

Case No. EKD/0022/01/09

April 2, 2009

Yerevan, Republic of Armenia

VERDICT
IN THE NAME OF THE REPUBLIC OF ARMENIA

COMMON JURISDICTION COURT IN KENTRON AND NORK-MARASH
ADMINISTRATIVE REGIONS OF YEREVAN

Presided by: Judge, Zhora Vardanyan
Assisted by: Emma Avetisyan
Participated by: Prosecutor, Hovsep Sargsyan
Prosecutor General's Office of the Republic of Armenia
Counsel, A. Gharibyan
Representative of the victim, Arman Mnatsakanyan

An open-court hearing on April 2, 2009 of the case on charges against Vardan Avetisyan: born on May 5, 1970 in Yerevan, Republic Armenia; Armenian by nationality; citizen of the Republic of Armenia; with higher education; married; with three underage dependent children under his care; unemployed; with no previous convictions; registered at 25 Papazyan Str., Apt. 52, Yerevan, Republic of Armenia; residing at 3 Arabkir 51st Str., Apt. 4, Yerevan, Republic of Armenia; provisional measure imposed in the form of a written undertaking not to leave.

Charges are pressed pursuant to Clause 1, Part 3, Article 177 and Clause 1, Part 3, Article 190 of the Criminal Code of the Republic of Armenia.

The criminal case was instigated on November 4, 2008 by the Department of Investigations of the National Security Service of the Republic of Armenia.

Description of the charges

The accused, Vardan Avetisyan, serving as the director of "Skava" LLC, acquired (from a party still unknown to the investigation) counterfeit copies of bank cards issued by U.S. financial institution "MBNA America Bank" and furtively thieved a particularly large amount (by means of the POS terminal installed in the commercial premises of the company) in total of 42,269,000 Armenian drams from the customer accounts with the financial institution above.

Besides, the accused, Vardan Avetisyan, legalized the illicit proceeds by means of a transfer of the thieved funds to the bank account of "Skava" LLC and further possession thereof, for the purpose of disguising the true nature and origin of the funds.

On March 4, 2009, the criminal case with an indictment was filed to the Court.

Examination and assessment of the evidence

Facts established by the Court

The accused, Vardan Avetisyan, serving as the director of "Skava" LLC (the company operates in the business of production, import, wholesale and retail sale of furniture), acquired (from a party still unknown to the investigation) counterfeit copies of bank cards No. 5490999252282420, 5490992684007739, and 5490990102804562, issued by U.S. financial institution "MBNA America Bank", furtively thieved a particularly large amount (by means of the POS terminal installed in the commercial premises of the company) in total of 42,269,000 Armenian drams from the customer accounts with the financial institution above, and legalized the illicit proceeds by means of a transfer of the thieved funds to the bank account of "Skava" LLC and further possession thereof, for the purpose of disguising the true nature and origin of the funds.

In particular, on September 18, 2008, by means swiping the counterfeit copy of the bank card No. 5490999252282420 (issued by "MBNA America Bank") through the POS terminal installed in the commercial premises of "Skava" LLC, Vardan Avetisyan transferred 12,367,000 Armenian drams from the account No. 9252282420 to the bank account of "Skava" LLC with "Inecobank" CJSC. In the accounting system, the thieved funds were registered as if a credit was advanced to the company from Vardan Avetisyan's personal funds under an agreement from September 19, 2008, thus legalizing the illicit proceeds and disguising the true nature and origin of the funds. With further transfers, Vardan Avetisyan gained possession of the funds.

On October 13, 2008, by means swiping the counterfeit copy of the bank card No. 5490992684007739 (issued by "MBNA America Bank") through the POS terminal installed in the commercial premises of "Skava" LLC, Vardan Avetisyan transferred 14,780,000 Armenian drams from the account No. 2684007739 to the bank account of "Skava" LLC with "Inecobank" CJSC. In the accounting system, the thieved funds were registered as if a credit was advanced to the company from Vardan Avetisyan's personal funds, under an agreement from October 15, 2008, thus legalizing the illicit proceeds and disguising the true nature and origin of the funds. Furthermore, Vardan Avetisyan gained possession of the funds and made transfers in the amount of 3,977,580 Armenian drams; an amount of 10,500,000 Armenian drams was withdrawn in cash, whereas 10,000,000 Armenian drams were returned to him under an accounting registration of a credit repayment.

On November 2, 2008, by means swiping the counterfeit copy of the bank card No. 5490990102804562 (issued by "MBNA America Bank") through the POS terminal installed in the commercial premises of "Skava" LLC, Vardan Avetisyan transferred 15,122,000 Armenian drams from the account No. 0102804562 to the bank account of "Skava" LLC with "Inecobank" CJSC. Vardan Avetisyan legalized the illicit proceeds by

means of registering the thieved funds as if furniture was purchased by U.S. national Jeffery Parker, thus disguising the true nature and origin of the funds with a purchase with no underlying assets.

During his interrogation on the transactions in the premises of the administrative headquarters of the National Security Service of the Republic of Armenia, Vardan Avetisyan indicated that on November 2, 2008 a foreign national had made furniture purchase with a bank card at the commercial premises of "Skava" LLC. First, he had verified the customer's signature on the passport with the one on the bank card, and presented the photocopies of the U.S. national customer's passport and of the bank card's surface, as a proof for the verification.

For the committed actions, charges were pressed against Volodya Ghukasyan, pursuant to Clause 1, Part 3, Article 177 and Clause 1, Part 3, Article 190 of the Criminal Code of the Republic of Armenia.

Evidence underlying the conclusions of the Court

The offence committed by the accused was proven with the acquisition and examination of the following evidence:

- Confession of the accused, Vardan Avetisyan: He pleaded guilty in the underlying offence of the indictment and gave testimony that on returning to Armenia from a business trip in Italy, he had met a young Armenian national, Hovik, who had no money to buy a ticket on a ferry and, thus, borrowed 600 Euros from him. After some time, he met Hovik in the commercial premises of the company in Armenia, and Hovik returned his debt. On becoming close associates, Hovik proposed his help in finding clients for the business. In one of the instances, Hovik indicated that the customer had an intention of paying with a credit card. Shortly afterwards, Hovik asked him to return the money, since the transaction could not be completed due to errors in initial calculations and projections. Vardan Avetisyan did not refuse and, upon Hovik's solicitation, gave him the POS terminal slip, without checking the information thereon, for his trust for Hovik. Next day, upon acknowledging that no purchase had actually taken place, but a turnover of funds had occurred, Vardan Avetisyan decided to register the transaction in the accounting system as if he had advanced a credit to "Skava" LLC: the funds were later transferred to trade partners and tax authorities from the bank account of "Skava" LLC. Vardan Avetisyan had no idea of whose bank card had Hovik used to conduct the transaction.

During the interrogation, Vardan Avetisyan gave a testimony that he had thieved a particularly large amount of money, which was legalized by means of transfer of the funds to the bank account of "Skava" LLC and further possession thereof, for the purpose of disguising the true nature and origin of the funds.

Vardan Avetisyan regretted his actions and petitioned the Court to impose a mild punishment.

- According to the testimony given in the Court by Arman Mnatsakanyan, the representative of the victim ("Inecobank" CJSC), on September 18, October 13,

and November 2, 2008 transactions with counterfeit copies of bank cards were conducted by means of "Inecobank" CJSC's POS terminal installed in the commercial premises of "Skava" LLC. As a result of these transactions, "Inecobank" CJSC might eventually incur a possible loss of 42,269,000 Armenian drams.

Through the "Master Card" payment system, the U.S. bank, which had issued and serviced the bank cards, presented a chargeback claim to "Inecobank" CJSC in the amount of 3,000,000 Armenian drams, equal to the amount in the civil petition filed.

In the course of the judicial proceeding, the representative of the victim clarified the claim and indicated that the inquiry made during the judicial proceeding had led to a conclusion that the factual loss incurred was equal to 1,000,000 Armenian drams, and thus a civil petition was filed with this amount.

The representative of the victim petitioned the Court to impose a 540-day arrest from November 2, 2008 on the deposited amount of 41,269,000 Armenian drams in the amount equal to the possible loss of 41,269,000 Armenian drams, by presenting an argument that the loss incurred by the bank as of the day of the petition was equal to 1,000,000 Armenian drams, while the possible loss may grow into 41,269,000 Armenian drams during the next 540 days following November 2, 2008 (the deadline for appealing transactions is 540 days after the transaction date).

- According to the reiteration (in the course of the judicial proceeding) of the testimony given by the witness, Hasmik Saghatelyan (serving as the chief accountant of "Skava" LLC) in the course of the preliminary investigation, Vardan Avetisyan had conducted the furniture sale transaction in the commercial premises at 13 Sasuntsi Davit Street, Yerevan, Republic of Armenia, where, pursuant to an agreement with "Inecobank" CJSC, a POS terminal was installed to service customers willing to pay with credit cards. The transactions conducted by means of the POS terminals on September 18 and October 13, 2008 were not real transactions representing a sale of goods. Knowing that the company was short of funds, Vardan Avetisyan (pursuant to an agreement signed on September 19, 2008) advanced a credit from his name to "Skava" LLC in the amount of 12,367,000 Armenian drams, and transferred this amount to the bank account of "Skava" LLC with "Inecobank" CJSC, by means of swiping his bank card through the POS terminal installed in the commercial premises of the company. The director had warned Hasmik Saghatelyan beforehand that he would deposit funds into the bank account of the company. On September 22, 2008 Hasmik Saghatelyan called "Inecobank" CJSC and found out that the amount of 12,367,000 Armenian drams was deposited into the bank account of "Skava" LLC. The director signed a credit agreement in the company's office, and they went together to "Inecobank" CJSC on September 22 and 23, 2008 and used the amount of 12,367,000 Armenian drams to make several transfers to different companies for goods and transportation, as well as to Rudik Ghazaryan in Germany and to the tax authorities in the Republic of Armenia. Upon the director's instructions, the remaining 6,000,000 Armenian drams were withdrawn in cash and deposited into the company's cash register.

According to the testimony of the witness, on October 10, 2008 a new credit agreement was signed between Vardan Avetisyan and "Skava" LLC in the amount of 5,000,000 Armenian drams, which, after corresponding registrations, was deposited into the cash register. According to the director's instructions, an amount of 10,973,109 Armenian drams was withdrawn from the cash register for purchasing goods from Dubai, while this amount was later transferred to Dubai from a bank account opened with "Armenian Development Bank" CJSC. That is, the credit advanced on the same day in the amount of 5,000,000 Armenian drams was entirely transferred to Dubai, while the other part of the transfer was generated from the previous credit, advanced in the amount of 12,367,000 Armenian drams.

On October 13, 2008 a new credit agreement was signed between Vardan Avetisyan and "Skava" LLC in the amount of 15,598,500 Armenian drams, out of which 230,000 Armenian drams were deposited into the company's cash register for the purpose of paying salaries, while the remaining amount was intended to be transferred to Dubai for purchasing goods. They went together to "Armenian Development Bank" CJSC on October 13, 2008, deposited the amount of 15,368,500 into the bank account of "Skava" LLC and transferred it to Dubai. That is, the underlying amount of the credit agreement was entirely used.

On the same day, Vardan Avetisyan told Hasmik Saghatelyan that he would advance a credit and transfer it to the bank account of "Skava" LLC with "Inecobank" CJSC by means of swiping his own bank card through the POS terminal installed in the commercial premises of the company. On October 15, 2008 Hasmik Saghatelyan called the bank and found out that the funds were deposited into the bank account. Vardan Avetisyan compiled a credit agreement between "Skava" LLC and himself in the amount of 14,780,000 Armenian drams, which was used to make several transfers on the next day: transfers to different companies for purchasing materials; part of the amount was transferred as a payment for electricity and property tax; and the other part was withdrawn in cash on October 16 and 17, 2008 and further deposited into the cash register of the company. Payments for current expenses were made out of the amount in the cash register, and 2,139,231 Armenian drams were used to repay the interests accrued on the loan from "Armenian Development Bank" CJSC, as well as to make transfers to Dubai.

On October 30, 2008, upon the director's instruction, Hasmik Saghatelyan withdrew an amount of 5,000,000 Armenian drams in cash from the cash register and paid it to the director as a full repayment of the credit, pursuant to the credit agreement from October 10, 2008. On November 1, 2008, upon Vardan Avetisyan's instruction, the remaining balance in the cash register, which equaled to 5,000,000 Armenian drams, was paid to the latter as a partial repayment of the credit under the credit agreement.

After an analysis of accounting documents, Hasmik Saghatelyan came to a conclusion that the total amount of 10,000,000 Armenian drams paid to Vardan Avetisyan on October 10 and 30, 2008 was generated from the amount of 14,780,000 Armenian drams received by means of the POS terminal on October 13, 2008.

According to the rules, the director had to provide the accounting unit with the POS terminal slip on advancing a credit to the bank account of “Skava” LLC, as these were documents strictly subject to registration. Hasmik Saghatelyan reminded Vardan Avetisyan on this issue several times, who did not present the slips, despite his promises to do so.

Hasmik Saghatelyan did not receive any information on the transaction conducted on November 2, 2008 by means of the POS terminal installed in the commercial premises of the company. She had not facilitated the delivery of any goods to the commercial premises of “Skava” LLC on and after November 2, 2008, and no accounting documents were presented, since the transaction was conducted on Sunday, and she was not in the city on that day. On Sunday, Vardan Avetisyan called her over the phone and said that he had conducted a transaction, while asking her to come to work the next day for registration of the documents. She did not ask for details, but did not go to work on Monday because of her illness. On Tuesday, November 4, 2008, she went to work and did not find the director.

- According to the reiteration (in the course of the judicial proceeding) of the testimony given by the witness, Violeta Simonyan, since October 1, 2008 she had been serving as an associate in the commercial premises of “Skava” LLC at 13 Sasuntsi Davit, Yerevan, Armenia, where Vardan Avetisyan was serving as a director. In her presence, the director never dealt with transactions of selling goods in the commercial premises and was predominantly in the industrial and administrative premises of “Skava” LLC in the district of Vardashen. Manager, Vahagn Hovhannisyan, who was also serving as a cashier, was dealing with transactions of selling goods in the commercial premises of the company. The manger was responsible for customer introduction. In fact, Violeta Simonyan and Vahagn Hovhannisyan were the only employees working in the commercial premises in the period from 10:00 to 19:00 o’clock, with the latter being the one who always closed the commercial premises after the working day with his keys. The commercial premises did not operate on Sundays.

A POS terminal was installed in the commercial premises by “Inecobank” CJSC for the purpose of servicing bank cards, and during her employment history, a only a single transaction of purchasing furniture in the amount of 490.000 Armenian drams was made with the POS terminal.

On Sunday, November 2, 2008 Violeta Simonyan was in the commercial premises and, on the next day, did not notice a change in the goods displayed.

- According to the testimony (in the course of the judicial proceeding) given by the manager and cashier of “Skava” LLC, Vahagn Hovhannisyan, due to an absence of an alarm system, he had the habit of visiting the commercial premises on Sundays for his own piece of mind, including on November 2, 2008: nobody else was in the commercial premises during his presence from 12:00 to 14:00 therein. On coming to work the next day around 9:30, he did not notice any change in the goods displayed compared to what was there on before. If furniture with a value of 15,000,000 Armenian drams was sold out of the commercial premises, part of it would have been taken out, making the difference visible.

- Established material evidence: agreements; payment orders; currency exchange order; cash register checks; cash withdrawal and deposit orders; cash deposit slips; POS terminal slips; photocopies of 2-3 pages of Jeffery Parker's passport with his photo and identification information and of the surface of his bank card.
- Established evidence: account turnover documents of the company; explanation by Vardan Avetisyan from November 4, 2008; agreement from September 4, 2009; letters from "Armenian Card" CJSC with No. 166/08 of November 11, 2008 and No. 173/08 of November 17, 2008; letter from the Passport and Visa Department of the Police of the Republic of Armenia, No. 25/01-50447; letters from the National Security Service of the Republic of Armenia from November 25, 2008, December 18, 2008, and January 27, 2009.
- According to the conclusion (No. 08-1502 of February 4, 2009) of the experts at the state non-commercial organization "National Bureau of Expert Examinations", under the National Academy of Science of the Republic of Armenia, transactions from September 18, 2008, October 13, 2008, and November 2, 2008 were documented and registered in the accounting system based on the legal grounds only, rather than on the grounds of the underlying business rationale and economic conditions. This kind of accounting treatment, in essence, was directed towards the disguising of the fact of thieving a large amount of funds by the director (Vardan Avetisyan) from different bank accounts, by means of using the POS terminal installed in the commercial premises of "Skava" LLC; actions characterized as legalization of proceeds in the amount of 42,269,000 Armenian drams by means of disguising the true nature and origin of the illicit proceeds.

From the standpoint of the accounting rules and the data obtained as a result of the preliminary investigation, the transactions above, in essence, are considered accurate.

As a result of these transactions, "Skava" LLC caused a direct loss of 42,269,000 Armenian drams to several bank customers, as well as to "Inecobank" CJSC, indirectly.

Besides, "Skava" LLC has not kept the copies of slips on transactions from September 18, 2008 and October 13, 2008, thus violating the requirements of Clause 2.4.11 of the agreement with "Inecobank" CJSC on "Accepting bank cards as means of payment in commercial premises" of September 4, 2008.

- According to the conclusion (No. 48930801 of February 5, 2009) of the expert at the state non-commercial organization "National Bureau of Expert Examinations", under the National Academy of Science of the Republic of Armenia, the copies of U.S. national Jeffery Parker's passport (No. 100553097), provided to the expert examination and to the investigative body as an evidence that Vardan Avetisyan had conducted the sales transaction, were not photocopied from the original passport directly. These photocopies did not conform to the conditions of passport standards in the U.S. and were produced by means of digital technologies.

Legal analysis of the Court

Upon assessing the evidence examined during the judicial proceedings, the Court establishes the fact that the accused, Vardan Avetisyan, serving as the director of

“Skava” LLC, acquired (from a party still unknown to the investigation) counterfeit copies of bank cards, issued by U.S. financial institution “MBNA America Bank”, and furtively thieved a particularly large amount (by means of the POS terminal installed in the commercial premises of his company) in the amount of 42,269,000 Armenian drams from the customer accounts with the financial institution above.

Besides, upon transfer of the thieved funds to the bank account of “Skava” LLC and further possession thereof, Vardan Avetisyan legalized the illicit proceeds by means of disguising the true nature and origin of the funds: that is, he committed an offence pursuant to Clause 1, Part 3, Article 177 and Clause 1, Part 3, Article 190 of the Criminal Code of the Republic of Armenia. The offence is rightfully identified, and Vardan Avetisyan shall be subject to criminal liability pursuant to the foregoing articles.

In determining the punishment for the accused, Vardan Avetisyan, the Court takes into consideration the character of the offense and the level of severity of social ramifications.

There are no factors aggravating the punishment.

As a factor mitigating the punishment, the Court takes into consideration that fact that the accused, Vardan Avetisyan: pleaded totally guilty; sincerely regretted his actions; undertook active measures to compensate the loss incurred; summoned the whole amount thieved, equal to 42,269,000 Armenian drams; had no prior convictions and charges; married; with three underage dependent children under his care; sole supporter of the family; positive characteristics.

Upon taking into consideration the circumstances of the case, the positive factors above characterizing the accused, the absence of aggravating factors, as well as his voluntary summoning of the loss, the Court concludes that his correction is possible with a conditional refraining from the imposing of a punishment, by means of imposing probation.

Upon examining the claim in the amount of 1,000,000 Armenian drams in the civil petition of the representative of the victim (“Inecobank” CJSC) the Court concludes that it shall be subject to full satisfaction at the expense of the funds in the amount of 15,000,000 Armenian drams, frozen at “Inecobank” CJSC.

The amount of 27,100,000 Armenian drams, summoned in cash from the accused, Vardan Avetisyan and held under the arrest at the National Security Service of the Republic of Armenia, as well as the amount of 14,000,000 Armenian drams frozen at “Inecobank” CSJC, shall be confiscated (as illicit proceeds) for the benefit of the State Budget of Republic of Armenia in the amount of 41,269,000 Armenian drams, pursuant to Clause 4, Part 1, Article 119 of the Criminal Procedure Code of the Republic of Armenia.

Guided by Articles 357-375 of the Criminal Procedure Code of the Republic of Armenia, the Court:

DEDICES

To declare Vardan Avetisyan guilty, pursuant to Clause 1, Part 3, Article 177 and Clause 1, Part 3, Article 190 of the Criminal Code of the Republic of Armenia, and

sentence him to imprisonment for a term of 5 (five) years, without confiscation of property, pursuant to Clause 1, Part 3, Article 177 of the Criminal Code of the Republic of Armenia; and to imprisonment for a term of 7 (seven) years, without confiscation of property, pursuant to Clause 1, Part 3, Article 190 of the Criminal Code of the Republic of Armenia.

To impose the total punishment in the form of a sentence to imprisonment with a term of 8 (eight) years, by partial addition of punishments, without confiscation of property, pursuant to Part 4, Article 66 of the Criminal Code of the Republic of Armenia.

To impose the final punishment in the form of a sentence to imprisonment with a term of 7 (seven) years, 10 (ten) months and 8 (eight) days, by netting the preliminary detention term of 1 (one) month and 22 (twenty two) days from the total punishment term, without confiscation of property.

To conditionally refrain from imposing the final punishment, pursuant to Article 70 of the Criminal Code of the Republic of Armenia, and to introduce probation of 4 (four) years, which shall be imposed by the Division of Alternative Punishments at the Penitentiary Institution under the Ministry of Justice of the Republic of Armenia.

To keep the provisional measure unchanged until the Verdict enters into force.

To satisfy the claim in the amount of 1,000,000 Armenian drams in the civil petition of the victim's representative (Arman Mnatsakanyan), and to confiscate it at the expense of the funds in the amount of 15,000,000 Armenian drams, frozen at "Inecobank" CJSC.

To confiscate the funds (as illicit proceeds) in the corresponding amounts of 14,000,000 and 27,269,000 Armenian drams, under the arrest at "Inecobank" CJSC and at the National Security Service of the Republic of Armenia, for the benefit of the State Budget of the Republic of Armenia.

To keep the documents, considered material evidence, in the criminal case.

This Verdict may be appealed within a month from the day of the announcement, pursuant to the appealing procedures.

JUDGE, ZHORA VARDANYAN