

## INSOL EUROPE

### DIGITAL ASSETS CASE SUMMARIES

Overview	
Case Citation	STS 2109/2019 of 20/06/20219 ECLI:ES:TS:2019:2109 CENDOJ reference 28079120012019100389
Date of judgment	20 June 2019
Country	Spain
Original Language of Judgment	Spanish
Court	Spanish Supreme Court, Criminal Chamber
Subject matter/catchwords	Fraud, Criminal Code, cryptocurrencies, bitcoin, intangible asset, HFT
Decision summary	The Chamber had to decide whether: <ol style="list-style-type: none"> <li>1. The crime of fraud/swindling was proven</li> <li>2. Restitution to the affected parties should take place in bitcoin or the equivalent amount of the monetary contribution made.</li> </ol>
Digital asset involved (e.g. Bitcoin, Ethereum, Ripple etc.)	Bitcoin
Valuation issues	N/A
Expanded Case Description	
Debtor	Marcos (The investment manager) and <i>Cloudtd Trading &amp; Devs LTD</i>
Identity of Insolvency Practitioner (if applicable)	N/A (note it is not an insolvency proceedings but a criminal proceedings)
Authorities considered by this case (categorised by country)	-
Domestic legislation applied	<i>Spanish Constitution, Criminal Code, Criminal Prosecution Law, Spanish law of the judiciary.</i>
Factual background	<p>The investment manager Mr. Marcos acted through his own company "Cloudtd Trading&amp;DEVS LTD", which he had founded in London and of which he was the sole administrator.</p> <p>Through the webpage of his company, Mr. Marcos signed several High Frequency Trading (HFT) contracts, motivated by a desire for illicit enrichment and pretending a solvency that he lacked.</p> <p>By virtue of the contracts signed with the private prosecution, The accused undertook to manage the Bitcoins that were given to him in deposit by each one of the contracting parties. More specifically, Mr. Marcos was handed an amount in Euros to invest and further trade in bitcoins.</p> <p>Mr. Marcos had to reinvest the dividends obtained and deliver the profits obtained at the expiration of the contract, in exchange for a commission.</p> <p>Mr. Marcos did not prove he had even invested and/or traded in bitcoin as per the content of the contract.</p>
Legal issues	The Supreme Court was required to consider whether restitution to the affected parties should take place in bitcoin or the equivalent amount of the monetary contribution.

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	<p>Under article 110 of the Spanish Criminal Code, restitution deriving from the civil liability of a criminal offence should take place by means of the <i>“thing that is object of the criminal offence”</i>.</p> <p>However, the Court states that the object of the criminal offence was not bitcoin, but the money itself that was handed by the private prosecution (Euros that were to be invested in bitcoins; but they did not hand bitcoins to the accused).</p> <p>In any event, the Supreme Court states that bitcoin would not be susceptible of return either.</p>
Reasoning	<p>It was proved that the accused never intended to carry out the High Frequency Trading transactions. The only thing that the defendant intended was the abusive capture of the money (Euros) of those whom he convinced to carry out these operations.</p> <p>The Supreme Court denied the aggrieved parties' request to be compensated with Bitcoins instead of their equivalent value in Euros.</p> <p>In its judgment, the Supreme Court stated:</p> <p><i>‘Neither the so-called bitcoin is something susceptible to return, since it is not a material object, nor does it have the legal consideration of money.’</i></p> <p><i>‘(...) Bitcoin is nothing more than an intangible asset, in the form of an account unit defined by computer and cryptographic technology called bitcoin [we understand it meant Blockchain], whose value is that each unit of account or its portion reaches through the offer and the demand in the sale of these units is done through bitcoin trading platforms.’</i></p> <p>According to the Supreme Court, Bitcoins are intangible assets that cannot be returned, and are not "electronic money" within the meaning of Law 21/2011, of July 26th..</p>
Further information (e.g. liquidator’s website)	N/A

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