparable’) the presumption will be ‘that a State has not departed from the requirements of the Convention when it does no more than implement legal obligations flowing from its membership of the organisation’ (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland*, No. 45036/98 (ECtHR, 30 June 2005), para 155). While a state will be fully responsible under the Convention for all acts falling outside its strict international legal obligations, any presumption can also be rebutted if, in the circumstances of a particular case, it is considered that the protection of Convention rights was manifestly deficient. According to the ECtHR, the substantive protection afforded by EU law is considered equivalent when the provisions of Article 52(3) CFR is taken into account (eg *Avotiņš v. Latvia*, No. 17502/07 (ECtHR, 23 May 2016), paras 101). The mechanism provided for by EU law for supervising observance of fundamental rights is also considered to afford protection comparable to that for which the Convention provides. In assessing whether the presumption will apply, case law from the ECtHR suggests that the Court considers whether the EU obligation arises from a Regulation, which affords no margin of manoeuvre, or a Directive, which are binding on the Member States as regards the result to be achieved but leave it to them to choose the means and manner of achieving it. Another consideration is whether the full potential of the relevant EU machinery for supervising fundamental rights had been deployed (see *Michaud v. France*, No. 12323/11 (ECtHR, 6 December 2012)). Against this background it is not apparent that the Bosphorus presumption would apply in regard to Article 15 of the Directive.

However, the existence of a single critical feature will not necessarily in itself result in a violation of the Convention. In the *Episcopo and Bassani* case, the Italian provision required ‘a conviction’. Moreover, the ECtHR specifically observed that the Italian Court of Appeal had ‘additionally . . . explicitly equated those statements to a “full finding of liability”’ (at para 133). The ECtHR’s reasoning thus suggests that it was the combined effects of the wording of the Italian scheme and the national court’s reasoning that resulted in the breach of Article 6(2), not merely the wording of the statute.

Sometimes, such as in the *Yordanov and others v. Bulgaria* case, the Court indicates how it weighs the various factors against each other.<sup>74</sup> However, in *Episcopo and Bassani* the court did not do that. The relative weight awarded to the Italian confiscation scheme’s wording and the reasoning by the national court is therefore not clear. Nevertheless, the reasoning of the Court seems to suggest that the structural features of the Italian scheme did create a ‘presumption’ of sorts of a violation, which was then confirmed by the reasoning of the national Court of Appeal.<sup>75</sup> This would suggest that the structural aspects of a scheme will be of considerable weight, although this feature alone might not necessarily in itself suffice to violate Article 6(2).

However, even if the structural aspect of a scheme would not suffice to violate the Convention on its own, the analysis shows that implementing a confiscation scheme which requires a potential *criminal conviction*, rather than a mere establishment of ‘criminal conduct’ as a prerequisite for confiscation would create a tension with Article 6(2) ECHR. Such a scheme may further increase the risk of subsequent violations of the Convention through the application of the provision, and the language used, by national courts.

*The second scenario.* The *second scenario* is where the national NCBC scheme is limited to requiring a link to ‘unlawful conduct’, or ‘criminal conduct’, as a prerequisite for confiscation, but does not require a conviction or that a conviction would have been reached. Confiscation schemes of this kind can be found in, for example, Finnish, German, Norwegian and Swedish law.<sup>76</sup>

Existing case law from the Court suggests that the underlying principle of the ECtHR’s approach is that the subsequent confiscation decision must be effectively distinguishable, legally and/or factually, from the criminal proceedings in order not to impute criminal liability on the defendant.<sup>77</sup> As noted in the Section ‘The first scenario’, the Court placed considerable weight on the distinction between ‘conviction of a criminal offence’ and the establishment of ‘unlawful conduct’ in finding that there was no violation in the *Cosovan* case. This suggests that a scheme which enables confiscation already where ‘unlawful conduct’, or ‘criminal conduct’, is established, rather than the defendant’s guilt, might steer clear of Article 6(2) ECHR. Although such a scheme would not

---

74. *Yordanov and others v. Bulgaria*, Nos. 265/17 and 26473/18 (ECtHR, 26 September 2023).

75. Section 133: ‘the requirement of a criminal “conviction” as a necessary precondition for the confiscation accompanied by the finding that the first-instance conviction had been left unaltered on the merits – constituted clear indicators that the confiscation was ordered because the applicant was considered criminally liable’.

76. Finland: Criminal Code chapter 10, section 2; Germany: StGB section 73; Norway: Criminal Code section 67; and Sweden: Criminal Code chapter 36, section 2.

77. See also *Ringvold v. Norway*, No. 34964/97 (ECtHR, 11 February 2003), para 38 where the ECtHR stressed (at para 38) that the impugned national ruling on compensation ‘did not state, either expressly or in substance, that all the conditions were fulfilled for holding the applicant criminally liable with respect to the charges of which he had been acquitted’.

eliminate the tension altogether, it would at least make it harder to argue that had it not been for the discontinuance of the proceedings, the defendant would have been convicted.

Another option for distinguishing the proceedings legally is to apply a lower standard of proof in the subsequent confiscation proceedings. For example, where confiscation is decided on a ‘clear balance of probabilities’ or a ‘balance of probabilities’ the subsequent confiscation proceedings will be effectively distinguishable from the earlier criminal proceedings, which are concluded on the criminal standard.<sup>78</sup> In this case, it could not readily be said that had it not been for the discontinuance of the proceedings, the defendant would have been convicted. A further option, which would distance the two sets of proceedings even more, is to combine both approaches. This would imply a confiscation scheme which enables confiscation of property that derives from ‘criminal conduct’ based on a lower standard of proof than the criminal standard.

However, as the language of the confiscation ruling in itself may create a sufficient link and constitute a violation of the Convention, extra care must in any case be exercised by the national court when formulating its reasoning in a confiscation decision which follows discontinued criminal proceedings.<sup>79</sup> Even where the wording of the confiscation scheme will not in itself suggest a violation of Article 6(2), the language used by the national court may, either on its own or in conjunction with wording of the scheme (as in the *Episcopo and Bassani* case), give rise to a violation.

It is difficult to assess in abstract which language would or would not be acceptable under Article 6(2). However, three observations can be made in this context. First, the Court stressed in the *Allen* case that ‘even some unfortunate language’ will not be decisive of a violation and that regard must be ‘had to the nature and context of the particular proceedings’.<sup>80</sup> It follows, that an unfortunate phrasing ought not necessarily in itself to suffice to violate the Convention. In the *Cosovan (No. 2)* case, the Court held that this applies even where the language of a judgement might be misunderstood ‘but where it cannot, on the basis of a correct assessment of the domestic law context, be characterised as reflecting an opinion that the applicant is guilty to the criminal standard of the commission of an offence’.<sup>81</sup>

Second, it should be permissible for the national courts to use such language as is required in order to establish the claim in question, but that they may go no further than that.<sup>82</sup> This proposition is supported by the *Nealon and Hallam* case in which the Grand Chamber specifically referred to the ‘the context of the exercise which they are required by domestic law to undertake’.<sup>83</sup>

78. In *Ajdaric v. Croatia*, No. 20883/09 (ECtHR, 12 December 2011), para 51 the Court referred to ‘the basic requirement of criminal justice that the prosecution has to prove its case beyond reasonable doubt’.

79. *Cosovan v. the Republic of Moldova (No. 2)*, No. 36013/13 (ECtHR, 8 October 2024), para. 36. See also *Fleischner v. Germany*, No. 61985/12 (ECtHR, 3 October 2019), paras 64 and 69.

80. *Allen v. the United Kingdom*, No. 25424/09 (ECtHR, 12 July 2013), para 126. See also *Nealon and Hallam v. the United Kingdom*, Nos. 32483/19 and 35049/19 (ECtHR, 11 June 2024), para 150. *Karaman v. Germany*, No. 17103/10 (ECtHR, 27 February 2014), para 63 the phrase was relevant in assessing a tribunal’s references to the applicant’s guilt made within the scope of a judgement against a separately prosecuted co-accused.

81. *Cosovan v. the Republic of Moldova (No. 2)*, No. 36013/13 (ECtHR, 8 October 2024), para 36.

82. Boucht, *The Limits of Asset Confiscation* (n 60) 130 footnote 149.

83. *Nealon and Hallam v. the United Kingdom*, Nos. 32483/19 and 35049/19 (ECtHR, 11 June 2024), para 168. See also *Cosovan v. the Republic of Moldova (No. 2)*, No. 36013/13 (ECtHR, 8 October 2024), para 34.

Third, the abolishment by the ECtHR of the ‘voicing of suspicion’ standard, which gave the individual a higher level of protection against statements by the court, would seem to be relevant in this context as well. It may also be recalled that the Court has repeatedly made a fundamental distinction ‘between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question’.<sup>84</sup> Statements which merely express a certain state of suspicion in regard to the respondent may, it seems, not in itself be sufficient to impute criminal guilt on the respondent provided that national court does not go further than what is necessary to conclude the confiscation matter.

In the *Episcopo and Bassani* case, the Italian Court of Appeal found that the applicant’s arguments and evidence did not justify his acquittal; in fact, and on the contrary, the Court concluded that ‘the evidence adduced can only uphold the finding of liability of Mr Episcopo in respect of the criminal charges’.<sup>85</sup> In conjunction with the wording of the Italian scheme, this amounted to a violation of Article 6(2).<sup>86</sup>

The context is also important. The national court’s language must be considered as a whole in view of all the circumstances. Where, for example, the subsequent proceedings do not subject the respondent to criminal liability, but are limited to restorative or preventive confiscation of assets, even some unfortunate language should not amount to a violation. In the *Cosovan (No. 2)* case, the Court noted that the domestic court had indeed used some unfortunate language:

statements such as that the investigation had collected sufficient evidence ‘to confirm the suspicion’ that ‘income in the amount of MDL 116,428 was obtained by [the applicant] as a result of [a] criminal offence’ and then ordered the confiscation of money from the applicant as ‘money obtained as a result of the criminal offence’ (see parag 7 above). Similarly, the investigating judge’s decision contains statements that the investigation had established that ‘income in the amount of MDL 116,428 ha[d] been obtained by [the applicant] as a result of [a] criminal offence’ but also an explanation that ‘an individual may be subjected to special confiscation when income is derived from an act committed and prohibited by the Criminal Code’, which in the applicant’s case was unlawful commercial activity.<sup>87</sup>

However, the ECtHR observed that the national ruling in question clarified that the applicant was not subject to criminal liability. The Court continued:

. . . the statements in question cannot of themselves amount to an explicit affirmation imputing liability for the criminal offence to the applicant. It is necessary to look at the context of the proceedings as a whole and their special features. These features are also applicable where the language of a judgment might be misunderstood but where it cannot, on the basis of a correct assessment of the domestic law context, be characterised as reflecting an opinion that the applicant is guilty to the criminal standard of the commission of an offence.<sup>88</sup>

---

84. *Karaman v. Germany*, No. 17103/10 (ECtHR, 27 February 2014), para 63 and *C.C.P. v Romania*, No. 20899/03 (ECtHR, 20 December 2011), para 55.

85. *Episcopo and Bassani v. Italy*, Nos. 47284/16 and 84604/17 (ECtHR, 19.12.2024), para 9.

86. As noted above, it is not entirely clear if it would have been possible to avoid a violation by using more careful language considering the structure of the Italian confiscation scheme.

87. *Cosovan v. the Republic of Moldova (No. 2)*, No. 36013/13 (ECtHR, 8 October 2024), para 34.

88. *ibid*, para 36.

It is therefore important that the allegation, and the subsequent decision granting the NCBC confiscation order, is strictly confined to determine the facts and the criminal origins of the property in question, without any suggestion of a criminal characterisation involving guilt on the part of the respondent.<sup>89</sup> This should reasonably be possible where the confiscation proceedings will be about whether, in the light of all the evidence, the property is liable to confiscation, rather than establishing criminal guilt for the respondent's participation in a criminal offence.

### *Independent non-conviction based confiscation proceedings*

*Applicability of Article 6(2) ECHR.* The focus in this section is on the applicability of Article 6(2) ECHR on so-called 'independent confiscation proceedings'. The reasoning with respect to Article 6(2) will be somewhat different, although overlapping in parts. Independent confiscation, which can be pursued in either criminal or civil proceedings, enable confiscation without any existing link to prior criminal proceedings (see the Section 'What is non-conviction based confiscation?') or any identified criminal conduct.<sup>90</sup> This means that confiscation can be ordered both where the previous criminal proceedings have been discontinued and where the defendant was acquitted, as well as where no criminal proceedings at all were initiated, or where the assets cannot be linked to any identified criminal offence.

As noted above, for the presumption of innocence in its second aspect to apply there must be a prior set of proceedings which amount to a 'criminal charge' according to the Convention. If there are no such prior proceedings, an inquiry into the second aspect of the presumption of innocence will be meaningless. Where there is a prior set of criminal proceedings, the applicant must demonstrate that a sufficient link exists between the two sets of proceedings.<sup>91</sup> As already noted, this inquiry concerns whether the second set of proceedings is so close, legally and/or factually, to the first set of criminal proceedings that Article 6(2) ECHR ought to apply.

It was observed in the Section 'Applicability of Article 6(2)' that the close link between the two sets of proceedings in cases where an identified criminal offence (or unlawful conduct) is a prerequisite for confiscation, makes it likely that a sufficient link will exist. In independent confiscation proceedings, this may be different. The independence of these proceedings not only from prior criminal proceedings but also from whether the assets can be linked to a particular offence and whether anyone is convicted of it, seems to make it more difficult to hold that the confiscation proceedings were such a consequence of or sequel to the criminal proceedings that a sufficiently close link can be said to exist.<sup>92</sup> It follows, that Article 6(2) is less likely to apply.

However, independent NCBC schemes which require as a precondition for confiscation that a criminal investigation into a particular trigger offence has been initiated, may have to be assessed differently. Examples of such schemes are Article 16 under the EU's Asset Recovery and Confiscation Directive (2024/1260) and section 76a(4) of the German StGB. It is possible that

---

89. Boucht, *The Limits of Asset Confiscation* (n 60) 130 footnote 149.

90. Although confiscation proceedings can be pursued independently of any criminal proceedings, in practice they may, nevertheless, follow upon prior criminal proceedings, for example where the defendant has been acquitted or where the proceedings were discontinued.

91. For the conditions that may suffice to create a link, I refer to section 4.2.1.

92. See *Gale v. The United Kingdom*, No. 25092/12 (ECtHR, 1 July 2025), para. 94.

these schemes should instead be assessed in line with the reasoning of the Section ‘Applicability of Article 6(2)’.

This is not the only relevant aspect. That the two issues (the criminal case and the confiscation case) are decided in the same proceedings and in the same judgement (even in cases where the confiscation proceedings are independent of the criminal proceedings) might suggest that a link exists, although this can hardly be decisive.<sup>93</sup> The use of the same evidence in the subsequent confiscation proceedings as in the criminal proceedings might in isolation also be seen as an indicator of a link. However, when the use of evidence is considered in conjunction with the objective of the confiscation proceedings, which is not to establish criminal liability but to establish whether certain property constitutes proceeds of crime, it can hardly be decisive (see also below).<sup>94</sup>

Further factors may speak against a link. Not only will an independent confiscation claim not necessarily follow from the criminal case, but the outcome of the criminal case will not be decisive for the subsequent confiscation proceedings. Although the evidence may be the same, the confiscation decision may be independent not only of the decision in the criminal proceedings but also in fact of whether there have been any criminal proceedings at all. In the English Supreme Court case *R. v Gale*, Lord Dyson aptly observed regarding the link between civil recovery proceedings under Part 5 of the POCA 2002 and prior criminal proceedings:

The Part 5 proceedings are not a ‘direct sequel’ or ‘a consequence and the concomitant’ of any criminal proceedings. They are free-standing proceedings instituted whether or not there have been criminal proceedings against the respondent or indeed anyone at all.<sup>95</sup>

This approach is now confirmed in *Gale v. The United Kingdom*,<sup>96</sup> and further supported by other case law from the ECtHR. In *O.L. v. Finland*, a case concerning the loss of the applicant’s right to visit his children, the Court denied that a sufficient link existed as follows:

the criminal investigations were not as such decisive for the issue of public care nor was there any link or dependence between the two. In this particular case, although the prosecutor did not press charges against the applicant, the decision to place A. into public care was legally and factually distinct.<sup>97</sup>

---

93. See also *Cosovan v. the Republic of Moldova (No. 2)*, No. 36013/13 (ECtHR, 8 October 2024), para 20.

94. See *Gale v. The United Kingdom*, No. 25092/12 (ECtHR, 1 July 2025), para. 95.

95. *R. v Gale* [2011] UKSC 49, para 133.

96. See *Gale v. The United Kingdom*, No. 25092/12 (ECtHR, 1 July 2025), para 94-95.

97. *O.L. v. Finland*, No. 61110/00 (ECtHR, 5 July 2005). See also *Balsamo v. San Marino*, Nos. 20319/17 and 21414/17 (ECtHR, 8 October 2019), where Article 6(2) was not applicable to the confiscation of assets that had been the subject of money laundering by a third party. In *Gogitidze v. Georgia*, No. 36862/05 (ECtHR, 12 May 2015), para 125, the ECtHR held that Article 6(2) was not applicable to a case of self-confiscation initiated before the actual criminal proceedings. In *Ringvold v. Norway*, No. 34964/97 (ECtHR, 11 February 2003), para 38, the Court observed that ‘the fact that an act that may give rise to a civil compensation claim under the law of tort is also covered by the objective constitutive elements of a criminal offence cannot, notwithstanding its gravity, provide a sufficient ground for regarding the person allegedly responsible for the act in the context of a tort case as being “charged with a criminal offence”’.

This aspect is further strengthened where independent confiscation is organised in the civil track rather than in the criminal track. Under these schemes, which can be found in Irish and English law,<sup>98</sup> confiscation proceedings are procedurally distinct from criminal proceedings and are pursued as civil proceedings, using, *inter alia*, a civil standard of proof. The confiscation case may also be litigated by another body than the prosecution service.

Furthermore, and importantly, the independent confiscation proceedings will not be about establishing criminal guilt for the respondent's participation in a criminal offence, but whether, in the light of all the evidence, it can be concluded that the property liable to confiscation, which belong to the defendant, has been obtained through unlawful conduct.<sup>99</sup> The purpose is therefore not to establish criminal responsibility, but to facilitate the confiscation of assets generated by or linked to unlawful conduct.

Considering that the subsequent confiscation proceedings will be largely distinct from the criminal proceedings, both factually and legally, at least where they are conducted in separate proceedings, it would appear arguable to hold that a sufficient link would not be likely to exist in these cases. However, as noted above, this may be different with schemes of the kind stipulated in Article 16 of EU Directive which is more directly connected to, and contingent on, the existence of an initial criminal investigation.

Even if there is not a sufficiently strong structural connection between the two sets of proceedings for a link under Article 6(2) to arise, the language used by the national court may nevertheless in itself establish a sufficient link where the reasoning of the court imputes criminal on the individual. As noted in the Section 'Applicability of Article 6(2)' *in fine*, the assessment of whether Article 6(2) is applicable, and whether it has been complied with, will thus merge into one. Also, if a connection would be considered to exist between the two sets of proceedings, a violation of the Convention will exist if the reasoning in the subsequent confiscation decision involves the imputation of criminal liability to the applicant.

In such a subsequent confiscation case, the court should therefore carefully consider its language so that there is no doubt about a previous acquittal. If, in the ruling on the confiscation matter, the court limits itself to assessing the origin of the property, without any suggestion about the party's guilt, the confiscation decision should be able to steer clear of the Convention.

*Compliance with Article 6(2) ECHR.* Where the Article 6(2) ECHR is applicable, it must be assessed whether the presumption of innocence was complied with. The considerations discussed in the Section 'The second scenario' *in fine* will be relevant in this context. I therefore refer to that discussion.

---

98. See the Irish Proceeds of Crime Act 1996 and the English Proceeds of Crime Act 2002, part 5. For a discussion on this distinction, see Boucht, *The Limits of Asset Confiscation* (n 60) 131–39.

99. For example, in *N.A. v. Norway*, No. 27473/11 (ECtHR, 18 December 2014), para 49–52, the Court held that Article 6(2) was not applicable in its second aspect to an award of compensation to the applicant's children after the applicant and her husband were acquitted of gross neglect because the national court's reasoning for awarding compensation did not amount to the establishment of criminal guilt on the applicant's part, and there were no other links between the criminal proceedings and the compensation proceedings as to justify extending the scope of Article 6(2) to cover the latter. See also *Gale v. the United Kingdom*, No. 25092/12 (ECtHR, 1 July 2025), paras 94–95.

## Concluding remarks

The focus of this article has been on the relevance of the second aspect of the presumption of innocence under Article 6(2) ECHR for non-conviction based confiscation proceedings. As the article shows, this aspect needs to be considered by states both when implementing NCBC schemes and when such schemes are applied in specific cases. A distinction was made between two types of NCBC proceedings: ordinary NCBC proceedings where it is a prerequisite for confiscation that the assets can be linked to an identified criminal offence, and independent NCBC proceedings, which are wholly autonomous of any criminal proceedings and any link to identified criminal conduct.

Case law from the ECtHR shows that the reputational aspect of Article 6(2) will potentially be of relevance in NCBC proceedings not only in regard to particular cases based on the language used by the national court but also in regard to how confiscation schemes are worded. For example, a direct implementation of Article 15 of the EU's Asset Recovery and Confiscation Directive (2024/1260) may create a tension with Article 6(2) in view of the ruling in the *Episcopo and Bassani* case. Interestingly, as a lower standard of proof in the subsequent confiscation proceedings may be one way of distancing them from the earlier criminal proceedings, the case law from the ECtHR in this context might in fact contribute to lower safeguards being in place for the respondent in confiscation proceedings. This must be seen as an inadvertent consequence of the ECtHR's decisions in this field.

This development in ECHR law will by no means not preclude NCBC schemes, even where a link to identified criminal conduct of which the defendant has not been convicted will constitute a prerequisite for confiscation. However, it does establish important requirements on how legislation on NCBC is drafted, and on how domestic courts phrase their subsequent confiscation decisions, in order to comply with the obligations under the ECHR.

## Acknowledgements

I would like to thank Marius Emberland and Mari Vindedal, as well as the two anonymous reviewers for useful comments on earlier drafts. All errors are my own.

## Declaration of conflicting interests

The authors declared the following potential conflicts of interest with respect to the research, authorship, and/or publication of this article: Johan Boucht is also Special Advisor to ØKOKRIM, Norway's National Authority for Investigation and Prosecution of Economic and Environmental Crime.

## Funding

The author received no financial support for the research, authorship, and/or publication of this article.

## ORCID iD

Johan Boucht  <https://orcid.org/0009-0006-7948-5363>