

Court verdict No: ARD/0071/01/14

Case received:	27-05-2014
Criminal case No:	ARD/0071/01/14
How the case was received:	First time
Case received from:	
Prosecutor:	General Prosecutor's Office of the Republic of Armenia
Preliminary investigation case number:	58214713
Summary of indictment:	<p>Charges were pressed against Armen Yury Sadovnichy for he, on 25 October 2013, obtained from http://forum.beznal.cc website the following full card details – Warren Taylor's card No 5491139385738340 issued by Citibank N.A. Columbus Georgia, Jonathan Sirley's card No 5147518046339408 issued by Associated Bank, N.A. Stevens Point Wisconsin, Ali Ahmed's card No 4342880017870456 issued by Fia Card Services, National Association, Wilmington, Delaware and Gregory Seigwoth's card No 4313072414798804 issued by Fia Card Services, National Association, Wilmington, Delaware – and stole a significant amount in equivalence of 283,600 Armenian drams from these accounts by using computer technologies. For the purpose of concealing and disguising the origin and transfer of these criminal proceeds, Armen Yury Sadovnichy carried out several wire and other transfers and conversions, including the use of electronic money transfer services, which was following by withdrawing and gaining possession of the funds, thus leading to the legalization of the criminal proceeds.</p> <p>In particular, with an intention to steal funds from the above card accounts placed on http://forum.beznal.cc website and then to legalize the funds by means of concealing and disguising the origin and transfer thereof, Armen Yury Sadovnichy placed (before the funds were stolen) a job advertisement on social networks www.facebook.com and www.odnoklassniki.ru, as if a company named Vestibular was looking for those interested in work for a daily rate of 5,000 Armenian drams. As a result, he recruited Armenian citizens Katerina Gagik Mnatsakanyan, Rosa and Suzy Spartak Sargsyans and then gained access to their accounts No ID-277529118, ID-587423810, ID-595325627 in the payment system iDram, including the corresponding passwords and PIN numbers for carrying out financial transactions. Afterwards, on 25 October 2013, he stole a significant amount in equivalence of 283,600 Armenian drams from the above card accounts placed on http://forum.beznal.cc website: in particular, 51,230 Armenian drams were stolen from Jonathan Sirley's card No 5147518046339408 issued by Associated Bank, while 10,246 and 30,738 Armenian drams were stolen from Warren Taylor's card No 5491139385738340 issued by Citibank N.A. Columbus Georgia. The stolen funds in total of 92,214 Armenian drams were transferred to Katerina Gagik Mnatsakanyan's iDram account No ID-277529118, which resulted in a balance of 90,000 Armenian drams after the corresponding fees and charges. On the same day, 10,246 Armenian drams were stolen from Gregory Seigwoth's card No 4313072414798804 issued by Fia Card Services, National Association, Wilmington, Delaware, while 1,025, 20,492, 51,230 and 15,369 Armenian drams were stolen from Ali Ahmed's card No 4342880017870456 issued by Fia Card Services, National Association, Wilmington, Delaware. On the same day, the stolen funds in total of 98,362 Armenian drams were transferred to Rosa Spartak Sargsyan's iDram account No ID-587423810, which resulted in a balance of 96,000 Armenian drams after the corresponding fees and charges. On the same day 100,000 Armenian drams were stolen from Ali Ahmed's card No 4342880017870456 issued by Fia Card Services, National Association, Wilmington, Delaware and transferred to Suzy Spartak Sargsyan's iDram account</p>

No ID-59525627, which resulted in a balance of 97,600 Armenian drams after the corresponding fees and charges. For the purpose of concealing the disguising the origin of criminal proceeds in equivalence of 283,600 Armenian drams in total, Armen Yury Sadovnichy avoided transferring the funds stolen from card accounts placed on [http: /forum.beznal.cc](http://forum.beznal.cc) website directly into this his own WebMoney service account, but managed to transfer the funds to iDram accounts of Katerina Gagik Mnatsakanyan, Rosa and Suzy Spartak Sargsyans, which was then converted into 683 US dollars, followed by a transfer of, on the same day (25 October 2014), 584 US dollars into his electronic purse No Z934972973931 with WebMoney service and remaining 99 US dollars into his other electronic purse No Z318400369315 with the same WebMoney service. On the same day, 584 US dollars that were transferred to electronic purse No Z934972973931 with WebMoney were then transferred to the electronic purse No Z318400369315, which resulted in a balance of 677 US dollars in criminal proceeds after the corresponding fees and charges. These funds were used at the discretion of Armen Yury Sadovnichy: in particular, after another currency conversation, 172,000 Armenian drams were transferred, in the time period of 25-27 October 2014, to his own iDram account No 293832463, while the remaining funds were used for different payments over the internet. From the total balance of 172,000 Armenian drams in his iDram account, 8,000 Armenian drams were used to recharge a mobile phone account, while 160,000 Armenian drams were transferred on 29 October 2014 to his dollar-denominated bank account No 11294030101 with Araratbank, where the funds were converted into 395 US dollars and withdrawn in cash from Ejmiatsin branch of the same bank, thus leading to legalization of the illicit proceeds.

Thus, Armen Yury Sadovnichy committed a crime specified under Part 1, Article 190 of the Criminal Code of the Republic of Armenia.

Accused

Name	Armen
Surname	Sadovnichy
Patronymic	Yury
Address	3 Zvartnots street, Apt 46, Ejmiatsin, Republic of Armenia
Gender	Male
Date of birth	29-08-1989

Article_1

Article	Art 1, Article 190
Prior convictions:	No prior convictions

Counsel

Name	
Surname	
Address	
Statistical line number:	7.5

Material evidence

Title of material evidence:	
Factual place of keeping material evidence:	
Restraint measure:	Written undertaking not to leave
Adult:	Yes

Inscribe

When:	27-05-2014
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Presiding judge

Court name: Armavir region

Name of judge: Vahe Rafael Khalatyan

Judge

Court name: Armavir region

Name of judge:

Other notes:

Case forwarded to (seat/regional center)

Date: 27-05-2014

Where: Ejmiatsin

Other notes:

Court verdict No: ARD/0071/01/14

Date: 27-05-2014

Other notes:

Inscribe

When: 27-05-2014

Presiding judge

Court (name): Ejmiatsin

Judge (name): Vahe Rafael Khalatyan

Judge

Court (name): Ejmiatsin

Judge (name):

Other notes:

Accepted into judicial proceedings

When: 27-05-2014

Decision sent to parties: 28-05-2014

A reminder/decision sent: 28-05-2014

Other notes:

Judicial proceedings initiated

When: 16-06-2014

Parties to judicial proceedings: Accused

Parties to judicial proceedings: Prosecutor

Parties to judicial proceedings

Name: Armen

Surname: Sadovnichy

Patronymic: Yury

Address: 3 Zvartnots street, Apt 46, Ejmiatsin, Republic of Armenia

Gender: Male

Other notes:

Time: 14:00

Parties to judicial proceedings

Name:	A. Goyunyan
Address:	5 Vazgen Sargsyan street, Yerevan, Republic of Armenia
Trial hall No:	2
Trial:	Took place
Reasons:	
Judicial proceedings initiated	
When:	25-06-2014
Time:	14:00
Trial hall No:	2
Other notes:	
Trial:	Took place
Reasons:	
Judicial proceedings initiated	
When:	10-07-2014
Time:	11:00
Trial hall No:	2
Other notes:	
Trial:	Took place
Reasons:	
Judicial proceedings initiated	
When:	12-08-2014
Time:	11:00
Trial hall No:	2
Other notes:	
Trial:	Took place
Reasons:	
Judicial proceedings initiated	
When:	27-08-2014
Time:	11:00
Trial hall No:	2
Other notes:	
Trial:	Took place
Reasons:	
Judicial proceedings initiated	
When:	22-09-2014
Time:	11:00
Trial hall No:	2
Other notes:	
Trial:	Took place
Reasons:	
Judicial proceedings initiated	
When:	25-09-2014
Time:	14:30
Trial hall No:	2

Other notes:	
Trial:	Took place
Reasons:	
Court verdict produced	
Date:	25-09-2014
Other notes:	
Conviction	
Accused	
Name	Armen
Surname	Sadovnichy
Patronymic	Yury
Address	3 Zvartnots street, Apt 46, Ejmiatsin, Republic of Armenia
Gender	Male
Date:	25-09-2014
Grave crime Article	
Article	Part 1, Article 190
Grave crime Article:	
Other crimes Articles	
Article	Part 1, Article 190
Other crimes Articles:	
Main punishment:	Imprisonment for a certain time
Additional punishment:	
Other punishments:	
Waived from punishment (reasons)	
Amount of property confiscated:	
Code:	
Other notes:	
Criminal-legal enforcement measures applied:	
Court verdict	
Contents of Court verdict:	<p>Criminal case No 58214713 ARD 0071/01/14</p> <p>COURT VERDICT IN THE NAME OF THE REPUBLIC OF ARMENIA</p> <p>Common Jurisdiction Court of First Instance in Armavir region of the Republic of Armenia</p> <p>Presided by: judge, Vahe Khalatyan, secretary, Kristine Hovhannisyan Participated by: prosecutor, Hayk Hakobyan; accused, Armen Sadovnichy; counsel, Tsolak Margaryan</p> <p>In the city of Ejmiatsin, the Republic of Armenia, on 25 September 2014, in an open court hearing, in an expedited court procedure, a criminal case was heard with charges against the accused, Armen Yury Sadovnichy – born on 29 August 1989 in Ejmiatsin, Republic of Armenia, Armenian national, Armenian citizen, not a member of any political party, with higher education, currently unemployed, engaged in private business, single, physically healthy, with two people in his</p>

dependence, with no prior convictions, registered and residing at 3 Zvartnots street, Apt 46, Ejmiatsin, Republic of Armenia.

Charges are pressed against Armen Yury Sadovnichy for crimes specified under Part 1, Article 190 of the Criminal Code of the Republic of Armenia.

In an expedited court procedure, the court examination of the criminal case established the following:

FINDINGS

1. Judicial history of the case

The criminal case was instigated on 13 October 2013 under Part 1, Article 190 of the Criminal Code of the Republic of Armenia. The criminal case was assigned the following number: 58214713 /ARD/0071/01/14/:

Charges were pressed by the preliminary investigation authority against Armen Yury Sadovnichy for the crime specified under Part 1, Article 190 of the Criminal Code of the Republic of Armenia.

On 20 May 2013, the preliminary investigation authority assigned a restraint measure against Armen Yury Sadovnichy in the form of a written undertaking not to leave.

On 27 May 2014, the criminal case No 58214713 was accepted with an indictment at the Common Jurisdiction Court of First Instance in Armavir region of the Republic of Armenia.

On 27 May 2014, a decision was made to instigate a court proceeding of the criminal case.

A court hearing was scheduled for 16 June 2014 in accordance with the decision from 9 June 2014 on instigating a court proceeding of the criminal case.

2. Factual circumstances established by the court

Expedited court procedure

The criminal case was instigated on 13 December 2013 based on the materials **received from the Prosecutor General's Office in the Republic of Armenia, with** elements of crime specified in Part 1, Article 190 of the Criminal Code of the Republic of Armenia, where Armen Yury Sadovnichy was accused in legalizing a significant amount in equivalence of 283,000 Armenian drams, which was stolen on 25 October 2013 from various bank card accounts belonging to foreign nationals.

The preliminary investigation uncovered and established the fact that Armen Yury Sadovnichy, on 25 October 2013, obtained from <http://forum.beznal.cc> website the following full card details – **Warren Taylor's card No 5491139385738340 issued by Citibank N.A. Columbus Georgia, Jonathan Sirley's card No 5147518046339408 issued by Associated Bank, N.A. Stevens Point Wisconsin, Ali Ahmed's card No 4342880017870456 issued by Fia Card Services, National Association, Wilmington, Delaware and Gregory Seigwoth's card No 4313072414798804 issued by Fia Card Services, National Association, Wilmington, Delaware** – and stole a significant amount in equivalence of 283,600 Armenian drams from these accounts by using computer technologies. For the purpose of concealing and disguising the origin and transfer of these criminal proceeds, Armen Yury Sadovnichy carried out several wire and other transfers and conversions, including the use of electronic money transfer services, which was following by withdrawing and gaining possession of the funds, thus leading to the legalization of the criminal proceeds.

In particular, with an intention to steal funds from the above card accounts placed on <http://forum.beznal.cc> website and then to legalize the funds by means of concealing and disguising the origin and transfer thereof, Armen Yury Sadovnichy placed (before the funds were stolen) a job advertisement on social networks www.facebook.com and www.odnoklassniki.ru, as if a company named Vestibular was looking for those interested in work for a daily rate of 5,000 Armenian drams. As a result, he recruited Armenian citizens Katerina Gagik Mnatsakanyan, Rosa and Suzy Spartak Sargsyans and then gained access to their accounts No ID-277529118, ID-587423810, ID-595325627 in the payment system iDram,

including the corresponding passwords and PIN numbers for carrying out financial transactions. Afterwards, on 25 October 2013, he stole a significant amount in equivalence of 283,600 Armenian drams from the above card accounts placed on <http://forum.beznal.cc> website: in particular, 51,230 Armenian drams were stolen from Jonathan Sirley's card No 5147518046339408 issued by Associated Bank, while 10,246 and 30,738 Armenian drams were stolen from Warren Taylor's card No 5491139385738340 issued by Citibank N.A. Columbus Georgia. The stolen funds in total of 92,214 Armenian drams were transferred to Katerina Gagik Mnatsakanyan's iDram account No ID-277529118, which resulted in a balance of 90,000 Armenian drams after the corresponding fees and charges. On the same day, 10,246 Armenian drams were stolen from Gregory Seigwoth's card No 4313072414798804 issued by Fia Card Services, National Association, Wilmington, Delaware, while 1,025, 20,492, 51,230 and 15,369 Armenian drams were stolen from Ali Ahmed's card No 4342880017870456 issued by Fia Card Services, National Association, Wilmington, Delaware. On the same day, the stolen funds in total of 98,362 Armenian drams were transferred to Rosa Spartak Sargsyan's iDram account No ID-587423810, which resulted in a balance of 96,000 Armenian drams after the corresponding fees and charges. On the same day 100,000 Armenian drams were stolen from Ali Ahmed's card No 4342880017870456 issued by Fia Card Services, National Association, Wilmington, Delaware and transferred to Suzy Spartak Sargsyan's iDram account No ID-59525627, which resulted in a balance of 97,600 Armenian drams after the corresponding fees and charges. For the purpose of concealing the disguising the origin of criminal proceeds in equivalence of 283,600 Armenian drams in total, Armen Yury Sadovnichy avoided transferring the funds stolen from card accounts placed on <http://forum.beznal.cc> website directly into his own WebMoney service account, but managed to transfer the funds to iDram accounts of Katerina Gagik Mnatsakanyan, Rosa and Suzy Spartak Sargsyans, which was then converted into 683 US dollars, followed by a transfer of, on the same day (25 October 2014), 584 US dollars into his electronic purse No Z934972973931 with WebMoney service and remaining 99 US dollars into his other electronic purse No Z318400369315 with the same WebMoney service. On the same day, 584 US dollars that were transferred to electronic purse No Z934972973931 with WebMoney were then transferred to the electronic purse No Z318400369315, which resulted in a balance of 677 US dollars in criminal proceeds after the corresponding fees and charges. These funds were used at the discretion of Armen Yury Sadovnichy: in particular, after another currency conversation, 172,000 Armenian drams were transferred, in the time period of 25-27 October 2014, to his own iDram account No 293832463, while the remaining funds were used for different payments over the internet. From the total balance of 172,000 Armenian drams in his iDram account, 8,000 Armenian drams were used to recharge a mobile phone account, while 160,000 Armenian drams were transferred on 29 October 2014 to his dollar-denominated bank account No 11294030101 with Araratbank, where the funds were converted into 395 US dollars and withdrawn in cash from Ejmiatsin branch of the same bank, thus leading to legalization of the illicit proceeds.

Thus, charges were pressed against Armen Yury Sadovnichy for a crime specified under Part 1, Article 190 of the Criminal Code of the Republic of Armenia.

In the course of the preliminary investigation, Armen Yury Sadovnichy pleaded fully guilty in the charges pressed against him, regretted his actions and testified that, in October of 2013, by means of placing a false job advertisement on social networks www.facebook.com and www.odnoklassniki.com, he gained access to iDram accounts No ID-277529118, ID-587423810 and ID-595325627 belonging to Katerina Mnatsakanyan, Rosa and Suzy Sargsyans, respectively. On 25 October 2013, after finding foreign bank card details on www.beznal.cc website, he transferred funds in equivalence of 283,600 Armenian drams from these card accounts into the iDram accounts, from where the stolen funds were subsequently transferred to his electronic purse with WebMoney. He did not transfer these funds directly into account as there was an intention to disguise the origin of the criminal proceeds. Afterwards, these funds were spent from this account at his

own discretion, such as payments over internet and transferring of 400 US dollars to his iDram account and then to his bank account with Araratbank, from where the funds were eventually withdrawn in cash.

In the course of the preliminary investigation, Armen Yury Sadovnichy pleaded fully guilty in the charges pressed against him, regretted his actions and petitioned the court to undertake an expedited court procedure, while announcing that his petition was willful, having been consulted with his counsel, he acknowledged the consequences of an expedited court procedure, and he agreed with the indictment. /minutes of court hearing/

A corresponding petition was presented by the counsel, Tsolak Margaryan, representing the accused, Armen Sadovnichy. The prosecutor, H Hakobyan, defending the indictment in the criminal case, had no objections to having an expedited case (equally no such objections in the indictment conclusions).

After establishing that the conditions specified under Articles 3751 and 3752 of the Criminal Procedure Code of the Republic of Armenia are satisfied, the court decided to undertake an expedited court procedure.

3. Legal analyses by the Court

Based on the evidence in the criminal case, the court establishes the actions, for which the accused Armen Yury Sadovnichy is accused of, whereby, on 25 October 2013, he obtained from <http://forum.beznal.cc> website the following full card details – **Warren Taylor's card No 5491139385738340 issued by Citibank N.A. Columbus Georgia, Jonathan Sirley's card No 5147518046339408 issued by Associated Bank, N.A. Stevens Point Wisconsin, Ali Ahmed's card No 4342880017870456 issued by Fia Card Services, National Association, Wilmington, Delaware and Gregory Seigwoth's card No 4313072414798804 issued by Fia Card Services, National Association, Wilmington, Delaware** – and stole a significant amount in equivalence of 283,600 Armenian drams from these accounts by using computer technologies. For the purpose of concealing and disguising the origin and transfer of these criminal proceeds, Armen Yury Sadovnichy carried out several wire and other transfers and conversions, including the use of electronic money transfer services, which was following by withdrawing and gaining possession of the funds, thus leading to the legalization of the criminal proceeds.

In particular, with an intention to steal funds from the above card accounts placed on <http://forum.beznal.cc> website and then to legalize the funds by means of concealing and disguising the origin and transfer thereof, Armen Yury Sadovnichy placed (before the funds were stolen) a job advertisement on social networks www.facebook.com and www.odnoklassniki.ru, as if a company named Vestibular was looking for those interested in work for a daily rate of 5,000 Armenian drams.

As a result, he recruited Armenian citizens Katerina Gagik Mnatsakanyan, Rosa and Suzy Spartak Sargsyans and then gained access to their accounts No ID-277529118, ID-587423810, ID-595325627 in the payment system iDram, including the corresponding passwords and PIN numbers for carrying out financial transactions. Afterwards, on 25 October 2013, he stole a significant amount in equivalence of 283,600 Armenian drams from the above card accounts placed on <http://forum.beznal.cc> website: in particular, 51,230 Armenian drams were stolen from Jonathan Sirley's card No 5147518046339408 issued by Associated Bank, while 10,246 and 30,738 Armenian drams were stolen from Warren Taylor's card No 5491139385738340 issued by Citibank N.A. Columbus Georgia. The stolen funds in total of 92,214 Armenian drams were transferred to Katerina Gagik Mnatsakanyan's iDram account No ID-277529118, which resulted in a balance of 90,000 Armenian drams after the corresponding fees and charges. On the same day, 10,246 Armenian drams were stolen from Gregory Seigwoth's card No 4313072414798804 issued by Fia Card Services, National Association, Wilmington, Delaware, while 1,025, 20,492, 51,230 and 15,369 Armenian drams were stolen from Ali Ahmed's card No 4342880017870456 issued by Fia Card Services, National Association, Wilmington, Delaware. On the same day, the stolen funds in total of 98,362 Armenian drams were transferred to

Rosa Spartak Sargsyan's iDram account No ID-587423810, which resulted in a balance of 96,000 Armenian drams after the corresponding fees and charges. On the same day 100,000 Armenian drams were stolen from Ali Ahmed's card No 4342880017870456 issued by Fia Card Services, National Association, Wilmington, Delaware and transferred to Suzy Spartak Sargsyan's iDram account No ID-59525627, which resulted in a balance of 97,600 Armenian drams after the corresponding fees and charges. For the purpose of concealing the disguising the origin of criminal proceeds in equivalence of 283,600 Armenian drams in total, Armen Yury Sadovnichy avoided transferring the funds stolen from card accounts placed on <http://forum.beznal.cc> website directly into his own WebMoney service account, but managed to transfer the funds to iDram accounts of Katerina Gagik Mnatsakanyan, Rosa and Suzy Spartak Sargsyans, which was then converted into 683 US dollars, followed by a transfer of, on the same day (25 October 2014), 584 US dollars into his electronic purse No Z934972973931 with WebMoney service and remaining 99 US dollars into his other electronic purse No Z318400369315 with the same WebMoney service. On the same day, 584 US dollars that were transferred to electronic purse No Z934972973931 with WebMoney were then transferred to the electronic purse No Z318400369315, which resulted in a balance of 677 US dollars in criminal proceeds after the corresponding fees and charges. These funds were used at the discretion of Armen Yury Sadovnichy: in particular, after another currency conversation, 172,000 Armenian drams were transferred, in the time period of 25-27 October 2014, to his own iDram account No 293832463, while the remaining funds were used for different payments over the internet. From the total balance of 172,000 Armenian drams in his iDram account, 8,000 Armenian drams were used to recharge a mobile phone account, while 160,000 Armenian drams were transferred on 29 October 2014 to his dollar-denominated bank account No 11294030101 with Araratbank, where the funds were converted into 395 US dollars and withdrawn in cash from Ejmiatsin branch of the same bank, thus leading to legalization of the illicit proceeds.

That is, Armen Yury Sadovnichy committed a crime specified under Part 1, Article 190 of the Criminal Code of the Republic of Armenia.

Based on the underlying evidence of the indictment, the court establishes the crime committed by the accused Armen Yury Sadovnichy: the crime has the elements of offence specified under Part 1, Article 190 of the Criminal Code of the Republic of Armenia, the guilt of the accused in the charges pressed against him is proven, Armen Yury Sadovnichy shall be subject to liability and punishment for the crime committed.

In determining the punishment, the court takes into consideration the nature and level of social ramifications of the crime committed by Armen Yury Sadovnichy, as well as the presence of mitigating and absence of aggravating circumstances in determining the liability and punishment.

In determining the liability and punishment, the court considers the following mitigating circumstances and personal characteristics: Armen Yury Sadovnichy regretted and still regrets his actions, he has no criminal or other negative history, has two dependents – his mother in poor physical health and his grandmother being a pensioner, has higher education, has a positive character.

In determining the liability and punishment, no aggravating circumstances have been found.

Taking into consideration the nature and level of social ramifications of the crime committed by Armen Yury Sadovnichy, his personality, characteristics, the presence of mitigating and absence of aggravating circumstances in determining the liability and punishment, as well as the fact that Part 1, Article 190 of the Criminal Code of the Republic of Armenia envisages a punishment in the form of imprisonment with confiscation of equivalent property for the crime committed by Armen Yury Sadovnichy, the court establishes that imprisonment with confiscation of equivalent property shall be imposed as a punishment for Armen Yury Sadovnichy, as specified under Part 4, Article 55 of the Criminal Code of the Republic of Armenia, while considering that such a punishment – in accordance with Part 1, Article 61 of the Criminal Code of the Republic of Armenia – can serve

the very purpose of the punishment and that imposition of such a punishment can serve the purposes of punishment specified under Article 48 of the Criminal Code of the Republic of Armenia, those being recovery of social justice, correction of the punished person, prevention of crimes, as well as satisfaction of the general principles for justice, personalization of liability and imposition of punishments, as specified under Article 10 and 61 of the Criminal Code of the Republic of Armenia.

When considering the restraint measures imposed on the accused, Armen Yury Sadovnichy, the court establishes that the restraint measure imposed in the form of a written undertaking not to leave shall be maintained until the court verdict enters into legal force.

When considering the management of the confiscated property, the court establishes that the arrest/seizure imposed on the property of Armen Yury Sadovnichy shall be maintained until the question of confiscating other equivalent property is resolved.

There is no material evidence, civil petition or court expenses, which shall all be considered resolved.

Other documents considered material evidence shall be left in the criminal case.

4. Conclusion

Guided by Articles 357-358, 360-365, 3751, 3753 of the Criminal Procedure Code of the Republic of Armenia, the court:

DECIDEDS

To prove the accused Armen Yury Sadovnichy guilty in the crime specified under Part 1, Article 190 of the Criminal Code of the Republic of Armenia and, as envisaged by the same Article, sentence him to imprisonment for 2 (two) years and 6 (six) months, with confiscation of equivalent property in the amount of 283,600 (two hundred eighty three thousand six hundred) Armenian drams. Armen Yury Sadovnichy will serve the punishment imposed on him in the corresponding penitentiary institution under the Criminal-Legal Department of the Ministry of Justice in the Republic of Armenia.

To maintain the restraint measure imposed on Armen Yury Sadovnichy in the form of written undertaking not to leave until the court verdict has entered into legal force.

To count the inception of the punishment from the moment of factual arrest/detention of Armen Yury Sadovnichy.

To maintain the arrest/seizure imposed on the property of Armen Yury Sadovnichy until the question of confiscating other equivalent property is resolved.

There is no material evidence, civil petition or court expenses, which shall all be considered resolved.

Other documents considered material evidence shall be left in the criminal case.

The court verdict can be appealed to the Criminal Court of Appeals in the Republic of Armenia within one month from the date of publication.

The court verdict cannot be appealed for grounds specified under Clause 1, Article 395 of the Criminal Procedure Code of the Republic of Armenia.

Judge, V Khalatyan

Date of court verdict: 25-09-2014

Other notes:

Case forwarded to the office

Case forwarded to the office: 29-10-2014

Number of pages: 1-268,2-147

Materials in case:

Other notes:

Case forwarded

Case forwarded: 29-10-2014

Number of pages: 1-268,2-147

Materials in case:

Where (court): Criminal Court of Appeals

Where:

Output document reference No: 9758

Other notes:

Case appealed

Date: 03-11-2014

Court verdict No: ARD/0071/01/14

Date: 24-10-2014

Accused

Person

Name Armen

Surname Sadovnichy

Address 3 Zvartnots street, Apt 46, Ejmiatsin, Republic of Armenia

Article_1

Article Part 1, Article 190

Convictions:

Counsel

Name Not applicable

Surname Not applicable

Address Not applicable

Punishment:

Article_2

Article

Restraint measure: Written undertaking not to leave

Petition for appeal presented by: Accused

Petitioner

Name Armen

Surname Sadovnichy

Address 3 Zvartnots street, Apt 46, Ejmiatsin, Republic of Armenia

Summary of petition:

To amend the court verdict (with respect to the punishment imposed on Armen Sadovnichy in the form of imprisonment for 2 (two) years and 6 (six) months with confiscation of equivalent property in the amount of 283,600 Armenian drams, in accordance with Part 1, Article 190 of the Criminal Code) issued by the Common Jurisdiction Court of First Instance in Armavir region of the Republic of Armenia from 25 September 2014 and to conditionally waive the imposition of the punishment or to impose a lighter punishment.

How petition was presented: Physical deliver to the office

Date: 24-10-2014

Adult: Yes

Petition received:	Against the court verdict effectively resolving the case
Inscribe	
Date:	27-10-2014
Presiding judge	
Court (name):	Criminal Court of Appeals
Judge (name):	Sergey Chichoyan
Judge	
Court (name):	Criminal Court of Appeals
Judge (name):	
Other notes:	
Acceptance of criminal case	
Date:	03-11-2014
Attached documents and material evidence	Not applicable
Accepted into proceedings	
Date:	05-11-2014
Judicial proceedings initiated	
When:	17-11-2014
Notice sent:	05-11-2014
Time:	13:00
Other notes:	
Trial hall No:	2
Trial:	Took place
Reasons:	Ensure the presence of the counsel during the trial
Judicial proceedings initiated	
When:	01-12-2014
Notice sent:	17-11-2014
Time:	12:00
Other notes:	
Trial hall No:	2
Trial:	Took place
Reasons:	Court was busy with another case
Judicial proceedings initiated	
When:	17-12-2014
Notice sent:	
Time:	11:00
Other notes:	
Trial hall No:	2
Trial:	Took place
Reasons:	
Petition for appeal was refused,	the subordinate court verdict was left in force
Court verdict left in force	Substantiated
Date:	17-12-2014
Accused	

Name	Armen
Surname	Sadovnichy
Patronymic	Yury
Address	3 Zvartnots street, Apt 46, Ejmiatsin, Republic of Armenia
Gender	Male
Date of birth	29-08-1989
Criminal Procedure Code Article	
Article	393-394
Criminal Procedure Code Article	
Article	402
Criminal Procedure Code Article	
Article	418
Other notes:	
Criminal Procedure Code Article	
Article	Part 1, Article 190
Court verdict	
Court verdict:	<p>Case No: ARD/0071/01/14 COURT VERDICT IN THE NAME OF THE REPUBLIC OF ARMENIA</p> <p>17 December 2014, Yerevan, Republic of Armenia CRIMINAL COURT OF APPEALS IN THE REPUBLIC OF ARMENIA Presiding judge: S. Chichoyan Judges: G. Avetisyan and A. Danielyan Secretary: N. Asatryan Participated by: Prosecutor: H. Hakobyan, Counsel: Ts. Margaryan Accused: A. Sadovnichy</p> <p>In an open court hearing, within the rules of the appeal procedure, in examination of the appeal petition presented by the accused, Armen Yury Sadovnichy, against the court verdict issued on 25 September 2014 by the Common Jurisdiction Court of First Instance in Armavir region of the Republic of Armenia in relation to Armen Yury Sadovnichy for Part 1, Article 190 of the Criminal Code of the Republic of Armenia, the court</p> <p>ESTABLISHED</p> <p><u>1. Judicial history of the case</u></p> <p>On 13 December 2013, criminal case No 58214713 was instigated by the Investigation Department of the National Security Service of the Republic of Armenia for elements of offence specified under Part 1, Article 190 of the Criminal Code of the Republic of Armenia.</p> <p>On 6 February 2014, Armen Yury Sadovnichy was involved as accused, and charges were pressed against him in accordance with Part 1, Article 190 of the Criminal Code of the Republic of Armenia.</p>

On 6 December 2014, the investigator decided to impose a restraint measure on Armen Yury Sadovnichy in the form of a written undertaking not to leave.

On 20 May 2014, a decision was made to change the charges pressed against the accused, Armen Yury Sadovnichy, and then again charges were pressed according to Part 1, Article 190 of the Criminal Code of the Republic of Armenia.

On 20 May 2014, no criminal prosecution against the accused, Armen Yury Sadovnichy, was instigated in accordance with Part 1, Article 181 of the Criminal Code of the Republic of Armenia due to absence of a petition from a victim.

On 23 May 2014, criminal case No 58214713, as instigated against the accused, Armen Yury Sadovnichy, in accordance with Part 1, Article 190 of the Criminal Code of the Republic of Armenia, was forwarded with an indictment to the Common Jurisdiction Court of First Instance in Armavir region of the Republic of Armenia.

In an expedited court procedure and with its court verdict from 25 September 2014, the Common Jurisdiction Court of First Instance in Armavir region of the Republic of Armenia proved the accused, Armen Yury Sadovnichy, guilty of crime specified in Part 1, Article 190 of the Criminal Code of the Republic of Armenia and sentenced him to imprisonment for 2 (two) years and 6 (six) months, with confiscation of equivalent property in the amount of 283,600 (two hundred eighty three thousand six hundred) Armenian drams.

Armen Yury Sadovnichy will serve his punishment in the form of imprisonment in the corresponding penitentiary institution under the Criminal-Legal Department of the Ministry of Justice in the Republic of Armenia.

The restraint measure imposed on Armen Yury Sadovnichy in the form of a written undertaking not to leave was maintained until the court verdict had entered into legal force.

The inception of the punishment was counted from the moment of factual arrest/detention of Armen Yury Sadovnichy.

The arrest/seizure imposed on the property of Armen Yury Sadovnichy was maintained until the question of confiscating other equivalent property was resolved.

There was no material evidence, civil petition or court expenses, which were all considered resolved.

Other documents considered material evidence were left in the criminal case.

An appeal against the court verdict was petitioned by the accused, Armen Yury Sadovnichy.

The criminal case was accepted at the Criminal Court of Appeals of the Republic of Armenia on 3 November 2014.

With the decision of the Criminal Court of Appeals of the Republic of Armenia from 5 November 2014, the appeal and criminal case were accepted into examination in accordance with the rules specified for examination of cases in the courts of cassation.

No written responses were received in objection of the petition for appeal.

2. Factual circumstances of the case

Armen Yury Sadovnichy was convicted in accordance with Part 1, Article 190 of the Criminal Code of the Republic of Armenia for the following crime.

Armen Yury Sadovnichy, on 25 October 2013, obtained from <http://forum.beznal.cc> website the following full card details – Warren Taylor's card No 5491139385738340 issued by Citibank N.A. Columbus Georgia, Jonathan Sirley's card No 5147518046339408 issued by Associated Bank, N.A. Stevens Point

Wisconsin, Ali Ahmed's card No 4342880017870456 issued by Fia Card Services, National Association, Wilmington, Delaware and Gregory Seigwoth's card No 4313072414798804 issued by Fia Card Services, National Association, Wilmington, Delaware – and stole a significant amount in equivalence of 283,600 Armenian drams from these accounts by using computer technologies. For the purpose of concealing and disguising the origin and transfer of these criminal proceeds, Armen Yury Sadovnichy carried out several wire and other transfers and conversions, including the use of electronic money transfer services, which was following by withdrawing and gaining possession of the funds, thus leading to the legalization of the criminal proceeds.

In particular, with an intention to steal funds from the above card accounts placed on <http://forum.beznal.cc> website and then to legalize the funds by means of concealing and disguising the origin and transfer thereof, Armen Yury Sadovnichy placed (before the funds were stolen) a job advertisement on social networks www.facebook.com and www.odnoklassniki.ru, as if a company named Vestibular was looking for those interested in work for a daily rate of 5,000 Armenian drams. As a result, he recruited Armenian citizens Katerina Gagik Mnatsakanyan, Rosa and Suzy Spartak Sargsyans and then gained access to their accounts No ID-277529118, ID-587423810, ID-595325627 in the payment system iDram, including the corresponding passwords and PIN numbers for carrying out financial transactions. Afterwards, on 25 October 2013, he stole a significant amount in equivalence of 283,600 Armenian drams from the above card accounts placed on <http://forum.beznal.cc> website: in particular, 51,230 Armenian drams were stolen from **Jonathan Sirley's card No 5147518046339408** issued by Associated Bank, while 10,246 and 30,738 Armenian drams were stolen from **Warren Taylor's card No 5491139385738340** issued by Citibank N.A. Columbus Georgia. The stolen funds in total of 92,214 Armenian drams were transferred to **Katerina Gagik Mnatsakanyan's iDram account No ID-277529118**, which resulted in a balance of 90,000 Armenian drams after the corresponding fees and charges. On the same day, 10,246 Armenian drams were stolen from **Gregory Seigwoth's card No 4313072414798804** issued by Fia Card Services, National Association, Wilmington, Delaware, while 1,025, 20,492, 51,230 and 15,369 Armenian drams were stolen from **Ali Ahmed's card No 4342880017870456** issued by Fia Card Services, National Association, Wilmington, Delaware. On the same day, the stolen funds in total of 98,362 Armenian drams were transferred to **Rosa Spartak Sargsyan's iDram account No ID-587423810**, which resulted in a balance of 96,000 Armenian drams after the corresponding fees and charges. On the same day 100,000 Armenian drams were stolen from **Ali Ahmed's card No 4342880017870456** issued by Fia Card Services, National Association, Wilmington, Delaware and transferred to **Suzy Spartak Sargsyan's iDram account No ID-59525627**, which resulted in a balance of 97,600 Armenian drams after the corresponding fees and charges. For the purpose of concealing the disguising the origin of criminal proceeds in equivalence of 283,600 Armenian drams in total, Armen Yury Sadovnichy avoided transferring the funds stolen from card accounts placed on <http://forum.beznal.cc> website directly into his own WebMoney service account, but managed to transfer the funds to iDram accounts of Katerina Gagik Mnatsakanyan, Rosa and Suzy Spartak Sargsyans, which was then converted into 683 US dollars, followed by a transfer of, on the same day (25 October 2014), 584 US dollars into his electronic purse No Z934972973931 with WebMoney service and remaining 99 US dollars into his other electronic purse No Z318400369315 with the same WebMoney service. On the same day, 584 US dollars that were transferred to electronic purse No Z934972973931 with WebMoney were then transferred to the electronic purse No Z318400369315, which resulted in a balance of 677 US dollars in criminal proceeds after the corresponding fees and charges. These funds were used at the discretion of Armen Yury Sadovnichy: in particular, after another currency conversation, 172,000 Armenian drams were transferred, in the time period of 25-27 October 2014, to his own iDram account No 293832463, while the remaining funds were used for different payments over the internet. From the total balance of 172,000

Armenian drams in his iDram account, 8,000 Armenian drams were used to recharge a mobile phone account, while 160,000 Armenian drams were transferred on 29 October 2014 to his dollar-denominated bank account No 11294030101 with Araratbank, where the funds were converted into 395 US dollars and withdrawn in cash from Ejmiatsin branch of the same bank, thus leading to legalization of the illicit proceeds.

3. Grounds for petitioning an appeal, arguments and expectations

The appeal is examined on the following grounds, with the following arguments.

By presenting the judicial history of the case, the accused, Armen Yury Sadovnichy, mentioned in his petition that he was appealing the court verdict with respect to the punishment on the grounds specified under Articles 10, 48, 61 and 70 of the Criminal Code of the Republic of Armenia.

By referencing Articles 10, 48, 61 and 70 of the Criminal Code of the Republic of Armenia, Armen Yury Sadovnichy mentioned that he had no prior criminal or other negative history, was positively characterized, had higher education, with circumstances mitigating the liability and punishment, such as pleaded guilty in the charges pressed against him, regretted wholeheartedly and testified and assisted the investigation. He had two persons as dependents (mother in poor physical health and grandmother who was a pensioner), was the only one providing for the family, and was ready to pay the sum equivalent to the confiscation amount. There were no circumstances aggravating the liability and punishment.

Armen Yury Sadovnichy argued that in such circumstances the court should have applied Article 70 of the Criminal Code of the Republic of Armenia, waiving the imposing of the punishment on him in the form of imprisonment, and that a probation period should have been applied, while he would pay a sum equivalent to the confiscation amount.

Considering the above and based on Articles 375-379 of the Criminal Procedure Code of the Republic of Armenia, Armen Yury Sadovnichy asked to amend (with respect to the punishment) the court verdict issued by the Common Jurisdiction Court of First Instance in Armavir region of the Republic of Armenia from 25 September 2014 and to waive the imposition of the punishment or to impose a lighter punishment.

4. Counterarguments to the petition for appeal

The prosecutor of the case, H. Hakobyan, presented his objections for the appeal petitioned by the accused and asked to refuse the appeal on the grounds that the court verdict issued on 25 September 2014 by the Common Jurisdiction Court of First Instance in Armavir region of the Republic of Armenia was rightful and substantiated, and there was no reason to amend it.

5. Arguments and conclusions of the Court of Appeals

After examining the petition for appeal, with the corresponding grounds and arguments contained therein, hearing the speech of the counsel on substantiating the conclusion made in the petition for appeal and the response of the prosecutor (who had no objections for the court verdict), analyzing the materials in the criminal case, evaluating those in conjunction, the Court of Appeals comes to a conclusion with inner determination that the petition for appeal should be refused for the following reasons.

According to Part 1, Article 385 of the Criminal Procedure Code of the Republic of Armenia, the Court of Appeals will revise a court verdict in the scope of the grounds and arguments in the petition for appeal.

According to Part 3, Article 381 of the Criminal Procedure Code of the Republic

of Armenia, the grounds, arguments and expectations in the appeal shall be presented exclusively in the petition for appeal, which cannot be amended or supplemented in the course of the judicial procedure.

According to Part 1, Article 360 of the Criminal Procedure Code of the Republic of Armenia, 'the court shall sequentially resolve the following questions when producing a verdict: ... 6) whether the accused shall be subject to punishment, 7) what punishment shall be imposed on the accused, 8) whether the accused shall serve the punishment imposed ...'. As demonstrated by this provision, the imposition of a punishment at a specific level and the resolution of a question whether punishment shall be imposed are two independent and sequential steps in the process of determining the punishment in a court procedure. That is, the court will first determine whether the accused shall be subject to punishment, then will set the type and level of the punishment, and only then will decide whether the accused shall in fact serve the punishment, depending on whether it will be possible to reach the purpose of the punishment without actually serving the punishment.

When resolving these questions, the court shall be guided by several articles in the general section of the Criminal Procedure Code of the Republic of Armenia. In particular, according to Article 10 of the Criminal Procedure Code of the Republic of Armenia, a punishment for a criminal is rightful if it is commensurate to the severity level and circumstances of the crime committed, to the personal characteristics of the criminal, and is both necessary and sufficient to correct the person and prevent a new crime.

According to Part 1, Article 61 of the Criminal Code of the Republic of Armenia, a punishment that is just is imposed for a crime on the person convicted, as determined in accordance with the relevant article in the special section of the Criminal Code of the Republic of Armenia, while taking into account provisions in the general section of the Criminal Code of the Republic of Armenia.

According to Part 2, Article 48 of the Criminal Code of the Republic of Armenia, the purpose of the punishment imposed for a crime on the person convicted is to recover social justice, correct the person, and prevent crimes.

When determining the punishment and considering whether it should actually be served, the court also takes into consideration the circumstances mitigating and aggravating the liability and punishment, as specified under Articles 62 and 63 of the Criminal Code of the Republic of Armenia.

As presented above, the provisions of the general section of the Criminal Code of the Republic of Armenia suggest that the decision of the court on how justified the type and level of punishment should be for the person convicted for a crime, as well as on whether it should be actually served, must be based on the category of crime committed, the characteristics of it, the factual circumstances of the case, the personality of the criminal, and on the comprehensive evaluation of mitigating or aggravating circumstances, in order to achieve the purposes of punishment specified under Part 2, Article 48 of the Criminal Code of the Republic of Armenia.

According to Article 70 of the Criminal Code of the Republic of Armenia, '1. When imposing a punishment in the form of detention, imprisonment or service in a disciplinary battalion the court decides that the correction of the person is achievable without actually serving the punishment, then the punishment can be conditionally waived. 2. When conditionally waiving the punishment, the court shall consider the personal characteristics of the criminal and any circumstances mitigating or aggravating the liability or punishment ...'.

In its decision No VB-201/07 from 30 November 2007 on K. Harutyunyan, the Court of Appeals took the following position in relation to the question of the punishment being just: '... a punishment is just if the court has rightfully evaluated all the circumstances of the case, personal characteristics of the criminal, and – in the scope of relevant provisions of the criminal law – has

imposed a punishment that is necessary and sufficient for the correction of the person and prevention of a new crime by the same person ...'.

In its decision No ESHD/0029/01/08 from 17 February 2009 on G. Madatyan, the Court of Appeals took the following position in relation to the question of the **nature and level of social ramifications of the crime**: '... the nature of social ramifications of an action is the qualitative side of the crime, which is determined in conjunction of the following factors: category and type of the offence, purpose and motive of the crime, and factual circumstances of social significance (at the time of the commission of the crime) inherent to the social relationship safeguarded by the criminal law. When determining the level of social ramifications of an action, the court shall establish the amount of losses caused by the crime, the manner in which the crime was committed, the extent by which criminal intentions were realized, the actions of the accomplices (if applicable) and their role in the crime.

In its decision No EAKD/0078/01/09 from 18 December 2009 on D. Hovhannisyanyan, the Court of Appeals took the position that, although the Criminal Code of the Republic of Armenia does not limit the conditional waiver of punishment to certain crimes or persons, the court – guided by general principles for imposing a punishment specified under Article 61 of the Criminal Code of the Republic of Armenia – must always take into consideration the nature and level of social ramifications of the crime. The main condition for the punishment to be just, as imposed by the court, is that it should be commensurate to the nature and level of social ramifications of the crime.

The main condition for applying Article 70 of the Criminal Code of the Republic of Armenia is to have substantial grounds for that. When conditionally waiving a punishment, the court must carry out a detailed analysis of the circumstances of the crime and the criminal. It is important for the court to arrive at the right conclusion that the correction of the criminal is achievable without actually serving the punishment.

The court can only arrive at such a conclusion as a result of an objective analysis of existing factors that characterize the crime, the criminal, in evidence of the grounds for conditionally waiving the punishment.

The Court of Appeals establishes that, guided by the general principles for imposing a punishment in accordance with Article 61 of the Criminal Code of the Republic of Armenia, the Common Jurisdiction Court of First Instance (in imposing a punishment on the accused, Armen Yury Sadovnichy) has sufficiently examined and evaluated the nature and level of social ramifications of the crime, personal characteristics of the accused, presence of circumstances mitigating the liability and punishment (i.e., he regretted his actions, had no criminal or other negative history, had two persons as dependents, his mother in poor physical health and grandmother being a pensioner, had higher education, was positively characterized), and absence of circumstances aggravating the liability and punishment, and has established that a punishment shall be imposed on the accused in the form of imprisonment for 2 (two) years and 6 (six) months, with confiscation of equivalent property in the amount of 283,600 (two hundred eighty three thousand six hundred) Armenian drams.

Guided by Part 1, Article 10, Part 2, Article 48, Parts 1 and 2, Article 61 of the Criminal Code of the Republic of Armenia, the Common Jurisdiction Court of First Instance has established that the punishment imposed on Armen Yury Sadovnichy in the form of imprisonment will achieve the purpose of punishment.

After considering whether Article 70 of the Criminal Code of the Republic of Armenia could be applied for the accused, Armen Yury Sadovnichy, and whether this would achieve the purpose of punishment specified under Article 48 of the Criminal Code of the Republic of Armenia, the Court of Appeals establishes that Armen Yury Sadovnichy shall be subject to punishment for the crime committed, the punishment imposed by the court is commensurate to the severity of the crime, personal characteristics of the criminal, and that he should serve the punishment

in the form of imprisonment.

The Court of Appeals establishes that conditional waiver of the punishment imposed on Armen Yury Sadovnichy cannot lead to the achievement of the purpose of punishment, the recovery of social justice, the correction of the person, and prevention of crimes, and concludes that there are no grounds to believe that the correction of the person is possible without serving the punishment.

In that sense, the arguments of the counsel cannot provide sufficient grounds for waiver of the punishment for Armen Yury Sadovnichy in accordance with Article 70 of the Criminal Code of the Republic of Armenia.

After examining in conjunction all the circumstances above, the Court of Appeals establishes that the verdict of the Common Jurisdiction Court of First Instance was issued in compliance with the provisions of material and judicial proceedings, therefore the Verdict shall remain in force, while the petition for appeal shall not be satisfied.

Based on the above and guided by Articles 393-394, 402, 418 of the Criminal Procedure Code of the Republic of Armenia, the Criminal Court of Appeals of the Republic of Armenia

DECIDES

To refuse the petition for appeal presented by the accused, Armen Yury Sadovnichy.

To leave the court verdict in force, as produced by the Common Jurisdiction Court of First Instance in Armavir region of the Republic of Armenia on 25 September 2014 in relation to the criminal case against Armen Yury Sadovnichy, in accordance with Part 1, Article 190 of the Criminal Code of the Republic of Armenia.

This verdict can be appealed to the Court of Cassation of the Republic of Armenia within one month after publication.

Presiding judge, S. Chichoyan

Date of court verdict: 17-12-2014

Case brought to the office

Date: 23-01-2015

Number of pages: 268, 194

Materials attached to the case:

Other notes:

Case forwarded

Case forwarded: 23-01-2015

Number of pages: 268, 194

Materials attached to the case:

Where: Armavir region

Reference NO: E-963/15

Other notes:

Case appealed

Date: 02-02-2015

Court verdict No: ARD/0071/01/14

Date: 02-02-2015

Petitioner: Counsel of the accused

Petitioner

Name Georgy

Surname Melikyan

Address 109 Muratsan street, Apt 6, Yerevan, Republic of Armenia

Other Accused, Armen Yury Sadovnichy

Counsel

Name

Surname

Address

Accused

Name

Surname

Address

Adult: Yes

Date of response received:

Content of response:

Petition received: Against the court verdict effectively resolving the case

Case received at Court of Appeals

Deliver date of the case: 04-02-2015

Reference No: E-827

Date case received: 26-02-2015

Volumes of criminal case /documents/: 2 volumes

Accused

Name

Surname

Address

Case No: ARD/0071/01/14

Case received: Armavir region

Case received:

Case received:

Number of persons subject to liability: 1

Inscribe

Date: 26-02-2015

Presiding judge

Court (name): Court of cassation

Judge (name): Davit Zakar Avetisyan

Judge

Court (name):	Court of Cassation
Judge (name):	Artur Vladimir Poghosyan
Other notes:	

Date:	23-01-2015
Number of pages:	268, 194
Materials attached to the case file:	
Remarks:	

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Case sent on:	23-01-2015
Number of pages:	268, 194
Materials attached to the case file:	
Sent to:	The Armavir Region
Cover letter number:	E-963/15
Remarks:	

Գործը բողոքարկվել է

Date:	02-02-2015
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Court case number: ARD/0071/01/14

Վճռաբեկ

Ստացվել է վճռաբեկ բողոք

Date:	02-02-2015
Persons lodging the appeal:	Defender of the defendant

Persons lodging the appeal

Name:	Georgi
Surname:	Melikyan
Address:	Apartment 6, building 109, Muratsan Street, City of Yerevan
Others:	Defendant Armen (son of Yuri) Sadovnichiy

Advocate

Name:	
Surname:	
Address:	

Convict

Name:	
Surname:	
Address:	
Adult:	Yes
Date reply received:	
Substance of the reply:	

Appeal received:	Against the judicial act on the merits of the case
Գործը ստացվել է վճռաբեկ դատարան	
Date case file delivered:	04-02-2015
Cover letter number:	E-827
Date case file received:	26-02-2015
Volumes (documents) of the criminal case file:	2 volumes
Convict	
Name:	
Surname:	
Address:	
Case number:	ARD/0071/01/14
Case file received in:	Armavir Region
Case file received:	
Case file received:	
Number of persons sentenced:	1
Մակագրել	
Date:	26-02-2015
Presiding judge	
Court name:	Cassation Court
Judge name:	Davit Avetisyan
Judge	
Court name:	Cassation Court
Judge name:	Artur Poghosyan
Remarks:	
Վճռաբեկ բողոքը վարույթ ընդունելը մերժվել է	
Date:	07-05-2015
Substance of the decision:	ARD/0071/01/14 DECISION OF THE CASSATION COURT OF THE REPUBLIC OF ARMENIA IN THE NAME OF THE REPUBLIC OF ARMENIA ON DECLARING THE CASSATION APPEAL INADMISSIBLE 7 May 2015, City of Yerevan The Criminal Chamber of the Cassation Court of the Republic of Armenia (hereinafter, “the Cassation Court”),

presided by D. AVETISYAN;
participating judges A. POGHOSYAN,
H. ASATRYAN,
S. AVETISYAN
Y. DANIELYAN
S. OHANYAN

Having examined the question of admissibility of the cassation appeal lodged by G. Melikyan, defender for defendant A. Sadovnichiy, against the 17 December 2014 decision of the Republic of Armenia Appellate Court regarding Armen (son of Yuri) Sadovnichiy,

HAS FOUND:

The First Instance General Jurisdiction Court of the Armavir Region (hereinafter also referred to as “the First Instance Court”), having applied speedy trial proceedings, rendered a judgment on 25 September 2014, whereby it found Armen Sadovnichiy guilty under Paragraph 1 of Article 190 of the Criminal Code of the Republic of Armenia and convicted him to imprisonment for a term of 2 years and 6 months, with confiscation of property in the amount of 283,600 Armenian drams.

Having examined the criminal case on the basis of the defendant’s appeal, the Criminal Appellate Court of the Republic of Armenia (hereinafter also referred to as “the Appellate Court”) rendered a decision on 17 December 2014 on rejecting the appeal and upholding the 25 September 2014 judgment of the First Instance Court.

G. Melikyan, defender for Armen Sadovnichiy, lodged a cassation appeal against the aforementioned decision of the Appellate Court, asking to quash the 17 December 2014 decision of the Appellate Court and sending the case to a lower court for a de-novo examination, or to order, under Article 70 of the Criminal Code of the Republic of Armenia, conditional non-execution of the sentence imposed on defendant Sadovnichiy and impose a probation period for a term of 5 years.

The person lodging the appeal argued that the appeal must be declared admissible, because the ground prescribed by Paragraph 1(2) of Article 414.2 of the Criminal Procedure Code of the Republic of Armenia is present, i.e. there has been a *prima facie* judicial error, which could influence the outcome of the case.

The person lodging the appeal claimed that the judicial acts of the lower-instance courts are unlawful and groundless and were rendered with a material violation of the procedural rights of defendant Sadovnichiy.

In particular, the person lodging the appeal argued that the First Instance Court violated Articles 10, 48, and 61 of the Criminal Code of the Republic of Armenia, as well as Paragraph 1(8) of Article 360 of the Criminal Procedure Code of the Republic of Armenia, and that the Appellate Court, failing to apply the rules of Article 70 of the Criminal Code of the Republic of Armenia with respect to defendant Armen Sadovnichiy, violated Articles 10, 48, and 61 of the Criminal Code of the Republic of Armenia, as well as Articles 358 and 397 of the Criminal Procedure Code of the Republic of Armenia, neglecting the goals of the sentence and breaching the necessary balance between the constitutionally-safeguarded interests.

Whereas, in the appealed judicial act, the Appellate Court found that "... the First Instance Court, when imposing a sentence on defendant Armen Sadovnichiy, followed the general principles of sentencing prescribed by Article 61 of the Criminal Code of the Republic of Armenia and sufficiently tested and assessed the nature and degree of danger posed to the community by the committed crime, the circumstances characterizing the defendant as a person, and the circumstances mitigating the liability and the sentence, including the fact that he repented for what he did, was not previously convicted or discredited, was looking after the mother who was ill and the grandmother who was receiving a retirement pension, had a university degree, was characterized positively, and that there were no circumstances aggravating the liability and the sentence, and had found that the sentence of imprisonment for a term of two years and six months must be imposed on the defendant, with confiscation of property in the amount of 283,600 Armenian drams. The First Instance Court, guided by Paragraph 1 of Article 10, Paragraph 2 of Article 48, and Paragraphs 1 and 2 of Article 61 of the Criminal Code of the Republic of Armenia, had found that the prison sentence imposed on Armen Sadovnichiy would secure the goals of the sentence.

The Appellate Court, having examined the possibility of applying Article 70 of the Criminal Code of the Republic of Armenia with respect to defendant Armen Sadovnichiy and the feasibility of achieving the sentence goals prescribed by Article 48 of the Criminal Code of the Republic of Armenia, hereby finds that Armen Sadovnichiy is subject to punishment for the crime committed, the sentence imposed by the court is proportionate to the gravity of the committed act and the person of the defendant, and that he must serve the imposed prison sentence.

The Appellate Court finds that conditional non-execution of the sentence imposed on Armen Sadovnichiy would fail to secure the goals of the sentence or to restore social justice or to correct the sentenced person and to prevent future crimes, and hereby concludes that there is no confidence that the defendant can be corrected without serving the imposed sentence.

To this end, the arguments of the defense cannot serve as a sufficient basis for the conditional non-execution of the sentence imposed on Armen Sadovnichiy under this case by virtue of Article 70 of the Criminal Code of the Republic of Armenia. Having examined the aforementioned circumstances in their totality, the [Appellate Court] hereby finds that the judgment of the First Instance Court was rendered in compliance with the substantive and procedural provisions of law, and hence, it **shall be upheld...**"

Based on the combined analysis of the arguments of the person lodging the appeal and the reasoning of the appealed judicial act, the Cassation Court finds that the person lodging the appeal has failed to show a *prima facie* judicial error that could influence the outcome of the case.

Therefore, the lodged appeal fails to substantiate the existence of the ground prescribed by Paragraph 1(2) of Article 414.2 of the Criminal Procedure Code of the Republic of Armenia.

Under Paragraph 1 of Article 414.3 of the Criminal Procedure Code of the Republic of Armenia, admissibility of a cassation appeal shall be rejected if the grounds prescribed by Paragraphs 1 and 2 of Article 414.1 and by Paragraph 1 of Article 414.2 of the Criminal Procedure Code are missing, and therefore, admissibility of the lodged appeal shall be subject to rejection.

Taking into consideration the aforementioned justifications and guided by Article 92 of the Republic of Armenia Constitution and Article 414.3 of the Criminal

	<p>Procedure Code of the Republic of Armenia, the Cassation Court hereby</p> <p>DECIDES:</p> <p>To declare as inadmissible the cassation appeal lodged by G. Melikyan, defender for defendant A. Sadovnichiy, against the 17 December 2014 decision of the Republic of Armenia Appellate Court regarding Armen (son of Yuri) Sadovnichiy.</p> <p>This Decision shall enter into force when rendered, shall be final, and shall not be subject to appeal.</p> <p>Presiding judge D. AVETISYAN</p> <p>judges A. POGHOSYAN, H. ASATRYAN, S. AVETISYAN Y. DANIELYAN S. OHANYAN</p>
Other remarks:	
Որոշումը ուղարկվել է կողմերին	
Date:	11-05-2015
Other remarks:	
Գործի առաքում	
Date case file delivered:	18-05-2015
Court:	Armavir Region
Other remarks:	2 volumes, 268 and 222 pages.