

Case No. EKD 0072/01/2009

June 30, 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
Counsels, A. Atarbekyan, I. Gazarova

An open-court hearing on June 30, 2009 of the criminal case on charges against:

Vazgen Hambardzum Pkhrikyan: born on May 2, 1982 in Yerevan, Republic of Armenia; Armenian by nationality; citizen of the Republic of Armenia; with higher education; single; served as director of "Ava Decor" LLC; with no previous convictions; residing at 50 Firdus Str., Yerevan, Republic of Armenia (detainee at penitentiary institution "Nubarashen").

The criminal case No. 58201109 was instigated on September 2, 2009, by the Department Investigations of the National Security Service of the Republic of Armenia.

Charges are pressed pursuant to Clause 2, Part 2, Article 177 and Part 1, Article 190 of the Criminal Code of the Republic of Armenia.

Vazgen Hambardzum Pkhrikyan was arrested on February 9, 2009.

Description of charges

The preliminary investigation body established that the accused, Vazgen Hambardzum Pkhrikyan, serving as director of "Ava Decor" LLC, was running a business of selling shoes in his own commercial premises, located at the crossroad of Nor-Aresh 14th Str. and Erebuni Str. in Yerevan, Republic of Armenia.

The accused, Vazgen Hambardzum Pkhrikyan, signed an agreement with "Araratbank" OJSC on accepting bank cards as means of payment: afterwards, the bank installed a POS terminal at the commercial premises and the store started to accept payments with both cash and bank cards. The bank official provided trainings to Vazgen

Hambardzum Pkhrikyan and to the salesperson (witness, Hayastan Ararat Gasparyan) on the rules of POS terminal exploitation, as a result of which a relevant evidential document was signed.

The accused, Vazgen Hambardzum Pkhrikyan, with the assistance of persons still unknown to the investigation, thieved funds from bank accounts in the U.S. by means of counterfeit copies of underlying bank cards (via payments systems "Master Card" and "Armenian Card") and later legalized the illicit proceeds.

In particular, on October 3, 2008, the accused, Vazgen Hambardzum Pkhrikyan, accepted a payment from a counterfeit copy of bank card No. 5490998311026349, issued by the U.S. bank "MBNA America Bank", and transferred the thieved funds in the amount of 1,000,000 Armenian drams to the bank account of "Ava Decor" LLC with "Araratbank" OJSC.

Upon realizing that the large amount of 1,000,000 Armenian drams was proceeds of crime, and with the purpose of disguising the illicit origin of the funds, the accused, Vazgen Hambardzum Pkhrikyan, withdrew the funds in cash, deposited the funds into the cash register of the company as income from sales, and used the funds to make transfers from the bank account of the company, by means of registering the use of the illicit proceeds as incurred expenses.

For the actions committed, charges were pressed against Vazgen Hambardzum Pkhrikyan, pursuant to Clause 2, Part 2, Article 177 and Part 1, Article 190 of the Criminal Code of the Republic of Armenia.

On May 6, 2009, the criminal case with an indictment was filed to the Court.

Analyzed evidence supporting the conclusions of the Court

In the course of preliminary investigation and judicial proceedings, Vazgen Hambardzum Pkhrikyan pleaded not guilty in the charges pressed against him.

The Court regards such a position by the accused, Vazgen Hambardzum Pkhrikyan, as a strategy of defense, whereby he desired to avoid criminal liability; however, the committal of the offense was proven with the acquired and examined evidence, as follows.

- According to the testimony given in the course of the judicial proceeding by the witness, Hayastan Ararat Gasparyan, she had been serving as a salesperson from January 8, 2008, in the shoes store "Ava Decor" LLC, in ownership of Vazgen Hambardzum Pkhrikyan. During that time, the average price for a pair of shoes was between 5,500-7,500 Armenian drams. The store was open in the period from 10:00 to 20:00 o'clock. She had to pick her own days off, usually 1 or 2 days in a month, but, sometimes, Vazgen Hambardzum Pkhrikyan happened not to call her to work. On October 3, 2008, upon the initiative of Vazgen Hambardzum Pkhrikyan, she did not go to work as he had told her that newly arrived goods were to be delivered to the store. She did not know anything about the transaction in the amount of 1,000,000 Armenian drams, which was conducted on the same day.

Hayastan Ararat Gasparyan said that a POS terminal was installed in the store, but she had accepted no payments by means of this device. During her employment history in the store, the average daily income from sales was between 25,000-30,000 Armenian drams, and not a single case of daily sales income equal to 1,000,000 was recorded.

No other salesperson worked in the store, and Vazgen Hambardzum Pkhrikyan was the one replacing her during the days she was off; again, during the days she was off, not a single case of daily sales income equal to 1,000,000 was recorded.

- According to the testimony given in the course of judicial proceeding by the witness, Hakob Aram Sargsyan, he had been serving as head of Technical Division in the Plastic Cards Transactions Department of "Araratbank" OJSC since 2007. On September 24, 2008, an agreement was signed between "Araratbank" OJSC and "Ava Decor" LLC on accepting payments with bank cards, and a POS terminal was installed in the store. In October of 2008, he learned that "Armenian Card" CJSC had announced about a fraudulent sales transaction in the amount of 1,000,000 Armenian drams, which was conducted on September 24, 2008 with the POS terminal installed in the commercial premises of "Ava Decor" LLC; however, he did not remember whether or not he had received a written notification on the issue. In January of 2009, Vazgen Hambardzum Pkhrikyan, director of "Ava Decor" LLC, applied to the bank with a request to terminate the agreement and, eventually, returned the POS terminal to the bank.
- According to the testimony given in the course of the judicial proceeding by the witness, Grigor Vardan Tsolakyan, he had been recruited as a specialist in "Araratbank" OJSC in year 2007, and had been serving as head of Plastic Cards Transactions Department of the bank since September 2008. On September 24, 2008, an agreement was signed between "Araratbank" OJSC and "Ava Decor" LLC on accepting payments with bank cards, and a POS terminal was installed in the store. In October of 2008, the bank received an official letter from "Armenian Card" CJSC, indicating the fact that a suspicious sales transaction in the amount of 1,000,000 Armenian drams was conducted in the commercial premises of "Ava Decor" LLC on September 24, 2008; and that in January of 2009, Vazgen Hambardzum Pkhrikyan, director of "Ava Decor" LLC, applied to the bank with a request to terminate the agreement and, eventually, returned the POS terminal to the bank. In the foregoing case, a sales transaction with a bank card was recorded. Pursuant to chargeback rules, in case the chargeback is made within 120 days, the transaction shall be considered fraudulent; in this case, no factual chargeback had taken place. That is, without the cardholder's knowledge, a third party made a transaction with the bank card of the latter.

Grigor Vardan Tsolakyan indicated that the bank was not filing a claim within a civil petition, since it had not incurred any loss as a result of the transaction.

- The list of suspicious transactions in the official letter No. 166-08, received from “Armenian Card” CJSC on November 11, 2008; and the records of examination of the foregoing evidence from February 2, 2009.
- The official letter No. 3379-7, received from “Araratbank” OJSC on December 18, 2008, which indicated that a transaction in the amount of 1,000,000 Armenian drams was conducted with the POS terminal installed in the commercial premises of “Ava Decor” LLC. Pursuant to the same document, the transaction was considered fraudulent in conformity with the information provided by “Armenian Card” CJSC.
- The agreement signed on August 24, 2008, between “Araratbank” OJSC and “Ava Decor” LLC on accepting bank cards as means of payment in commercial premises; and the records of examination of the foregoing agreement.
- The official letter received on February 10, 2009, from the State Revenue Committee of the Republic of Armenia, which indicated that no customs registration were made on the name of “Ava Decor” LLC in the period from 2007 to 2008.
- The bank account statement of “Ava Decor” LLC, seized on February 19, 2009 from “Araratbank” OJSC.
- The official letter received on February 24, 2009, from the head of the State Register Agency of Legal Entities under the Ministry of Justice of the Republic of Armenia, which indicated that Vazgen Hambardzum Pkhrikyan was the sole founder and director of “Ava Decor” LLC.
- The expert opinion received on March 20, 2009, from the state non-commercial organization “National Bureau of Expert Examinations”, under the National Academy of Science of the Republic of Armenia, which confirmed that the documentary registration and accounting records of transactions were aimed at disguising the fact that Vazgen Hambardzum Pkhrikyan had thieved funds from bank customers through the POS terminal, thus, legalizing the funds in the amount of 1,000,000 Armenian drams by means of disguising the true nature and origin of the illicit proceeds.

Legal analysis by the Court

Upon assessing the evidence examined during the judicial proceeding, the Court establishes the fact that the accused, Vazgen Hambardzum Pkhrikyan, serving as the director of “Ava Decor” LLC, with the assistance of persons still unknown to the investigation, thieved funds in the amount of 1,000,000 Armenian drams from bank accounts in the U.S. by means of counterfeit copies of underlying bank cards (via payments systems “Master Card” and “Armenian Card”) and later legalized the illicit proceeds, thus, committing actions specified under Clause 2, Part 2, Article 177 and Part 1, Article 190 of the Criminal Code of the Republic of Armenia. The offence is rightfully identified, and Vazgen Hambardzum Pkhrikyan shall be subject to criminal liability pursuant to the foregoing articles.

In determining the punishment for the accused, Vazgen Hambardzum Pkhrikyan, the Court takes into consideration the character of the offense, the level of severity of social ramifications, and the absence of factors aggravating the liability.

As a factor mitigating the punishment, the Court takes into consideration that fact that the accused, Vazgen Hambardzum Pkhrikyan is young, has positive characteristics, with no prior convictions.

Although the accused, Vazgen Hambardzum Pkhrikyan pleaded not guilty, he petitioned the Court to implement the decision from June 19, 2009 of the National Assembly of the Republic of Armenia on Declaring Amnesty and to release him from serving the punishment: the prosecutor had no objections against the petition.

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

DECIDES

To declare Vazgen Hambardzum Pkhrikyan guilty, pursuant to Clause 2, Part 2, Article 177 and Part 1, Article 190 of the Criminal Code of the Republic of Armenia, and sentence him to imprisonment for a term of 2 (two) years and 6 (six) months, pursuant to Clause 2, Part 2, Article 177 of the Criminal Code of the Republic of Armenia; and to imprisonment for a term of 1 (one) year, without confiscation of property, pursuant to Part 1, Article 190 of the Criminal Code of the Republic of Armenia.

To impose a total punishment by sentencing Vazgen Hambardzum Pkhrikyan to imprisonment for a term of 3 (three) years, without confiscation of property, upon partial addition of punishments imposed on the bases of 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 2 (two) years, 7 (seven) months, and 9 (nine) days, by netting the preliminary detention term of 4 (four) months and 21 (twenty one) days from the total punishment term, without confiscation of property.

To implement Sub-clause 1, Clause 1 of the decision from June 19, 2009 of the National Assembly of the Republic of Armenia on Declaring Amnesty and release Vazgen Hambardzum Pkhrikyan from serving the punishment imposed by the Court.

To remove the provisional measure of arrest imposed on Vazgen Hambardzum Pkhrikyan and to immediately free him from the court room.

This Verdict may be appealed within a month from its publication, pursuant to appealing procedures.

JUDGE, ZHORA VARDANYAN