



**Observatoire ARGA**

**Digital Evidence and the Right to a Fair Trial:  
How Technological Asymmetry Undermines Equality of Arms in  
Crypto Cases**

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# Abstract

This report examines the impact of digital evidence and technological asymmetry on the realization of the right to a fair trial in cases involving cryptocurrencies and digital assets. It analyzes how unequal access to technical knowledge, data, and expert resources between the prosecution, the defense, and the court distorts the evidentiary process, shifts the burden of proof, and weakens procedural safeguards. Particular attention is given to the role of private analytics companies, closed methodologies, and the absence of unified standards for assessing digital evidence.

## 1. Introduction

Crypto-related cases are characterized by a high degree of technological complexity. In such proceedings, evidence increasingly takes digital form and requires specialized knowledge for interpretation. This creates a fundamentally new situation for criminal and quasi-criminal proceedings in which equality of arms is at risk.

Technological asymmetry becomes one of the key factors influencing case outcomes, often regardless of the actual guilt or innocence of the person involved.

## 2. The Concept of Technological Asymmetry

Technological asymmetry refers to inequality between the parties in access to:

- specialized analytical tools;
- technical expertise;
- original data and logs;
- the ability to interpret digital traces.

In crypto cases, this asymmetry is systemic and rarely offset by procedural mechanisms.

## 3. Digital Evidence as a New Category

Digital evidence in crypto cases includes:

- on-chain data;
- results of blockchain analytics;
- metadata and logs;
- data from platforms and providers;
- expert conclusions.

Unlike traditional evidence, such materials require interpretation rather than direct perception, increasing the role of experts and analysts.

## 4. The Role of Private Analytics Companies

Private analytics companies become key providers of evidentiary information. At the same time:

- their methodologies are proprietary;
- algorithms cannot be verified by the defense;
- conclusions are presented as objective facts.

The court and the defense are placed in a dependent position vis-à-vis private sources of expertise.

## 5. Shifting the Burden of Proof

Under conditions of technological asymmetry, the burden of proof is effectively shifted:

- the prosecution presents a technical hypothesis;
- the defense is forced to refute it;
- the absence of alternative expertise is interpreted against the accused.

This contradicts the principle of the presumption of innocence.

## 6. Limited Access of the Defense to Data

The defense is often deprived of:

- full access to underlying data;
- the ability to reproduce the analysis;
- sufficient time and resources for independent examination.

Procedural rights formally exist but are not effectively realized.

## 7. The Court as a Non-Specialized Arbiter

Courts generally lack sufficient technical competence to critically assess digital evidence. As a result:

- expert conclusions are accepted without analysis;
- alternative interpretations are disregarded;

- technological complexity is mistaken for proof.

Technical authority replaces legal scrutiny.

## 8. Errors of Interpretation and Their Consequences

Misinterpretation of digital data may lead to:

- incorrect attribution of wallets;
- false conclusions about control over assets;
- unjustified preventive measures;
- international search notices and extradition risks.

The consequences of such errors are often irreversible.

## 9. International Practice and Divergent Standards

There is no unified approach to the assessment of digital evidence across jurisdictions. Some courts require strict verification, while others rely on expert reports without scrutiny. This increases legal uncertainty and the risk of forum shopping.

## 10. The Political and Economic Context of Digital Evidence

In cases involving significant economic or political interests, digital evidence may be used to accelerate proceedings and legitimize severe measures. Technology becomes a tool of pressure rather than a means of establishing truth.

## 11. Impact on the Right to Defense

Technological asymmetry restricts:

- the ability to mount an effective defense;
- the realization of equality of arms;
- the adversarial nature of proceedings.

The defense is placed in a structurally disadvantaged position.

## 12. Humanitarian and Legal Consequences

Procedural deficiencies in crypto cases result in:

- arbitrary restrictions of liberty;
- loss of property;
- destruction of social and professional life.

Digital complexity increases individual vulnerability before the system.

## 13. Institutional Limits of the Current Model

The current model of adjudication is not adapted to digital evidence:

- there are no specialized courts;
- unified standards have not been developed;
- procedural rules lag behind technological realities.

This creates a systemic deficit of fairness.

## 14. Conclusions

Technological asymmetry in crypto cases undermines the fundamental principles of a fair trial. Without institutional reform, digital evidence will continue to function as an instrument of power rather than a means of establishing truth.

## 15. Recommendations

1. Development of unified standards for the admissibility and assessment of digital evidence.
2. Ensuring equal access of the parties to data and expert analysis.
3. Transparency of methodologies used by analytics companies.
4. Specialization of courts and judges in digital matters.
5. Protection of procedural rights in conditions of technological complexity.

## List of sources and materials used

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