

## INSOL EUROPE

### DIGITAL ASSETS CASE SUMMARIES

Overview	
Case Citation	Ruling of 4 November 2021 of the Provincial Court of Barcelona (Section 21) nº 2123/2021, appeal. 342/2021
Date of judgment	4 November 2021
Country	Spain
Original Language of Judgment	Spanish
Court	Provincial Court of Barcelona (Section 21)
Subject matter/catchwords	Intervention and observation of communications, corruption privacy, subsidies, cryptocurrency, bitcoin
Decision summary	<ol style="list-style-type: none"> <li>1. The analysis of the communications gives rise to well-founded suspicions about the commission of corruption-related offenses,</li> <li>2. Unlawfulness of the conversion of public administrations' money (including regional and local ones) into cryptocurrencies, which lack traceability and cannot be considered as electronic money.</li> </ol>
Digital asset involved (e.g. Bitcoin, Ethereum, Ripple etc.)	Bitcoin
Valuation issues	N/A
Expanded Case Description	
Debtor	Persons Unknown
Identity of Insolvency Practitioner (if applicable)	N/A
Authorities considered by this case (categorised by country)	<p><b>Spain</b>            STS 2109/2019 of 20/06/20219            ECLI:ES:TS:2019:2109            CENDOJ reference 28079120012019100389</p> <p>Law 21/2011 of 26 July, on Electronic Money is also cited (in order to state that Bitcoin does not meet the criteria of electronic money)</p>
Domestic legislation applied	<i>Spanish Constitution, Spanish Criminal Prosecution Law</i>
Factual background	<p>The investigated persons held positions with public responsibilities in the immediate past. Due to the prestige and trust granted to them by the sovereign leadership, they enjoy the necessary influence at the highest level to achieve their financial purpose. Relationship with people who currently hold political positions based on trust and who have access to public funds.</p> <p>The investigated people might have diverted public funds with the goal of financing political projects outside the Law, collected at taxpayers' expense, from the good purpose for which they were budgeted and assigned to public administrations. They then might have committed other criminal offences in order to hide the corruption-related criminal offences by converting public money into bitcoin with the intention of making those amounts untraceable.</p>

#### Contributors:

**CARLES | CUESTA Abogados**, Spain

José Carles ([j.carles@carlescuesta.es](mailto:j.carles@carlescuesta.es)) and Sara Pereira ([s.pereira@carlescuesta.es](mailto:s.pereira@carlescuesta.es)).

<b>Legal issues</b>	<p>Whether the Court should grant:</p> <ol style="list-style-type: none"> <li>1. Interception of communications.</li> <li>2. If the conversion of money from public administrations into cryptocurrency is lawful or not.</li> </ol>
<b>Reasoning</b>	<p>From the analysis of the communications, there are well-founded suspicions about the commission of corruption offenses will allow the interception of communications.</p> <p>The court confirms that <b>the conversion of money from public administrations, including autonomous and local administrations, into cryptocurrencies lacking traceability and configuration as electronic money is unlawful.</b></p> <p>Indeed, cryptocurrencies are not susceptible of return because they are not money, as <b>they do not represent a credit for which the issuer is liable.</b></p> <p>The bitcoin is an <b>intangible asset</b>, in the form of a unit of account defined by means of computer and cryptographic technology called bitcoin [we understand it refers to blockchain]. Bitcoin's value is the value that each unit of account or its portion reaches by the concert of supply and demand in the sale of these units is made through Bitcoin trading platforms.</p>
<b>Further information (e.g. liquidator's website)</b>	N/A

**Contributors:**

**CARLES | CUESTA Abogados**, Spain

José Carles ([j.carles@carlescuesta.es](mailto:j.carles@carlescuesta.es)) and Sara Pereira ([s.pereira@carlescuesta.es](mailto:s.pereira@carlescuesta.es)).