



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF COSOVAN v. THE REPUBLIC OF MOLDOVA (No. 2)

(Application no. 36013/13)

JUDGMENT

Art 6 § 2 • Presumption of innocence • Special confiscation of a sum of money because of its undisputed unlawful origin, after the discontinuance of the criminal proceedings as time-barred • Under domestic law special confiscation constituted a precautionary measure which appeared to be directed against property rather than a person and intended to prevent the use of assets from an unlawful act • Imposition of a confiscation order did not amount to a penalty as such and did not require a finding of guilt for a criminal offence or reflect an opinion of guilt to the criminal standard of the commission of a such an offence • Statements in the confiscation order, on the basis of a correct assessment of the domestic law and read in the context of the decision as a whole, could not reasonably be understood as an affirmation of guilt to the criminal standard of the commission of the offence

Prepared by the Registry. Does not bind the Court.

STRASBOURG

8 October 2024

FINAL

08/01/2025

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Cosovan v. the Republic of Moldova (no. 2),

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Arnfinn Bårdsen, *President*,

Pauliine Koskelo,

Saadet Yüksel,

Lorraine Schembri Orland,

Frédéric Krenc,

Diana Sârcu,

Davor Derenčinović, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 36013/13) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Moldovan national, Mr Serghei Cosovan (“the applicant”), on 26 April 2013;

the fact that the applicant died on 25 March 2021 and his wife, Ms Elena Cosovan, expressed her wish to pursue the application before the Court;

the decision to give notice to the Moldovan Government (“the Government”) of the complaints concerning Article 6 §§ 1 and 2 of the Convention and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 10 September 2024,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the confiscation of a sum of money from the applicant, despite the discontinuance of the criminal proceedings against him as time-barred. The applicant complained of a violation of his rights under Article 6 §§ 1 and 2 of the Convention.

THE FACTS

2. The applicant was born in 1971 and lived in Chişinău. He was represented by Mr I. Cerga, a lawyer practising in Chişinău.

3. The Government were represented by their Agent, Mr O. Rotari.

4. The facts of the case may be summarised as follows.

5. On 15 January 2007, following numerous complaints from the Chişinău municipality, a criminal investigation was initiated against the applicant on charges of practising illegal commercial activity. According to the prosecution the applicant, acting as the director of a company, V.G., was suspected of having operated a public car park between April and November

2006 without proper authorisation from the State authorities and without paying taxes.

6. During the investigation, the tax authorities calculated the income from the car park during the period of the investigation, based on the documents seized on site, at 116,428 Moldovan lei (MDL) (the equivalent of 7,080 euros). The investigation also revealed that V.G. was an enterprise run by the applicant which had failed to submit any tax returns since December 2004 and which had for that reason been designated as a “delinquent” entity.

7. On 27 June 2011, following a request from the applicant, the prosecutor in charge of the case decided to discontinue the investigation because it was time-barred. The decision to discontinue read as follows:

“The investigation was initiated on 15 January 2007 on charges of [illegal practice of commercial activity] in respect of [the applicant].

According to the material in the case file, ... on 1 April 2006 the F. company signed a lease agreement for a plot of land with the V.G. company, represented by its director [the applicant], to be used as a car park. Since then [the applicant] ... had been operating an illegal car park on that plot of land, without any system for recording cash receipts and without proper authorisation, and had received a total of MDL 116,428 in cash. ...

During the investigation sufficient evidence was gathered to confirm the suspicion in respect of [the applicant] and in particular there were [ten witness statements], ... three records seized on site reflecting [the activity of the car park], ... [replies from the tax authority] about the V.G. company being listed as a delinquent entity and about the car park’s takings between 1 April and 1 November 2006, amounting to MDL 116,428.

On 23 June 2011 [the applicant] requested the discontinuance of the criminal investigation because the limitation period had expired. ... In view of the accumulated evidence, I consider that the criminal investigation in respect of [the applicant] should be discontinued because the limitation period has expired.

At the same time, it is noted that income in the amount of MDL 116,428 was obtained by [the applicant] as a result of the criminal offence provided for in Article 241 § 2 (e) and (f) of the Criminal Code, through the operation of an illegal car park.

Under Article 285 § 6 (3) of the Code of Criminal Procedure, a prosecutor deciding to discontinue an investigation may, where necessary, take precautionary measures. Under Article 98 § 2 of the Criminal Code, special confiscation is a precautionary measure. ...

Since the authority conducting the criminal investigation has not identified and seized the amount of money obtained as a result of the criminal offence, it is necessary to proceed under Article 106 §§ 1 and 2 a) of the Criminal Code with special confiscation, that is, the forced and uncompensated transfer to the State of a sum equivalent to that income, amounting to MDL 116,428, from the suspect [the applicant].

... For the above-mentioned reasons, ... I order the following:

1. The discontinuance under Article 275 paragraph 4 of the Code of Criminal Procedure of the criminal investigation on the charges under Article 241 § 2 (e) and (f) of the Criminal Code of illegal practice of commercial activity by [the applicant] because the limitation period has expired;

2. The special confiscation of ... a sum equivalent to that obtained from the criminal offence, amounting to MDL 116,428, to be paid by [the applicant]. ...”

8. The applicant challenged the part of the prosecutor's decision that concerned the confiscation and argued, *inter alia*, that he had never admitted guilt and that his guilt had not been determined by a court of law. He had never been given any explanation as to the applicability of the legal provision on special confiscation. The measure of special confiscation therefore could not be applied to him.

9. On 6 April 2012 a hierarchically superior prosecutor dismissed the applicant's appeal, reiterating the reasons previously given by the prosecutor (see paragraph 7 above) and stating as follows:

“[T]he authority which conducted the criminal investigation considers that the sum of MDL 116,428 obtained from the operation of the illegal car park by the accused [the applicant] represents the proceeds of criminal activity and that that sum may be the subject of special confiscation under Article 106 of the Criminal Code.

On 23 June 2011 [the applicant] sought the discontinuance of the criminal investigation because of the expiry of the limitation period. On 27 June 2011 the investigation was discontinued under Article 275 § 1 (4) of the Code of Criminal Procedure. Discontinuance on this ground [does not give an entitlement to rehabilitation].

For this reason, a request to discontinue proceedings on the grounds of the expiry of the limitation period indicates a waiver of the right to have guilt proved in criminal proceedings.

Non-rehabilitation is therefore a condition imposed by the law for the application of the rules on the expiry of the limitation period.”

10. On 19 April 2012 the applicant complained to the investigating judge about the confiscation ordered by the prosecutor, seeking the annulment of his decision of 27 June 2012 but only as to the part concerning confiscation. He argued that the prosecutor had not explained to him that asking for the investigation to be discontinued because it was time-barred was considered by the criminal investigating authority to be an admission of guilt. Nevertheless, he had never had standing in the criminal proceedings as he had not been acknowledged as a suspect and no charges had ever been brought against him. By concluding that he was guilty, the prosecutor had breached his right to a fair trial and his right to be presumed innocent. Because he had not admitted guilt, the prosecutor was precluded from applying the measure of special confiscation, which could be used only once the criminal offence and the offender had been established in judicial proceedings. He submitted that the confiscation had already been enforced.

11. On 15 January 2013 the investigating judge of the Buiucani District Court dismissed the applicant's complaint. The court provided the following reasons:

“In the course of the criminal investigation sufficient and pertinent evidence was gathered to confirm the suspicion in respect of [the applicant], and in particular there were [ten witness statements], ... three records seized on site reflecting [the activity of the car park], ... [replies from the tax authority] about the V.G. company being listed as

a delinquent entity and about the car park's takings between 1 April to 1 November 2006 amounting to MDL 116,428.

On 23 June 2011 [the applicant] sought the discontinuance of the proceedings as time-barred. During the criminal investigation ... it was established that [the applicant] could not be held criminally liable because ... of the expiry of the limitation period. ... Nevertheless, it has been found that income in the amount of MDL 116,428 has been obtained by [the applicant] as a result of criminal offences under Article 214 § 2 (e) and (f) of the Criminal Code, through the operation and administration of the unauthorised car park. Under Article 285 § 6 (3) of the Code of Criminal Procedure, the prosecutor may, if necessary, take precautionary measures ... [such as special confiscation].

[T]he court finds that the prosecutor's decision was well-founded, with due assessment of the evidence adduced, and [the applicant] did not refer to any legal reasons why the prosecutor's decision of 27 June 2011 should be annulled. ...

On 28 February 2008 [the applicant] was acknowledged as a suspect, which he was informed about in the presence of his appointed lawyer, and he refused to make a statement. On 23 June 2011 [the applicant] sought the discontinuance of the proceedings because of the expiry of the limitation period. ... On 27 June 2011 the proceedings [were discontinued and the confiscation was ordered] ...

[The applicant] does not challenge the prosecutor's decision to discontinue the criminal investigation. ... His complaints about [procedural deficiencies] do not correspond to the material in the file since all procedural actions had been taken in the presence of his appointed lawyer. For this reason, the discontinuance of the investigation ... on the grounds of the expiry of the limitation period took place with his consent and in compliance with Article 275 § 4 and Article 285 of the Code of Criminal Procedure. In discontinuing the proceedings, the prosecutor was authorised to adopt precautionary measures, [including special confiscation].

[D]uring the criminal investigation it was established [see a summary of findings based on the evidence listed above] and that income in the amount of MDL 116,428 had been obtained by [the applicant] as a result of the criminal offences under Article 241 § 2 (e) and (f) of the Criminal Code, through the operation and management of an unauthorised car park. [The applicant] did not contest those conclusions reached by the prosecutor. Neither [the applicant], nor his lawyer denied the facts alleged in the court proceedings. Even if a criminal penalty was not established, an individual may be subjected to special confiscation when income is derived from an act committed and prohibited by the Criminal Code, in this particular case Article 241 § 2 (e) and (f), the result of that act [in the present case] being the sum of MDL 116,428 derived from unlawful commercial activity.

On that basis, the court concludes that in the absence of any legal impediments and with the [necessary] procedural authority ..., the prosecutor has correctly applied Article 106 of the Criminal Code and ordered the special confiscation of [MDL 116,428] which has been obtained from unlawful commercial activity."

12. The Government provided the complete criminal file from the domestic proceedings. Among other things, in addition to the facts described above it contained numerous letters, decisions and site reports by the local public authority concerning the dismantling of illegal car parks in various parts of the city, including the car park allegedly operated by the applicant; numerous police reports about the site; a decision by the owner of the V.G. company authorising the applicant to act as its administrator; ten witness

statements, including one by the owner of the V.G. company concerning the informal transfer of ownership of the company to the applicant and statements from five car-park security staff who said that the applicant had taken all the income from the car park; the record of the applicant's interview as a suspect on 28 February 2008, during which he declined to make a statement; a request dated 21 October 2009 signed by the applicant's lawyer seeking the discontinuance of proceedings as time-barred; and a request dated 23 June 2011 signed by the applicant also seeking the discontinuance of proceedings as time-barred.

RELEVANT DOMESTIC AND INTERNATIONAL LEGAL FRAMEWORK

I. DOMESTIC LEGAL FRAMEWORK

13. The Code of Criminal Procedure, enacted by Law no. 122 of 14 March 2003, at the time of the events of this case provided as follows:

**Article 23. Protecting victims' rights as a result of crimes,
abuse of public office and judicial error**

“(3) A person who is acquitted or in respect of whom a decision to discontinue proceedings is taken on rehabilitation grounds shall be entitled to the restoration of all personal rights, as well as to compensation for the damage caused.”

Article 275. Circumstances excluding criminal investigation

“A criminal investigation shall not be initiated, and if initiated, may not be pursued and shall be discontinued if:

... 4) the limitation period has expired or an amnesty has been declared; ...”

Article 285. Discontinuance of a criminal investigation

“(1) A criminal investigation shall be discontinued in the situations referred to in Article 275, and also:

... 2) when at least one of the grounds in Articles 35 and 53 of the Criminal Code has been established; ...

(6) On discontinuing a criminal investigation, the prosecutor, if necessary, shall take the necessary steps:

... 3) to apply precautionary measures; ...

(6¹) The discontinuance of a criminal investigation and the exemption of a person from criminal liability shall not be pursued against the wishes of the person concerned.”

Article 397. Other issues to be solved in the operative part of the judgment

“The operative part of a judgment convicting or acquitting [the defendant] or discontinuing criminal proceedings shall include ... if appropriate:

2) a decision on any special confiscation; ...”

14. The Criminal Code of the Republic of Moldova, enacted by Law no. 895 of 18 April 2002, at the time of the events of the present case provided:

Article 14. Definition of a criminal offence

“(1) A criminal offence is a harmful act (*fapta*) (act or omission) provided for by the criminal law, committed with intent and punishable by a criminal penalty.”

Article 53. Exemption from criminal liability

“A person who has committed an act which contains the elements of a crime may be exempted from criminal liability by the prosecutor in the course of the criminal investigation and by the court in the course of court proceedings because of:

...

(g) the expiry of the limitation period for criminal offences.”

Article 62. Categories of penalties applied to individuals

“(1) The following penalties may be imposed on individuals who have committed crimes:

- a) a fine;
- b) deprivation of the right to hold an office or to practise a certain activity;
- c) withdrawal of military rank, honour or title, qualifications or State awards;
- d) community service;
- [point (e) (‘arrest’) repealed as from 13 May 2008]
- f) imprisonment;
- g) life imprisonment.”

CHAPTER X. Precautionary measures

Article 98. Purpose and types of precautionary measures

“(1) Precautionary measures shall aim to remove a risk and to prevent the commission of acts prohibited by criminal legislation.

(2) Precautionary measures shall be as follows:

- a) compulsory medical treatment;
- b) compulsory education;
- c) expulsion;
- d) special confiscation.”

Article 106. Special confiscation

“(1) Special confiscation is the forced and uncompensated transfer to the State of goods used in the commission of a crime or obtained as a result of crime. If the goods

used in the commission of a crime or obtained as a result of crime no longer exist or cannot be traced, their equivalent value shall be confiscated.

(2) The following goods (*bunuri*) shall be subject to special confiscation:

a) those resulting from an act (*fapta*) prohibited by this Code as well as any income from those goods, except for goods or income subject to return to their legal owners;

b) those used or intended for use in the commission of a crime, if they belong to the offender (*infractor*);

c) those provided for the carrying out of a crime or to pay the offender (*infractor*);

d) those obtained through the commission of a crime, if they are not to be returned to the injured person or are not intended to be provided to him or her by way of compensation;

e) those possessed contrary to the law;

f) those converted or transformed, partially or completely, from goods resulting from crime or from any income accrued from such assets;

g) those used or intended for the financing of terrorism.

(2¹) If the goods resulting from or acquired through crime or any income accrued from such goods have merged with legally acquired goods, then the part of the goods or their equivalent value which corresponds to the value of the goods resulting from or acquired through crime and any income accrued from those goods shall be subject to confiscation.

(3) Special confiscation shall be applied to persons who have committed the acts (*fapte*) prohibited by this Code. The goods mentioned in paragraph 2 may be subject to confiscation even if they belong to other persons, if those persons accepted them knowing that they had been illegally obtained.

(4) A special confiscation measure shall be applicable even if no criminal sanction was imposed on the perpetrator (*făptuitor*).

Article 241. Illegal practice of commercial activity

(1) The illegal practice of commercial activity, resulting in large profits, shall be punished by a fine of up to 500 conventional units or community service of up to 200 hours ...

(2) The same deed committed:

... (e) in extremely large proportions;

(f) resulting in extremely large profit....

Shall be punished by a fine from 500 to 1000 conventional units or imprisonment up to two years ...

[Article 126 of the Criminal Code defined “extremely large” any value exceeding 5,000 conventional units, which at the time of events constituted 100,000 Moldovan lei (equivalent to 5,900 euros)]”

15. After several amendments in 2012 and 2016, the provisions of Article 106 of the Criminal Code of the Republic of Moldova now read as follows:

Article 106. Special confiscation

“(1) Special confiscation is the forced and uncompensated transfer to the State of goods listed under paragraph (2). If those goods no longer exist or cannot be found, their equivalent value shall be confiscated.

(2) The following goods (including money) shall be subject to special confiscation:

a) those used or intended for use in the commission of a crime;

b) those resulting from crimes, as well as any income accrued from them;

c) those provided for the carrying out of a crime or to pay the offender (*infractor*);

[point (d) repealed as from 06 May 2016]

e) those possessed contrary to the law;

f) those converted or transformed, partially or completely, from goods resulting from crime or from any income accrued from such goods;

g) those which constitute the object of the crimes of money laundering and financing of terrorism.

(2¹) If the goods resulting from or acquired through crime or any income accrued from such goods have merged with legally acquired goods, then the part of the goods or their equivalent value which corresponds to the value of the goods resulting from or acquired through crime and any income accrued from those goods shall be subject to confiscation.

(3) If the goods listed under paragraph (2) a) and b) belong or were transferred for consideration to a person who was not and ought not have been aware of the purpose or the origin of the goods, their equivalent value shall be subject to special confiscation. If those goods were transferred without consideration to a person who was not and ought not to have been aware of their purpose and origin, then the goods shall be subject to confiscation.

(4) A special confiscation measure shall be applicable even if no criminal sanction was imposed on the perpetrator (*ăptuitor*).”

II. INTERNATIONAL LEGAL FRAMEWORK AND PRACTICE

16. The Financial Action Task Force (FATF) recommendations entitled “International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation” include: recommendation no. 4, which states that countries should consider adopting measures that allow non-conviction-based confiscation “to the extent that such a requirement is consistent with the principles of their domestic law”; and recommendation no. 38, which calls on States to ensure they have the authority to respond to requests made on the basis of non-conviction-based confiscation proceedings and related provisional measures, unless this is inconsistent with fundamental principles of their domestic law.

17. The Fifth Round Mutual Evaluation Report of the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) on “Anti-money

laundering and counter-terrorist financing measures in the Republic of Moldova” was issued in 2019 (MONEYVAL(2019)6) and reads as follows, in so far as relevant:

“Special confiscation

250. The special confiscation is defined as a security measure aimed at removing the dangers resulting from the commission of criminal acts, as well as preventing the commission of future criminal offences. According to the prosecutors, the special confiscation is usually ordered by the Court in case of a conviction. However, the measure may also be applied if the Court decides the cessation of the trial on motivated grounds (i.e. in case of amnesty or death of the offender) or in cases where the criminal liability has been replaced with a civil liability and respective sanction. The confiscation is considered to be an ‘in rem’ measure, hence not being subject to the statute of limitations ...”

THE LAW

I. PRELIMINARY REMARKS

18. The Court notes at the outset that the applicant died after lodging the present application and that his wife has expressed a wish to continue the proceedings before the Court. The Court sees no reason why the applicant’s wife, a close relative, cannot pursue the application on his behalf (compare also *David v. Moldova*, no. 41578/05, § 28, 27 November 2007). However, for reasons of convenience, the text of the judgment will continue to refer to Mr Serghei Cosovan as “the applicant” even though only Ms Elena Cosovan is now to be regarded as having the status of applicant before the Court (compare also *Isayeva v. Azerbaijan*, no. 36229/11, § 62, 25 June 2015).

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

19. The applicant complained that the proceedings against him had not been fair because a confiscation order, and thus a criminal sanction, had been imposed on him in the absence of a fair trial by a court of law. He relied on Article 6 § 1 of the Convention. At the same time, he complained under Article 6 § 2 of the Convention that a confiscation order, which amounted to a criminal sanction, had been imposed on him contrary to the principle of the presumption of innocence. The Court, being the master of the characterisation to be given in law to the facts of the case, considers that these complaints fall to be examined only under Article 6 § 2 of the Convention, which reads as follows:

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

A. Admissibility

20. The Court notes that the applicant had procedural standing as a suspect in the criminal investigation proceedings against him and had thus been “charged” for the purposes of Article 6 of the Convention (see, *inter alia*, *Stirmanov v. Russia*, no. 31816/08, § 39, 29 January 2019) until the criminal investigation proceedings against him were discontinued. In determining whether the Article 6 § 2 applies to the confiscation order made against him, the Court reiterates that whenever the question of the applicability of Article 6 § 2 arises in the context of subsequent proceedings, the applicant must demonstrate the existence of a link, as referred to above, between the concluded criminal proceedings and the subsequent proceedings. 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 (*Allen v. the United Kingdom* [GC], no. 25424/09, § 104, ECHR 2013, and *Nealon and Hallam v. the United Kingdom* [GC], nos. 32483/19 and 35049/19, § 122, 11 June 2024). In the present case, the special confiscation order against the applicant was made within in the prosecutor’s decision to discontinue the investigation, directly following that decision, and by reference to the evidence gathered in the investigation proceedings. For this reason, the Court considers that there is a sufficient link between the criminal proceedings and the impugned confiscation order and Article 6 § 2 of the Convention is therefore applicable in respect of him (contrast *Gogitidze and Others v. Georgia*, no. 36862/05, §§ 124-27, 12 May 2015).

21. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties’ submissions*

(a) *The applicant’s submissions*

22. The applicant submitted that he had never admitted guilt and that the criminal proceedings had been discontinued as time-barred on the “exclusive initiative” of the criminal investigating authority. The applicant noted that his procedural standing as a suspect had expired by virtue of statute in 2008, that no charges had ever been brought against him and that he had had no procedural standing when the proceedings had been discontinued in 2011.

23. The applicant argued that under domestic law, the prosecutor was precluded from ordering the confiscation of the assets of persons who had no standing in a criminal case and who had not been finally convicted. He submitted that the prosecutor had assumed the power of a court and had taken an independent view that he was guilty and ordered the confiscation of his assets. He viewed the measure of confiscation as a criminal penalty, with reference to *Welch v. the United Kingdom* (9 February 1995, Series A no. 307-A). His right to be presumed innocent had been breached because the discontinuance decision by the prosecutor had thus attributed guilt to him, despite the absence of any procedural standing on the applicant's part.

(b) The Government's submissions

24. The Government submitted that under domestic law, a prosecutor discontinuing an investigation was authorised to take precautionary measures such as special confiscation (Article 285 § 6 (3) of the Code of Criminal Procedure). The Government argued that special confiscation was a precautionary measure and not a criminal sanction. They submitted that both the domestic law at the time and the FATF recommendations allowed for special confiscation in the absence of conviction. They submitted that the discontinuance of criminal proceedings as time-barred and the implicit exemption from criminal liability on those grounds did not preclude the confiscation of the proceeds of the crime concerned (Article 106 § 4 of the Criminal Code).

25. The Government also submitted that the criminal investigation concerned an illegal car park operated by a company administered by the applicant, which had taken MDL 116,428 in the course of its unauthorised commercial activity. The discontinuance of the investigation as time-barred and the consequent exemption of the applicant from criminal liability had required the applicant's consent because it did not entail rehabilitation. The Government argued that when agreeing to have the criminal investigation against him discontinued as time-barred, the applicant had accepted that the decision would not have the effect of rehabilitation and therefore, implicitly, he had accepted his guilt. The Government agreed that after May 2008 the applicant had had no standing in the criminal case, because of the expiry of the statutory time-limit for procedural standing as a suspect. However, that situation had not precluded the continuation of the investigation or its subsequent discontinuance as time-barred. The Government contended that the proceedings had complied with the requirements of Article 6 § 2 of the Convention and that the applicant had never complained at domestic level about the discontinuance of the investigation on those grounds as such or about the conclusions the prosecutor had drawn from the evidence gathered.

2. The Court's assessment

(a) Scope of the case

26. At the outset the Court notes that the applicant's main issue is with the special confiscation ordered along with the discontinuance of proceedings against him as time-barred. In his view, special confiscation amounted to a criminal penalty and could have been imposed only if his guilt were to have been lawfully established by a court following a fair trial.

27. Nevertheless, the applicant has no issue with the discontinuance of the investigation as such on the grounds of limitation, with the duration of the pre-trial investigation nor with the fact that the case was never committed for trial by the prosecutor. The applicant's allegations before the Court as to the absence of his consent to the discontinuance (see paragraph 22 above) are inconsistent with his position, submissions and actions at domestic level (see paragraphs 8 and 10 above) and with the material from the criminal file provided by the Government, which has not been disputed by the applicant (see paragraph 12 above).

28. For these reasons, the Court is called upon to determine whether the application of the special confiscation in the present case resulted from or amounted to an implicit assertion of the applicant's guilt.

(b) General principles

29. The Court reiterates that the presumption of innocence does not only apply in the context of pending criminal proceedings, but also protects individuals 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 (see *Bikas v. Germany*, no. 76607/13, § 31, 25 January 2018, and *Allen*, cited above, § 94). 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. To 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. This approach reflects the fact that at national level judges may be required, outside the context of a criminal charge, to sit in cases arising out of the same facts as a previous criminal charge which did not result in a conviction. 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. A person who was acquitted or in respect of whom criminal proceedings were discontinued will remain subject to the ordinary application of domestic rules as to evidence and the standard of proof outside criminal trials (see *Nealon and Hallam*, cited above, §§ 168-169).

(c) Application of those principles in the present case

30. The Court notes that under Moldovan law, special confiscation was a precautionary measure which could be ordered even when criminal liability or a criminal sanction had not been established (see paragraphs 13-14 above). Special confiscation was not included in the list of criminal sanctions provided for in the Criminal Code (see Article 62 in paragraph 14 above). Nevertheless, its general application to “goods used in the commission of a crime or obtained as a result of crime” and, particularly in the applicant’s case, to goods “resulting from an act prohibited by this Code”, appears to be dependent on the existence of an unlawful act (see Article 106 §§ 1 and 2 (a) in paragraph 14 above). In the Court’s view, therefore, there is nothing in the relevant legislation classifying the measure as a penalty (contrast *G.I.E.M. S.r.l. and Others v. Italy* [GC], nos. 1828/06 and 2 others, §§ 220-21, 28 June 2018). Moreover, similar confiscation rules – where the criminal liability of the offender and prescription were irrelevant for confiscation purposes and where confiscation orders generally covered property that had been acquired through unlawful activities – were not uncommon among Council of Europe member states at the time of the events (see comparative law analysis in *Silickienė v. Lithuania*, no. 20496/02, §§ 33-35, 10 April 2012).

31. In assessing the nature and purpose of a confiscation measure, the Court takes note of the Government’s reference to the obligation to comply with the FATF recommendations on implementing non-conviction-based confiscation in order to combat money laundering and the financing of terrorism and proliferation (see paragraph 24 above). A measure of this kind can be applied to third parties who have not been involved in any criminal proceedings, persons who have been convicted or acquitted, and also persons in respect of whom proceedings have been discontinued for reasons not entailing rehabilitation, such as the expiry of the limitation period. While there is no need for an assessment of the degree of culpability, the application of special confiscation may be dependent on an assessment of a link between certain acts and the assets to be confiscated.

32. The Court further notes that the domestic authorities referred to Article 106 §§ 1 and 2 (a) of the Criminal Code when ordering special confiscation in respect of the applicant. The first paragraph defined special confiscation as the forfeiture of “goods used in the commission of a crime or obtained as a result of crime”, while the second paragraph listed different

categories of goods subject to confiscation (see paragraph 14 above). In the applicant's case, these were goods "resulting from an act prohibited by this Code". This provision refers to an unlawful act rather than to a crime as such, in contrast to the similar provision under letter (d) of the same paragraph: "[goods] obtained through the *commission of a crime*". This distinction reflects the definition of a crime in Article 14 of the Criminal Code as "an act" (*fapta*) committed with "intent" (*cu vinovăție*). In the applicant's case, the measure was limited to the actual amount of enrichment he had obtained from the unauthorised activity, without any statutory assumptions affecting any other aspects of his income from any period (compare also *Ulemek v. Serbia* (dec.), no. 41680/13, § 54, 2 February 2021, and contrast *Welch*, cited above, § 33). The confiscation order was subject to enforcement under the rules for the enforcement of civil awards, which did not allow for enforcement by imprisonment in default of payment.

33. The provision thus appears to be directed against property rather than a person and was intended to prevent the use of assets originating from an unlawful act, being comparable to the institution of civil confiscation *in rem* and was not affected by the expiry of the statute of limitation (see also MONEYVAL's assessment in paragraph 17 above; see *Ulemek v. Serbia* (dec.), cited above, § 50, and *Balsamo v. San Marino*, nos. 20319/17 and 21414/17, § 62, 8 October 2019). Accordingly, the imposition of a confiscation order as such did not amount to a penalty, and also did not require the domestic authorities under domestic law to find the applicant guilty of a criminal offence (contrast, for instance, *El Kaada v. Germany*, no. 2130/10, §§ 62-63, 12 November 2015) or to reflect an opinion that the applicant is guilty to the criminal standard of the commission of a criminal offence (compare *Nealon and Hallam*, cited above, § 168).

34. In this connection, the Court notes that, with regard to the reasoning provided by the domestic authorities, when considered as a whole, and in the context of the exercise which they were required by the domestic law to undertake (compare *Nealon and Hallam*, *ibid.*), the applicant did not complain of any particular statement made by the authorities. Even so, the Court observes that the prosecutor's decision contains 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 paragraph 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 (see paragraph 11 above).

35. The Court notes that the decisions in question clarified that the applicant was not subject to criminal liability, while they commented on the proceeds of crime which were to be confiscated from him on the basis of persisting indications that he had obtained the money from criminal activity, even if he had never been properly charged with the commission of a criminal offence before the domestic courts. In the Court's opinion, such statements may be understood as referring to both the commission of the criminal offence in issue and to the unlawful origin of the money as described in Article 106 § 2 (a) of the Criminal Code.

36. The Court reiterates that extra care ought to be exercised when formulating the reasoning in a confiscation decision after the discontinuation of criminal proceedings (see *Fleischner v. Germany*, no. 61985/12, §§ 64 and 69, 3 October 2019). However, 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 (compare *Nealon and Hallam*, cited above, §§ 168-169).

37. In this connection, the Court observes that the confiscation was ordered along with the discontinuance of criminal proceedings as time-barred and, therefore, was ancillary to those proceedings. Under domestic law, a confiscation order could not be made before a decision of acquittal, conviction or discontinuation was taken in the criminal case (see paragraph 13 above, Articles 285 and 397 of the Code of Criminal Procedure).

38. The context was clarified by the reasoning of the investigating judge in which he explained that the applicant had had no procedural standing at the time of the discontinuance of the proceedings, that the evidence in the file showed that the applicant had obtained money from an unauthorised commercial activity and that the applicant had never disputed this in his appeals before the hierarchically superior prosecutor nor in the course of adversarial proceedings before the investigating judge. The judge was satisfied that the special confiscation of the money in question had a sufficient legal basis in view of its undisputed unlawful origin (see paragraph 11 above).

39. It is noteworthy that the legal basis chosen for the confiscation in the applicant's case concerned goods obtained from an "act prohibited by the [Criminal] Code", as opposed to goods obtained from the commission of a criminal offence (see paragraph 30 above). In the light of this choice of the legal basis for confiscation, 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.

40. The Court cannot find it unreasonable for the domestic authorities to have provided particulars as to the unlawful conduct which had allegedly resulted in the acquisition of the disputed money and to refer to a link between such conduct and the assets at issue. On the contrary, in the light of the Court's case-law concerning forfeiture of proceeds of crime, the authorities are under an obligation to provide such an assessment in order to comply with the requirements of the Convention (see a summary of the case-law in *Yordanov and Others v. Bulgaria*, nos. 265/17 and 26473/18, §§ 123-24, 26 September 2023, and *Todorov and Others v. Bulgaria*, nos. 50705/11 and 6 others, §§ 190-99, 13 July 2021).

41. It is also important to note that, in the present case, the assessment of the unlawful origin of the money ("illegal commercial activity" as described under Article 241 of the Criminal Code, see paragraph 14 above) was based on evidence collected in the course of the investigation and not on any presumptions. The decisions referred to the search carried out at the unauthorised car park which resulted in various records of money received for providing a parking service, to the witness statements concerning the applicant's involvement with the car park staff and to the information about of the company's delinquent tax status (see paragraphs 7, 11 and 12 above). As noted by the domestic courts, this evidence was never disputed by the applicant although he had a reasonable opportunity to put his case to the authorities in order to effectively challenge the confiscation measure, being assisted at all times by a practising lawyer.

42. In the light of the foregoing, the Court concludes that on the basis of a correct assessment of the domestic law, and read in the context of the decision as a whole, the special confiscation order, which referred to the unlawful origin of the goods subjected to confiscation, could not reasonably have been understood as an affirmation of guilt to the criminal standard of the commission of an offence.

There has accordingly been no violation of Article 6 § 2 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, that the applicant's widow has standing to pursue the application lodged with the Court by her late husband;
2. *Declares*, unanimously, the application admissible;
3. *Holds*, by four votes to three, that there has been no violation of Article 6 § 2 of the Convention.

COSOVAN v. THE REPUBLIC OF MOLDOVA JUDGMENT (No. 2)

Done in English, and notified in writing on 8 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Yüksel, Krenc and Derenčinović is annexed to this judgment.

JOINT DISSENTING OPINION OF JUDGES
YÜKSEL, KRENC AND DERENČINOVIĆ

We respectfully disagree with the majority's finding that there has been no violation of Article 6 § 2 of the Convention.

The present case raises specific questions concerning confiscation without a criminal conviction. We are aware that this type of confiscation may give rise to several issues, notably regarding the presumption of innocence (see, in another context, *G.I.E.M. S.r.l. and Others v. Italy* [GC], nos. 1828/06 and 2 others, 28 June 2018). We do not, however, take a position on the domestic legislation in the abstract, but will confine our examination strictly to the manner in which that legislation was applied to the applicant in the specific circumstances of the present case.

From that perspective, and in our humble opinion, the present judgment misses the mark when incorporating the findings of the recent Grand Chamber judgment in *Nealon and Hallam v. the United Kingdom* ([GC], nos. 32483/19 and 35049/19, 11 June 2024). In *Nealon and Hallam*, the Court stated that the presumption of innocence would be violated if the decisions and reasoning of the domestic courts reflected an opinion that the applicant was guilty to the criminal standard of the commission of a criminal offence, and that the second aspect of Article 6 § 2 protected innocence in the eyes of the law (*ibid.*, §§ 168 and 181).

In the present case, the prosecutor and the investigating judge, in their decisions, used wording such as “income ... obtained by [the applicant] **as a result of the criminal offence**” and “money obtained **as a result of the criminal offence**” (see paragraphs 7 and 11 of the judgment; emphasis added). In our view, given that the applicant had never had the opportunity to exercise his rights of defence in a criminal trial and that the domestic law did not require such a conclusion for ordering special confiscation, those statements reflected an opinion that the applicant was guilty to the criminal standard of committing the criminal offence (contrast *Nealon and Hallam*, cited above, § 180). With all due respect, we cannot endorse the majority's conclusion as set out in paragraph 42 of the present judgment.

Relying on *Nealon and Hallam*, the majority refers to “a correct assessment of the domestic law” (see paragraphs 36 and 42 of the judgment) and notes that the applicant did not take issue with any particular statement (see paragraph 34 of the judgment). In this regard, we note that in *Nealon and Hallam* too, the applicants did not complain about the language used by the Justice Secretary or the domestic courts (see *Nealon and Hallam*, cited above, § 170) and yet the Grand Chamber still focused primarily on the positive

imputation of guilt, taking the wording of the decisions and reasoning into account as part of its main assessment (*ibid.*, §§ 178-81).

The domestic legislature has very carefully defined conditions for special confiscation. In the present case, however, the authorities failed to apply this regime in a manner that would have been consistent with the safeguards concerning the presumption of innocence. The domestic legislation defines a criminal offence as “a harmful act (*fapta*) (act or omission) provided for by the criminal law, committed with intent and punishable by a criminal penalty”. The threshold for applying special confiscation is the establishment of the harmful act prohibited by the Criminal Code (an objective element unrelated to the intent/guilt of the suspect). In the present case, by mixing a “confirmation of suspicion” with “goods ... obtained as the result of crime” (which encompasses both objective and subjective elements, including intent/guilt), the authorities *de facto* imputed to the applicant an element of personal criminal liability. This constitutes, in our opinion, a violation of the second aspect of Article 6 § 2, which protects innocence in the eyes of the law.