

NICOLAE TITULESCU UNIVERSITY
DOCTORAL SCHOOL OF LAW



DOCTORAL THESIS

CONFISCATION IN ROMANIAN CRIMINAL LAW.

Standards of Legitimacy, Evidentiary Regime and Limits from a
Comparative and Convention Perspective

SUMMARY

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Outline of the Thesis

Introductory chapter. Reasons for choosing the topic; novelty, topicality and significance of the research; legal and doctrinal context; central hypothesis; state of research; research questions, methodology, findings and limitations; terminology.

Chapter 1. Confiscation in Classical Criminal Law: Foundations and Structural Limits. Origins and development of the institution; traditional justifications; limits of the classical model; the premises of the transition.

Chapter 2. The Internationalisation of Confiscation and Its Functional Shift. The Vienna and Palermo Conventions and the UN Convention against Corruption; asset recovery; limits of the international model.

Chapter 3. The Europeanisation of Confiscation and the Move beyond the Classical Criminal Law Framework. Directive 2014/42/EU; case law of the Court of Justice; Directive (EU) 2024/1260.

Chapter 4. Special Confiscation. Object of the measure and the asset-offence link; review tests and patterns of reasoning drawn from the case law of the High Court; standard of proof; limitation, death and other procedural events; residual judicial inquiry; compatibility with the Convention.

Chapter 5. Extended Confiscation. Its Hybrid Character. Legal nature; the wealth-based presumption and the standard of proof; culpability and proportionality; European case law; the United Kingdom and Italy compared; critique of the domestic rules.

Chapter 6. Confiscation in the Absence of a Criminal Conviction. Comparative models; classification under the Convention; legitimacy criteria for non-conviction-based confiscation.

Chapter 7. The Evidentiary and Procedural Regime of Confiscation. Evidentiary logics; migration of standards; the operational test; safeguards for third parties.

Chapter 8. The Legal Nature of Confiscation: Critique of a Formalist Debate and a Functional Reconstruction. Critique of the unitary classification; the differentiated model.

Chapter 9. The Need for Legislative Reconstruction. Specific Proposals. Recognising functional plurality; third parties; special confiscation; the intermediate standard and the post-conviction procedure; non-conviction-based confiscation; transposition of Directive (EU) 2024/1260.

Chapter 10. Conclusions. The course of the argument; the thesis restated and its limits; original contributions and open questions.

Keywords: special confiscation; extended confiscation; non-conviction-based confiscation; NCBC; standard of proof; residual judicial inquiry; operational test; functional equivalence of safeguards; differentiated model; third-party rights; Directive (EU) 2024/1260.

Research Problem and Method

Motivation and Research Problem

I am a judge, and my experience of applying confiscation in criminal cases is the starting point of this research. In more than a decade on the bench I have delivered hundreds of judgments in which confiscation was either mandatory or available, and I gradually came to see that judicial practice in this area swings between two patterns. Sometimes confiscation is ordered or refused wholesale, without any analysis of the conditions specific to each form, as though every form followed the same logic and called for the same standard of proof; at other times, when criminal proceedings end without a conviction, whether by termination, on expiry of the limitation period or on the death of the defendant, the courts decline to rule on confiscation, relying on grounds that have no legal bearing on the fate of property obtained through crime. Both patterns lead to wrong outcomes, so that property which should not be confiscated is sometimes confiscated, while property which should be confiscated is sometimes left untouched.

The research starts from the question *‘Where do these errors come from, and how can they be corrected?’* The answer I reached is that they stem from the absence of a coherent theoretical framework capable of guiding the application of confiscation from principle to the individual case, and the thesis seeks to build that framework by offering the courts a workable method of analysis, one that starts from the concrete problems of practice and returns to them after examining the theoretical foundations. The question is also topical at European level, since Directive (EU) 2024/1260 on asset recovery and confiscation widens the scope for action against criminal assets and requires Member States to transpose it by 23 November 2026, reopening the relationship between effective recovery, the autonomy of certain procedures and the protection of the rights of those affected.¹

State of Research and Novelty of the Topic

Romanian legal scholarship has not yet produced a monograph devoted to confiscation as an institution in its own right. The general treatises, from the collective work edited by Vintilă Dongoroz to those written or edited by Vasile Dobrinoiu and Mihail Udroi, examine confiscation within the broader framework of criminal sanctions without developing a theory of the institution and of its

¹ Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation, OJ L, 2024/1260, 2 May 2024.

relationship with constitutional safeguards and with those of the European Convention on Human Rights. European scholarship, by contrast, has grown considerably over the past two decades. Among the works that have shaped it, the volume edited by Jon Petter Rui and Ulrich Sieber on non-conviction-based confiscation is the central point of reference and Anna Maria Maugeri's writings provide the foundation for any analysis of the Italian system, while British scholarship is represented by, among others, the work of Mitchell, Taylor and Talbot and of Millington and Sutherland Williams. The thesis builds primarily on this literature and on the case law of the constitutional and supreme courts of Italy and the United Kingdom and of the European courts, which it measures critically against Romanian positive law.

Hypothesis and Contributions

The central hypothesis is that the difficulties created by the expansion of confiscation cannot be resolved through piecemeal legislative adjustments, because their source lies in the way the institution itself is legally conceived. Special confiscation, extended confiscation and measures ordered without a conviction share the same name but differ in their object, their function and the intensity of the interference they entail, and treating them as a single institution inevitably produces incoherence and conflicts with the fundamental principles of criminal law.

The proposed answer is a differentiated model in which the regime of each form of confiscation, namely its standard of proof, its procedural safeguards and the position of third parties, is derived from its function and its actual effects. The model is the principal contribution of the work and rests on the operational test, which sets the standard of proof for each form, and on the principle of functional equivalence of safeguards, which determines the protection owed to third parties and to persons targeted by autonomous proceedings. The work also identifies three mechanisms by which, in practice, the evidentiary rules of one form of confiscation are carried over into another, organises into five models the reasoning of the High Court of Cassation and Justice on the link between the asset and the offence, and puts forward three legitimacy criteria for non-conviction-based confiscation, the concept of residual judicial inquiry and proposals *de lege ferenda*.

Objectives and Research Questions

The research is organised around five questions.

1. When does confiscation acquire, in substance, the character of a criminal penalty, with all the safeguards that go with it?
2. When is recourse to the civil standard of proof a legitimate legislative choice, and when does it become a means of circumventing criminal-law safeguards?

3. What are the constitutional and Convention limits on extended confiscation, and does the case law of the European Court of Human Rights and of the Court of Justice provide a coherent framework for drawing them?

4. What regime governs confiscation where criminal proceedings are terminated, particularly on the death of the defendant or on expiry of the limitation period, and through which procedural tools may the court determine the property aspect of the case?

5. What solutions does comparative law, with an emphasis on the Italian and British systems, offer where confiscation affects the property of third parties?

The aim of the work is to provide a coherent account of the main forms of confiscation and to formulate criteria that will assist judges in giving reasons and legislators in drafting rules, with particular attention to the effects on third parties and to the implications of current developments in EU law.

Methodology and Scope

The analysis starts from Articles 112 and 112¹ of the Criminal Code (CC) and the related provisions of the Code of Criminal Procedure (CCP). The doctrinal and systematic interpretation of these provisions is tested against the case law of the High Court of Cassation and Justice and against that of the Constitutional Court, the European Court of Human Rights and the Court of Justice of the European Union, while the historical method traces the development of confiscation from the 1988 Vienna Convention to Directive (EU) 2024/1260.

The in-depth comparison covers Italy, which has developed the most elaborate system of preventive confiscation in Europe, and the United Kingdom, which built one of the most sophisticated asset recovery regimes through its 2002 Act, while Germany, France, the Netherlands and Belgium are drawn on selectively, where they offer a useful contrast or a relevant solution.

The Romanian judgments cited are few and were chosen for their illustrative value, to bring out patterns of reasoning and of applying the standard of proof that are representative of current practice. Some are my own, but none is relied on as authority. The models, tests and principles proposed in the work are doctrinal reconstructions that systematise reasoning drawn from legislation and case law without attributing it to the courts as an express formulation. The thesis does not attempt a philosophical or historical analysis of the concept of punishment, its central inquiry being the conditions under which confiscation acquires, in substance, the character of a criminal penalty, with direct consequences for the procedural safeguards that apply.

Chapter 1. Confiscation in Classical Criminal Law: Foundations and Structural Limits

The idea that no one should profit from crime explains the place of confiscation in classical criminal law, alongside justifications based on prevention, the neutralisation of dangerous property and the restoration of the legal order. In its typical form, the measure removes the proceeds or the instrumentalities of the offence, and its legitimacy depends on the concrete link between the asset and the offence, which makes it possible to neutralise the unlawful gain and prevents the measure from turning into an open-ended reaction against the person's property.

The classical model reaches its limits when the asset can no longer be identified, when its value passes through the hands of others or when its origin can only be inferred indirectly. Organised and economic crime, built on intermediaries, on the conversion of assets and on the concealment of proceeds, makes it futile to pursue only the original object, yet the practical need to extend confiscation does not in itself set the limits of that extension. The traditional classification, generally a non-punitive one, then comes into tension with the severity of the effect on property, and the real function of the measure matters all the more the further confiscation moves away from a specific offence and from a conviction.

Chapter 2. The Internationalisation of Confiscation and Its Functional Shift

International instruments respond to the difficulty of tracing criminal gains across borders and beyond the assets of the immediate offender. The 1988 Vienna Convention links confiscation to the fight against drug trafficking,² the Palermo Convention extends it to the structures of transnational organised crime,³ and the United Nations Convention against Corruption (UNCAC) turns asset recovery into a distinct international agenda.⁴

These conventions strengthen the obligation of States to provide for confiscation and to cooperate in giving effect to it, but they retain its dependence on conviction and deliberately avoid a clash with the traditional principles of criminal law, leaving unresolved the relationship between confiscation, conviction and the rights of the owners of the property. Confiscation thus ceases to be conceived solely as a consequence of criminal punishment and becomes a central instrument of asset recovery, although the legal premises of the classical criminal

² United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20 December 1988.

³ United Nations Convention against Transnational Organized Crime, New York, 15 November 2000.

⁴ United Nations Convention against Corruption, New York, 31 October 2003.

model remain in place, and European law inherits the tension between this new function and the old framework.

Chapter 3. The Europeanisation of Confiscation and the Move beyond the Classical Criminal Law Framework

In the European Union, confiscation has shifted from being a matter of cooperation between authorities to being a matter of common substantive and procedural rules. The framework decisions facilitated the cross-border recognition of freezing and confiscation orders, but the differences between Member States, particularly regarding proof, the relationship with conviction and third parties, exposed the limits of cooperation without a minimum of common rules.

Directive 2014/42/EU laid down minimum rules for confiscation following conviction, extended confiscation and third-party confiscation,⁵ and its Article 8 introduced safeguards concerning the reasons for the measure and the means of challenging it, including for persons affected by extended confiscation and for third parties. Minimum harmonisation nevertheless left the standard of proof unsettled, and the Court of Justice has relied on proportionality and fundamental rights to discipline national solutions without being able to overcome fragmentation.

Directive (EU) 2024/1260, which the thesis analyses as a legislative correction of the framework established by Directive 2014/42/EU, extends the confiscation mechanisms. Article 15 allows confiscation proceedings to continue in narrowly defined situations, such as the death of the person prosecuted or the objective impossibility of continuing the criminal proceedings, provided that criminal proceedings have been initiated. Article 16 introduces the confiscation of unexplained wealth, meaning property identified in the course of a criminal investigation which the court is satisfied derives from the activities of a criminal organisation, a finding that may rest on indicators such as a substantial disproportion to lawful income. The evidentiary logic thus moves from classical causal proof towards inferential proof, in which disproportionate wealth plays a central role, and confiscation proceedings become far more autonomous than under the previous framework. For Romanian law, the thesis argues for a transposition that regulates the standard of proof, the procedure and the rights of third parties together, since a minimal transposition confined to formal compliance would preserve the present incoherence.

⁵ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014, OJ L 127, 29 April 2014.

Chapter 4. Special Confiscation

The Basis and Object of the Measure

Special confiscation remains the classical form of action against property in criminal proceedings, and its central question is what link must be proved between the asset and the act prohibited by criminal law. The answer varies with the role of the asset and cannot be inferred automatically from the outcome of the case against the person. The thesis analyses the categories in Article 112(1) CC according to the role of the asset in relation to the act, with particular attention to converted or substituted value, and shows that, for property whose possession is prohibited, covered by letter (f), confiscation in criminal proceedings must be related to the act before the court, even though there is no need to prove that the asset was used as an instrument of the offence.⁶ To separate the asset that justifies the measure from one merely present in the circumstances of the offence, the court must verify the actual role of the asset, its derivation from the offence and, where it has been converted, the continuity of its value.

The Asset-Offence Link in the Case Law of the High Court

In the absence of detailed statutory criteria, the High Court of Cassation and Justice has used its case law to curb the tendency to order confiscation automatically. The thesis organises its recurring lines of reasoning into five models, ranging from the decisive functional role of an asset used to commit the offence and the substitutability test to the limits on confiscating assets used after the offence and on confiscating commingled fungible values, which makes the reasoning on the asset-offence link open to scrutiny.

The most telling example comes from usury, where the High Court separated the capital lent from the interest charged and tied confiscation to the direct derivation of property from the offence, rejecting any global approach to the sums that circulated in the context of the offence; the thesis explains why the capital raises a different legal problem and where the decision sits within the five models.⁷ The same logic governs situations in which fungibility or the commingling of lawful and unlawful values precludes wholesale confiscation for as long as it has not been established which part of the value represents the proceeds of the offence or the unlawful component of the mixed fund. For assets used after the offence has been completed, to secure its benefits or to evade its consequences, the thesis reconstructs the same logic by way of interpretation, in the absence of a binding High Court decision addressing Article 112(1)(c) CC

⁶ Article 112(1) of the Criminal Code. See Law No. 286/2009 on the Criminal Code, as subsequently amended and supplemented.

⁷ High Court of Cassation and Justice, Panel for the Resolution of Questions of Law in Criminal Matters, Decision No. 26/2025 (HP) of 27 January 2025, Official Gazette of Romania No. 467 of 20 May 2025.

directly, showing that what is decisive is the concrete role of the asset and that the timing of its use is not enough.

The Standard of Proof and Differences between Offences

The reasoning on confiscation is often treated as a by-product of the decision on the charge, as though the conviction proved everything that needs to be established for the measure. The thesis argues the opposite, namely that for special confiscation ordered in criminal proceedings the statutory link between the asset and the offence must be established to the criminal standard, beyond reasonable doubt, because the interference with the right of property is final and rests directly on the criminal liability of the convicted person. Inferences from the evidence remain possible, provided that the court sets out the facts from which it starts and the reasoning by which it arrives at the specific asset.

For offences that directly generate a financial gain, the object of confiscation may seem obvious, but the amount and the identity of the asset obtained must be distinguished from what merely circulated in the context of the offence. For offences without an immediate financial result, a conviction no longer entails confiscation automatically, and the measure must be based either on classifying the asset as an instrument of the offence or on an indirect derivation of property that is clearly delimited and rigorously proved, the mere presence of the asset in the context of the offence being insufficient.

Limitation, Death and the Paradox of the Dual Standard

The expiry of the limitation period does not dispose of the question whether an asset may be confiscated, but it changes the framework in which the court answers it, because in the absence of a conviction the conditions for the interference must be established through a genuine judicial examination that must not turn into an implicit conviction. Death adds a difficulty of its own, since the measure comes to affect the estate inherited by the heirs, who bear no criminal liability for the deceased's act and must be able to defend themselves. The other grounds for terminating criminal proceedings likewise call for differentiation according to the findings on the merits that they still allow, including by reference to the hierarchy of the grounds listed in Article 16(1) CCP.

Practice reveals a paradox here, because if a dual standard of proof were accepted, demanding for the criminal aspect of the case and flexible for the civil claim and for confiscation, the interference with property would become easier to justify where the limitation period has expired than where there is a conviction. Limitation would thus lower the safeguards and make it easier to reach the person's property, and the same court would apply different standards to the same body of evidence in the same proceedings, a solution the thesis rejects as incompatible with the unity of the criminal process.

Residual Judicial Inquiry and the European Convention

The solution proposed for these situations is residual judicial inquiry, defined as the examination that the criminal court carries out of the property aspect of the case where proceedings end without a conviction, covering the act relevant to the measure and the relationship between the asset and that act, without imposing, or allowing the imposition of, a penalty. Although the Code does not recognise it under that name, the obligation to carry it out follows from the interpretation of the existing rules, and the concept gives that obligation its content, in the sense that the court establishes independently whether the act occurred and whether the asset is linked to it, to the criminal standard and in adversarial proceedings, without relying on a presumption drawn from the charge and without automatically declining to examine the assets.

Convention review requires that the wording of the judgment should not attribute to the person a criminal guilt that the decision does not establish, and for the thesis *Geerings v. the Netherlands* remains the leading authority on the standard of proof, holding that confiscation based on offences of which the person has not been convicted, in the absence of an actual judicial finding, is incompatible with the presumption of innocence.⁸ More recent Strasbourg case law adds a seemingly contrary nuance, distinguishing confiscation based on a finding of guilt from autonomous or preventive confiscation directed at the origin of the assets, to which Article 6 § 2 and Article 7 do not apply in the same way as in a classical criminal trial.⁹ The distinction does not undermine the argument of the thesis, because the Romanian legislature has kept confiscation within the criminal process, as a consequence of it, subject to the same procedural rules and the same standard of proof, thereby providing protection above the Convention minimum. Residual judicial inquiry fits within this legislative choice, and the court must state what it finds regarding the asset, what evidence it relies on and what consequences follow, so that those affected can challenge the finding.

Chapter 5. Extended Confiscation. Its Hybrid Character

Conditions of the Measure and Constitutional Limits

Extended confiscation starts from a conviction but concerns assets whose link with criminal activity is established by an inference drawn from the person's wealth. Its function is hybrid, combining the neutralisation of wealth that is incompatible with lawful income with a severe and final interference with the property of the convicted person, and this duality explains why neither the classical

⁸ ECtHR, *Geerings v. the Netherlands*, no. 30810/03, 1 March 2007, especially §§ 43–51.

⁹ ECtHR, *Garofalo and Others v. Italy* (dec.), nos. 47269/18 and others, 21 January 2025; *Gale v. the United Kingdom* (dec.), no. 25092/12, 1 July 2025; *Gogitidze and Others v. Georgia*, no. 36862/05, 12 May 2015.

criminal standard nor the balance of probabilities fits it without adjustment. Constitutional Court Decision No. 11/2015, which excluded from extended confiscation assets acquired before the entry into force of Law No. 63/2012, applies the principle of non-retroactivity to a measure formally classified as a safety measure and thereby confirms that the effects of the measure must be assessed beyond its label.¹⁰

The Wealth-Based Presumption and Its Limits

In Romanian law, a disproportion between a person's lawful income and his or her assets contributes to convincing the court that the assets derive from criminal activity, although on its own it is not a sufficient basis. The thesis shows that Article 112¹ CC, although constitutional case law consistently describes it in terms of presumptions, does not establish a legal presumption in the technical sense, since the provision ties the disproportion to the court being 'convinced', a formula of free judicial assessment, and not to a legal conclusion as to illicit origin. The reasoning by which illicit origin is inferred is constructed only in the reasons of each individual judgment, the person concerned has to defend against it without the law specifying what exactly must be proved in rebuttal, and the reviewing court has no statutory criteria for checking whether the inference has in fact operated as an irrebuttable presumption.

The problem also has a constitutional dimension, since the Constitutional Court has upheld the compatibility of the mechanism with the presumption that property has been lawfully acquired, enshrined in Article 44(8) of the Constitution, through a dynamic interpretation of that presumption which has had the effect of relativising the safeguard. From a functional perspective, the lack of an explicit standard is more than a mere drafting omission, because it leaves the requirement that the court be 'convinced' oscillating between an unarticulated civil threshold and a criminal standard invoked in form only, and makes it impossible to check how the court inferred illicit origin.

The practical risk is that a conviction which opens the way to an examination of the person's assets will be treated as proof that all of those assets are of illicit origin. The thesis therefore separates the function of the conviction, which merely triggers the application of Article 112¹ CC, from the independent analysis of the origin of each asset within the period laid down by law, and calls for a financial analysis of the assets and of the lawful income for the relevant period in place of global figures unaccompanied by any examination of how the assets were acquired or of the person's explanations. In *Phillips v. the United Kingdom*, the European Court accepted rebuttable presumptions concerning assets in confiscation proceedings following conviction, while making that possibility

¹⁰ Constitutional Court of Romania, Decision No. 11/2015, Official Gazette of Romania No. 102 of 9 February 2015.

conditional on the person's real ability to respond and on judicial review of the specific circumstances.¹¹ Proportionality also extends to the amount, and an admissible presumption does not relieve the court of the need to explain why the value confiscated corresponds to the aim pursued, a requirement that British practice, especially *R v Waya*, articulates most clearly.¹²

European Case Law and the Lessons of Comparison

The judgment of the Court of Justice in Joined Cases C-845/19 and C-863/19 precludes a mere conviction from leading automatically to extended confiscation and requires the court to be satisfied, on the basis of the specific circumstances, that the assets derive from criminal activity.¹³ The comparison with the United Kingdom and Italy shows how this requirement is applied and which solutions can be adapted to Romanian law.

British case law, from *Rezvi* and *Benjafield* to *May*, *Jennings*, *Green* and *Waya*, has shaped a coherent regime that accepts a distinct post-conviction measure, presumptions and inferences subject to effective judicial scrutiny, a broad concept of criminal benefit and the taking into account of conduct not resulting in a conviction, and that, since *Waya*, requires a mandatory proportionality check. The 2010 *Joint Thematic Review*, however, also documents the shortcomings in the regime's application, including the substantial gap between the amounts set in confiscation orders and those actually recovered. The comparison supports separating the property proceedings from the determination of guilt, which the thesis adopts, whereas the statutory assumptions covering all property held over the preceding six years, which apply where the defendant has a 'criminal lifestyle', are not adopted.

Italian scholarship describes a 'taming' of extended confiscation, which has gone from a heavy-handed instrument to one that operates 'with the handbrake on'. The Constitutional Court and the Joint Sections of the Court of Cassation, supported by scholarship, have established the non-punitive character of the measure, which is designed to restore a lawful financial position, the rebuttable character of the presumption of disproportion, which must be verified by reconstructing the person's assets flow by flow and period by period, and predictable temporal rules on the period over which disproportion is assessed. To these is added the obligation to give reasons on *periculum in mora* where preventive seizure anticipates discretionary confiscation.¹⁴ Scholars see these

¹¹ ECtHR, *Phillips v. the United Kingdom*, no. 41087/98, 5 July 2001; *Grayson and Barnham v. the United Kingdom*, nos. 19955/05 and 15085/06, 23 September 2008.

¹² *R v Waya* [2012] UKSC 51.

¹³ CJEU, *DR and TS*, Joined Cases C-845/19 and C-863/19, judgment of 21 October 2021, ECLI:EU:C:2021:864.

¹⁴ Corte cost., sent. n. 33/2018; Cass. pen., Sez. Un., n. 27421/2021, *Crostella*; Cass. pen., Sez. I, n. 1778/2020, *Ruggieri*; Cass. pen., Sez. Un., n. 36959/2021; Cass. pen., Sez. Un., n. 33451/2014, *Repaci*.

limits as the means by which the measure is kept below the threshold of a criminal penalty in the substantive sense without losing its effectiveness.

Procedural Shortcomings of Romanian Law

In Romanian law, the analysis of the person's assets is folded into the criminal trial, with no separate stage devoted to financial investigation and no specialised support structure. The prosecutor presents the conclusions on the origin of the assets together with the charge, and the court assesses at one and the same time the defendant's guilt and a body of assets that is sometimes complex, built up through intermediaries and cross-border transfers, so that the result is either longer proceedings or a superficial treatment of the property aspect of the case. This is the starting point for the proposal of a separate post-conviction procedure, developed in Chapter 9.

Chapter 6. Confiscation in the Absence of a Criminal Conviction

Distinguishing the Mechanisms and the Comparative Models

Residual judicial inquiry presupposes a court already seised of the criminal case, but there remain situations in which the criminal process, by its very structure, cannot provide a basis for the interference, either because there is no person against whom proceedings have been brought or because the case is discontinued before it reaches a court. For those situations, the chapter examines whether, and on what conditions, autonomous confiscation can be legitimate.

The expression 'without a conviction' covers solutions built on different foundations, as Italian preventive confiscation shows, since it is tied to the social dangerousness of the person, does not depend on proof of a specific offence and has drawn criticism regarding the foreseeability of its criteria and the protection of property. In the United Kingdom, Part 5 of the *Proceeds of Crime Act 2002* provides for a civil recovery action directed against the property itself and decided on the balance of probabilities.¹⁵ The German-Scandinavian model keeps autonomous confiscation within criminal law, as a procedure directed, as a rule, against a person, with a standard of proof higher than the civil one. In Romanian law, Article 549¹ CCP governs only confiscation following the discontinuance of the case or a waiver of prosecution, through a hybrid procedure that defines neither the standard of proof nor the applicable safeguards.

Classification under the Convention and the Limits of Legitimacy

The *Sud Fondi*, *Varvara* and *G.I.E.M.* trilogy shows that a confiscation classified in domestic law as an administrative sanction may be classified as a 'penalty' within the meaning of Article 7 of the Convention where its actual

¹⁵ *Proceeds of Crime Act 2002* (United Kingdom), Part 5.

function is punitive and individualised.¹⁶ *G.I.E.M. S.R.L. and Others v. Italy* does not reduce the inquiry to the existence of a formal conviction and focuses on the court's actual findings on liability and on the safeguards afforded by the proceedings.¹⁷

Comparing *Welch* and *Walsh*, which concern the same State and the same legal tradition, makes it possible to reconstruct the criteria the Court applies. In *Welch v. the United Kingdom*, the confiscation order exceeded the actual enrichment, the amount could reflect the offender's culpability and non-payment could lead to a term of imprisonment in default, which is why the Court classified the order as a penalty.¹⁸ In *Walsh v. the United Kingdom*, civil recovery following an acquittal involved no finding of guilt and the amount did not exceed the proceeds of the unlawful conduct, so that the proceedings were not regarded as the determination of a criminal charge.¹⁹ No single factor is decisive, but taken together they show that the domestic label attached to the procedure does not determine its classification under the Convention. The test also has an acknowledged limit, in that it gives clear answers at the extremes and less clear ones in the intermediate zone, where the Italian preventive measure lies.

The legitimacy of non-conviction-based confiscation also has limits unrelated to classification. Proportionality, its substantive safeguard, becomes vulnerable in systems where the authorities have an institutional interest in maximising the assets confiscated, whether because the proceeds fund their own budgets or because they count towards performance indicators, the American experience of policing for profit being a case in point. The gravest risk, however, is the use of civil proceedings as a substitute for a criminal prosecution that would be possible but uncertain in outcome, a risk expressly acknowledged when the British Act of 2002 was adopted and managed through guidance that gives priority to criminal prosecution. The risk grows where proceedings may be brought after an acquittal, offering the prosecution a second bite of the cherry, and the European Court has curbed this effect only procedurally, by requiring the civil court to avoid language suggesting that the acquitted person is guilty. At the level of the system as a whole, the spread of these mechanisms erodes the distinction between civil and criminal law, applying civil-level safeguards to measures whose effects are comparable to those of criminal sanctions and lowering, as such measures become commonplace, the legitimacy requirements imposed on other forms of State interference.

¹⁶ ECtHR, *Sud Fondi S.r.l. and Others v. Italy*, no. 75909/01, 20 January 2009.

¹⁷ ECtHR [GC], *G.I.E.M. S.R.L. and Others v. Italy*, nos. 1828/06 and others, 28 June 2018.

¹⁸ ECtHR, *Welch v. the United Kingdom*, no. 17440/90, 9 February 1995.

¹⁹ ECtHR, *Walsh v. the United Kingdom* (dec.), no. 43384/05, 21 November 2006.

Whatever its classification, non-conviction-based confiscation affects property and remains subject to Article 1 of Protocol No. 1. Drawing on the Convention standards and on the practical limits of these mechanisms, the thesis proposes three cumulative legitimacy criteria. The first, necessity, requires the mechanism to be used only where classical criminal confiscation cannot operate, so that it does not become a convenient substitute for criminal prosecution. The second, equivalence of safeguards, requires a mechanism whose effects are comparable to those of a conviction to be accompanied by comparable safeguards, tailored to what is actually at stake for the person concerned. The third, transparency of classification, requires that the procedure should not conceal a criminal penalty behind a civil label, since such a mechanism forfeits its legitimacy by adding to the interference with property an interference with the right to a fair trial.

Chapter 7. The Evidentiary and Procedural Regime of Confiscation

Three Evidentiary Logics and the Migration of Standards

The three forms of confiscation raise different evidentiary questions, because while special confiscation requires direct proof of the link between the asset and an offence, extended confiscation rests on an inference about the person's wealth, triggered by disproportion following a conviction, and non-conviction-based mechanisms have varying grounds and procedures. The coexistence of these regimes becomes problematic only when the boundaries between them are not respected, and Romanian judicial practice documents at least three mechanisms by which the evidentiary rules of one form are carried over into another.

The first consists in treating the conviction as a substitute for the individual analysis of the assets, so that the conviction, which opens the way to extended confiscation and has only a secondary evidentiary function as to the origin of the assets, comes to be treated as an implicit presumption that the person's entire wealth is of illicit origin, and the measure turns into a strict-liability sanction against property. The second consists in relying on disproportionate wealth in special confiscation, through reasoning such as 'the assets are disproportionate to the defendant's lawful income, so they derive from crime', which takes the place of the direct proof required by Article 112 CC. The third lies in reasoning by formulas such as 'it is evident that' or 'logically', which do not reveal the standard applied and reduce appellate review to a formality. The three mechanisms reinforce one another, so that the more demanding standards are weakened by the application of the less demanding ones, while the latter become entrenched in the absence of rules delimiting them.

The substance of the standards of proof is present, explicitly or implicitly, in current Romanian law, but the normative structure that would delimit them is

missing. According to the thesis, a coherent system of proof in confiscation matters would require the law to set out explicitly the standard applicable to each form, going beyond the generic reference to the court being ‘convinced’, to make a statement of the standard applied a condition of the lawfulness of the measure, open to review on appeal, and to prohibit expressly the use in special confiscation of the evidentiary rules specific to extended confiscation or to non-conviction-based mechanisms.

The Operational Test and Its Application

The instability stems from the fact that Romanian law allows the standard of proof to follow from the formal classification of the measure. The national label is not neutral, however, since authors such as Rui and Sieber have shown that the proliferation of non-conviction-based confiscation mechanisms in Europe was driven precisely by the wish to bypass criminal procedural safeguards by reclassifying the procedure as ‘civil’, while Vogel has demonstrated that the civil-criminal distinction in confiscation matters is predominantly procedural. The thesis therefore proposes an operational test made up of three cumulative elements, which transposes into domestic law the logic of the *Engel* analysis and the markers drawn from *Welch* and *Walsh*. Under this test, the standard of proof and the safeguards are determined by the intensity of the interference with the right of property, by how closely the measure is linked to the criminal liability of the person and by its predominant purpose, preventive or punitive. The more serious the interference, the closer the link with criminal liability and the nearer the purpose comes to a punitive one, the more rigorous the safeguards and the higher the standard must be.

Applied to special confiscation following conviction, the test calls for the classical criminal standard, since the interference is at its most intense and is final, and the measure rests on the very criminal liability established by the conviction. Accepting a lower threshold for the asset-offence link would mean an interference based on incomplete legal certainty, in other words a strict-liability sanction against property. In the case of extended confiscation, the hybrid function rules out both the unadjusted application of the criminal standard, which would deprive the institution of any practical use, and the balance of probabilities, which by definition tolerates a margin of error incompatible with the possible loss of an entire estate, and this leads to an explicit intermediate standard lying between criminal proof of the offence and the mere balance of probabilities. In non-conviction-based confiscation, the link with the criminal liability of the person is weak or non-existent, and the standard may fall below the criminal one only if the reduction is offset by stronger procedural safeguards. The same logic explains the difference between the British model, which tries the property on the balance of probabilities, and the German-Scandinavian model, which, by directing the procedure against a person, requires a standard higher than the civil one.

The Principle of Functional Equivalence of Safeguards

The confiscation of property belonging to third parties who bear no criminal liability for the offence and confiscation ordered in autonomous proceedings, without any criminal liability having been established, raise the same difficulty, because in both situations the State must justify the interference without being able to rely on the criminal liability of the person whose property is confiscated.

The principle of functional equivalence of safeguards answers this problem by requiring procedural safeguards to be all the stronger the further confiscation moves away from a criminal conviction as its basis, in order to compensate for the weakening of the link with personal liability. The principle draws on the case law of the European Court on third parties, which recognises their right effectively to challenge the findings on the asset-offence link,²⁰ on comparative scholarship on non-conviction-based confiscation and on the internal logic of Romanian law, in which residual judicial inquiry makes up for the absence of a conviction through the rigour of its own analysis.

Romanian law, however, does the opposite, with safeguards becoming weaker precisely as confiscation moves away from the criminal liability of the person. On the death of the defendant, courts sometimes lift the precautionary measures automatically, sometimes maintain confiscation through the bare formula that the other provisions of the judgment are upheld, and sometimes order it without any separate reasoning, while heirs and other third parties have no procedure in which to challenge the findings that affect them. The situations that are most sensitive from the standpoint of fundamental rights thus end up with the weakest protection.

Chapter 8. The Legal Nature of Confiscation: Critique of a Formalist Debate and a Functional Reconstruction

A Question Wrongly Put

The debate on the legal nature of confiscation, as a penalty, a safety measure or a *sui generis* sanction, has gone on for decades without becoming productive. The thesis argues that its persistence is explained by a methodological error common to all the positions, namely the premise that a single formal classification is possible and that it can determine the applicable legal regime. Romanian scholarship, broadly following continental scholarship, has wavered between these positions, relying either on the severity of the interference and the link with the offence, or on the preventive purpose and the express classification in the Criminal Code, or on the unsuitability of the traditional categories. Each of these

²⁰ ECtHR, *Silickienė v. Lithuania*, no. 20496/02, 10 April 2012; *Balsamo v. San Marino*, nos. 20319/17 and 21414/17, 8 October 2019.

classifications captures a real aspect of the institution, but all of them answer the question ‘what is confiscation?’ and sidestep the question that actually decides cases, namely how confiscation operates in the individual case, against whom, within what procedural framework and with what intensity of interference.

Legal classifications remain useful as a guide, but they lose their capacity to determine the applicable regime on their own. A confiscation formally classified as a safety measure may call for the full criminal safeguards if it operates punitively, while a formally criminal measure may work with a more flexible standard if its role is strictly restitutory, so that it is the function that determines the classification. The *sui generis* position, adopted with nuances by Boucht and by Rui and Sieber, has the merit of recognising that the institution does not fit the traditional categories, but it remains insufficient as long as it offers no positive criterion for allocating standards and safeguards, and so restates the problem without solving it.

The Functional Criterion in European Case Law

European case law has long applied, implicitly, a functional criterion that traditional scholarship never formulated. The *Engel* criteria are a tool of functional analysis through which the European Court looks behind the national label and examines the actual effect of the measure. The contrast between *Raimondo v. Italy*, in which anti-Mafia preventive confiscation remained outside the notion of a penalty, and the *Sud Fondi*, *Varvara* and *G.I.E.M.* trilogy, in which Italian confiscation for unlawful site development was classified as a penalty, shows that the change in classification followed the change in function. The Court of Justice follows a similar logic, rejecting extended confiscation ordered automatically on the strength of a mere conviction and making the application of Directive 2014/42/EU depend on a functional link between the proceedings and a finding that an offence has been committed, regardless of how the proceedings are classified nationally. The thesis formulates this criterion explicitly and uses it to determine the regime applicable to each form of confiscation in Romanian law.

The Differentiated Model

The three forms of confiscation cannot share the same legal nature, since they perform different functions, affect property with different intensity and are linked to different degrees to the criminal liability of the person. A common classification distorts their analysis by eliminating the very criteria that distinguish them, and the same name cannot, of itself, produce the same legal regime.

In the differentiated model, the actual function of the measure determines the legal nature of each form of confiscation and the regime applicable to it. The model retains the classification of the forms of confiscation already established by positive law and specifies the legal consequences of each. Special confiscation

following conviction has a restitutory and neutralising function, rests on the criminal liability established by the conviction and calls for the classical criminal standard and the full safeguards of the criminal process. Extended confiscation has a hybrid function, and its link with the criminal liability of the person is established indirectly, through inferences drawn from the person's wealth, which calls for an explicit intermediate standard accompanied by safeguards that compensate for those inferences. Non-conviction-based confiscation has a predominantly restitutory or preventive function and a weak or non-existent link with the criminal liability of the person, and its procedure operates, as a rule, below the classical criminal standard, the lowering of the standard having to be offset by a distinct, adversarial procedure with full access to the evidence. These regimes cannot be reduced to one another without losing the criteria that justify them, and a system based on any of the traditional classifications cannot secure them coherently.

The Incompatibility of Positive Law and Its Consequences

Measured against the model, Romanian law proves incompatible with it on three points. Extended confiscation lacks both an explicit intermediate standard and a procedural stage for assessing the person's assets, so that in practice the standard drifts either towards the criminal one, which makes the measure excessively difficult to apply, or towards an undefined inference lacking verifiable criteria. Non-conviction-based confiscation has no general procedural framework, the only express provision, Article 549¹ CCP, being confined to discontinuance and waiver of prosecution, while limitation, death and other procedural incidents are dealt with by analogy with the post-conviction regime. The classification of all forms as safety measures affecting property becomes, in turn, a fiction that encourages the transfer of standards from one form to another and the application to one form of safeguards designed for another. The Constitutional Court has acknowledged that, in terms of the intensity of the interference, extended confiscation may amount to a criminal penalty in the substantive sense, but that acknowledgement has not led to any legislative differentiation.

The lack of differentiation causes the standard applicable to extended confiscation to vary from one case to another and perpetuates the incoherence of the evidentiary regimes, as a direct effect of the premise that a single institution can govern radically different functions. It also exposes Romanian law to vulnerability under the Convention, since the case law of the European Court, in the line of *Phillips and Grayson and Barnham*, has accepted presumptions relating to assets in extended confiscation only where there are effective procedural safeguards and a genuine opportunity to rebut them, which a system with no explicit standard and no separate procedure for assessing assets cannot consistently provide. Residual judicial inquiry, the operational test and the principle of functional equivalence of safeguards can partly make up for this gap through

interpretation, but they cannot create standards of proof, establish procedures or allocate safeguards in place of the legislature.

Chapter 9. The Need for Legislative Reconstruction. Specific Proposals

The differentiated model requires the current rules on standards of proof, procedures and third-party rights to be amended. The proposals of the thesis are presented here through the problem each addresses, the solution proposed and the safeguards it provides. For the post-conviction procedure for extended confiscation, the thesis drafts the full statutory text *de lege ferenda*, while the other proposals are framed as requirements that the legislation must meet.

Recognising Functional Plurality and Third-Party Rights

As long as the law treats confiscation as a single institution, any differentiation of standard or procedure lacks a statutory basis, which is why the first proposal is to regulate the three forms in separate chapters or sections within the existing legislative framework, stating explicitly for each form its predominant function, its standard of proof, its safeguards and the regime applicable to third parties, without creating a separate confiscation code.

Third parties may be affected by any of the forms, whether through the involvement of their property in ancillary proceedings, in the case of special confiscation, through the inclusion of transfers made to them in the calculation of disproportion, in the case of extended confiscation, or through the absence of any procedure in which to assert their rights, in the case of non-conviction-based confiscation. The thesis therefore proposes a distinct, adversarial procedure for any third party whose property rights are affected, regardless of his or her procedural status. Its safeguards are access to the file and to the material on which the measure is based, the right to challenge the findings on the illicit origin of the asset or on its link with criminal activity, and an individualised proportionality test, separate from the one applied to the convicted person.

Special Confiscation: Reasoning on the Asset-Offence Link and Residual Judicial Inquiry

Special confiscation is the most settled form of the institution, and the classical criminal standard remains unchanged. The problem is twofold, because courts frequently conflate the finding of guilt with the justification for confiscation, while in cases where proceedings are terminated practice is divided between confiscation without any independent analysis, reflexive refusal and constructions of the courts' own devising that lack a statutory basis. The solution consists, first, in introducing into Article 112 CC a duty to give reasons, separately from the decision on the merits, for the existence of the asset-offence link and for the standard applied in establishing it. Secondly, residual judicial inquiry would be

expressly enshrined in law, so that, where criminal proceedings are terminated, special confiscation could be ordered only after an independent judicial finding that the act occurred, that it meets the statutory definition of the offence and that there is a concrete link between the asset and the act, made in adversarial proceedings and to the criminal standard.

Extended Confiscation: The Intermediate Standard and the Post-Conviction Procedure

The rules on extended confiscation must first specify the standard of proof, because the current formula of the court being ‘convinced’ does not define its level. The thesis proposes a standard defined by statute, in which a finding by the court that illicit origin is more likely than not constitutes only the minimum threshold, and the conclusion must rest cumulatively on a manifest disproportion between the person’s assets and lawful income and on factual evidence linking the assets to criminal activity, which it is for the prosecutor to prove. The minimum threshold does not, however, exhaust the standard, which results from the cumulative application of the two requirements, so that its superiority over the balance of probabilities is qualitative and concerns the basis on which the court may reach its conclusion, because disproportion taken in isolation can no longer sustain the measure, while presumptions remain rebuttable and subject to judicial review. This is also where the proposal differs from the English procedure, which likewise operates on the balance of probabilities but allows, where the defendant has a criminal lifestyle, statutory assumptions covering all property held over the preceding six years.

The procedural proposal that follows responds to inconsistent practice in which, for want of a stage devoted to examining disproportion, extended confiscation is sometimes refused for lack of evidence and sometimes granted on the basis of generalised presumptions, a situation also noted in the monitoring reports of the National Agency for the Management of Seized Assets and in the GRECO evaluations, which as early as 2005 had observed the terminological inconsistency of the legal framework. Nor does the current system allow confiscable assets to be reassessed where, between the offence and the judgment, they have been transferred or concealed, which widens the gap between the estimated criminal benefit and the assets actually confiscated. The case law points in the same direction, since the European Court requires, where confiscation rests on presumptions, a genuine means of rebuttal and adversarial proceedings, the Court of Justice held in *DR and TS* that a third party claiming a right in the property must be able to take part as a party in the confiscation proceedings, and the Constitutional Court has found that the mechanism involves presumptions calling for adequate judicial safeguards.

The second proposal concerns procedure, with the analysis of the person's assets to be separated from the determination of guilt by means of an autonomous post-conviction procedure. The prosecutor would apply to the court within six months of the conviction becoming final, submitting a financial investigation report, an analysis of how the person's assets have developed and details of any third-party transferees, and jurisdiction would lie with the court that tried the case at first instance, sitting as a specialised panel. In these proceedings, the person concerned has access to the file, may propose evidence and expert reports and takes part in the taking of evidence. Property transferred to third parties may be confiscated where they knew or ought to have known of its illicit origin, acquired it gratuitously or took part in concealing it, whereas property acquired by third parties in good faith and for value may not be confiscated, the burden of proving good faith and valuable consideration lying on the third party. Third parties are entitled to take part in the proceedings and to raise their own defences. The judgment must state why the arguments raised in defence were accepted or rejected and may be appealed by the prosecutor, by the person concerned and by the third parties affected.

The risk of assets being disposed of before the procedure is concluded is addressed by precautionary measures, which serve a different function from the confiscation procedure, since seizure preserves the assets while the procedure determines whether they may be confiscated, so that the existence of seizure no more renders the separate procedure redundant than pre-trial detention renders a trial on the merits redundant. The thesis therefore argues that the legislation should provide for precautionary measures to remain in force by operation of law until final determination, for the possibility of autonomous freezing and for the provisional judicial administration of the assets. Separation allows the analysis of the assets to benefit from genuinely adversarial proceedings and dedicated expert evidence, while the criminal trial can concentrate on the charge and be concluded within a reasonable time. The British and Irish models confirm that separation is workable, although the Irish model, which is essentially civil, could not be transplanted wholesale into Romanian law without constitutional amendment.

Non-Conviction-Based Confiscation and the Transposition of EU Law

Apart from Article 549¹ CCP, non-conviction-based confiscation has no general procedural framework, and it is precisely the most sensitive situations that remain unregulated. The thesis proposes an autonomous framework, reserved for cases in which the criminal process cannot result in a conviction for reasons other than the non-existence of the act. The standard of proof cannot be the classical criminal standard, and its reduction is offset by fully adversarial proceedings, effective access to the evidence, the possibility of requesting expert reports and the retention of the initial burden of proof on the authority seeking confiscation; the person concerned may prove the lawful origin of the assets but is under no

obligation to do so. The proposed framework meets the three legitimacy criteria, because it cannot serve as an alternative to a criminal prosecution that remains possible, it tailors its safeguards to what is actually at stake for the person concerned, and it is openly regulated as a procedure governed by the safeguards of the criminal process, with no relabelling as civil.

The transposition of Directive (EU) 2024/1260, due by 23 November 2026, may be piecemeal, layering the new mechanisms on top of the existing inconsistencies, or comprehensive, through legislation covering the intermediate standard, the post-conviction procedure, the autonomous framework for non-conviction-based confiscation and the protection of third parties, and the Directive allows either approach. The thesis argues for the second, since a minimal transposition would perpetuate the unpredictability of standards, the lack of safeguards and the present incoherence, with the consequences borne by the courts and by those affected.

Chapter 10. Conclusions

The Thesis Restated

Confiscation cannot be coherently regulated as a single institution, because its distinct functions give rise to distinct legal regimes that cannot be subsumed under a single formal classification. Without claiming that positive law already reflects the proposed differentiation, the work shows that the unitary treatment produces the incoherence identified and proposes a distinct regime for each form of confiscation.

Answers to the Research Questions

Confiscation acquires the character of a criminal penalty when its function is punitive, which is assessed on the basis of indicators considered together and drawn from a comparison of *Welch* and *Walsh*, such as whether the order exceeds the holder's actual enrichment, whether culpability is relevant to fixing the amount, whether non-payment may lead to a deprivation of liberty and whether there is a finding, even an implicit one, of guilt. No single indicator is decisive, but the more of them are present, the more likely a criminal classification becomes, and the operational test transposes the same logic into domestic law through the intensity of the interference, the link with the criminal liability of the person and the predominant purpose of the measure.

Recourse to the civil standard of proof is legitimate for mechanisms that are only weakly linked, or not linked at all, to the criminal liability of the person and that have a predominantly restitutory or preventive function, provided that the lowering of the standard is offset by stronger procedural safeguards. It becomes a means of circumvention where the civil label conceals a punitive function or where

civil proceedings take the place of a criminal prosecution that remains possible, that is to say where the criteria of transparency of classification and necessity are breached.

The limits on extended confiscation are non-retroactivity, established by the Constitutional Court in Decision No. 11/2015, the presumption of innocence, an effective opportunity to challenge the inferences and the proportionality of the amount. The European Court and the Court of Justice lay down the conditions under which presumptions relating to assets are admissible but do not set a common evidentiary threshold, and in these circumstances the lack of an explicit standard in Romanian law exposes it to vulnerability under the Convention.

Where criminal proceedings are terminated on expiry of the limitation period or on the death of the defendant, the court may determine the property aspect of the case through residual judicial inquiry, to the criminal standard and with the heirs able to defend themselves, while situations that never reach the criminal court call for an autonomous procedure with compensatory safeguards.

As regards third parties, the thesis bases the dedicated procedure on the principle of functional equivalence of safeguards and on the case law of the European Court, under which confiscation ordered against third parties who cannot effectively challenge the link between the asset and the offence violates Article 1 of Protocol No. 1, while the Court of Justice held in *DR and TS* that a third party claiming a right in the property must be able to take part as a party in the confiscation proceedings, although its case law as a whole does not build a coherent positive framework for the protection of third parties. The proposed procedure affords them access to the evidence, the possibility of challenging the origin of the asset and individualised proportionality review. From comparative law, the thesis takes the observation of British scholarship that the protection of third parties is sometimes vague, their means of objection being liable to become illusory in the absence of clear rules, as well as the approach of the civil recovery systems of Seychelles and British Columbia, which grant interested persons the right to be notified, to be heard and to take part in the proceedings.

Hierarchy of Contributions

The principal contribution of the work is the differentiated model, which replaces the question of the legal nature of confiscation with a rule for determining the regime applicable to each form, one that can be reviewed on appeal. The operational test sets the standard of proof, while the principle of functional equivalence determines the safeguards required for third parties and in autonomous proceedings. The model rests on the analysis of practice, which identified three mechanisms by which evidentiary rules are carried over from one form to another, and on the organisation of the High Court's reasoning into five models, while

residual judicial inquiry and the proposals *de lege ferenda* show how the courts and the legislature can apply it.

The proposal for autonomous proceedings does not contradict the argument that Romanian law offers superior protection. That argument concerns confiscation operating within the criminal process, where the single standard applies whether or not there is a conviction. Autonomous proceedings concern situations in which the criminal process, by its structure, cannot provide a basis for the interference, and there the alternative to a regulated procedure is either the impossibility of any interference with assets of illicit origin or fragmented solutions lacking a standard and safeguards.

Limitations of the Research and Open Questions

The work justifies the intermediate standard and sets its parameters but does not fully operationalise it, its quantification and the concrete method of applying it being left to further research and, above all, to the legislature. Nor does it settle the relationship between extended confiscation and non-conviction-based confiscation in the grey areas, where the dividing line remains open, given that some systems treat the two forms together under a single procedural regime. Full implementation of the model also depends on legislative action, because interpretive tools can partly make up for the absence of rules but cannot replace them. The first two limitations also indicate the directions in which the research can be taken further.

Pending legislative action, the interpretive tools developed in the thesis can partly make up for the absence of rules, enabling the court to give separate reasons for the asset-offence link and to refuse to import the logic of disproportion into special confiscation, to carry out a genuine residual judicial inquiry where proceedings end without a conviction and to afford heirs and other third parties the opportunity to challenge the findings that affect them. The legislature can give these requirements statutory form through the law transposing Directive (EU) 2024/1260, regulating them together rather than through isolated amendments.

For the judge, the model provides an analytical grid for identifying the applicable form of confiscation, the corresponding standard of proof and the relevant procedural safeguards. At the doctrinal level, the analysis shows that the legal nature of confiscation cannot be determined on the premise that it is a single institution, and the traditional question about its legal nature thus turns out to be wrongly framed.

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