

Case No. EKD/0090/01/09

April 14, 2010

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, G. Poghosyan
Assisted by: A. Martirosyan
Participated by: Prosecutor, H. Sargsyan
Representative of the victim, A. Mnatsakanyan
Accused, A. Sargsyan
Counsels, K. Kamalyan, A. Atarbekyan, M. Tovmasyan, K. Grigoryan, V. Babayan

An open-court hearing on April 14, 2010 of the criminal case on charges against:

Arsen Hayk Sargsyan: born on February 15, 1980 in Yerevan, Republic of Armenia; Armenian by nationality; citizen of the Republic of Armenia; married; with three dependent persons under his care; in his words, with semi-higher education and bad health; founder of "ATA Mobile" LLC; with no previous convictions; under arrest since February 10, 2009; resided at 77 Gusan Sheram Str., Apt. 41, Yerevan, Republic of Armenia; 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.

Judicial background of the case

The criminal case No. 582012089 was instigated on February 2, 2009, with the decision of investigator H. Avetisyan from the Department of Investigations of the National Security Service of the Republic of Armenia, pursuant to Clause 1, Part 3, Article 177 and Clauses 1 and 2, Part 2, Article 190 of the Criminal Code of the Republic of Armenia.

Arsen Hayk Sargsyan was arrested on February 10, 2009.

With the decision from February 12, 2009 of investigator H. Avetisyan of the Investigative Department of the National Security Service of the Republic of Armenia, Arsen Hayk Sargsyan was identified as an accused, and charges were pressed against

him pursuant to Clause 1, Part 3, Article 177 and Clauses 1 and 2, Part 2, Article 190 of the Criminal Code of the Republic of Armenia.

With the decision from May 7, 2009 of investigator H. Avetisyan of the Investigative Department of the National Security Service of the Republic of Armenia, the charges pressed against Arsen Hayk Sargsyan were changed and supplemented, and new charges were 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.

On May 21, 2009, the criminal case with an indictment was filed to the Court.

With the decision from May 26, 2009 of the Common Jurisdiction Court (judge, G. Poghosyan) of Kentron and Nork-Marash Administrative Regions of Yerevan, the criminal case, instigated against Arsen Hayk Sargsyan, pursuant to Clause 1, Part 3, Article 177 and Clause 1, Part 3, Article 190 of the Criminal Code of the Republic of Armenia, was taken into proceedings, and with the decision from June 9, 2009, a judicial examination was assigned.

Charges were pressed against the accused, Arsen Hayk Sargsyan, pursuant to Clause 1, Part 3, Article 177 and Clause 1, Part 3, Article 190 of the Criminal Code of the Republic of Armenia, for the following actions: "Being the sole founder of "ATA Mobile" LLC and running a retail business of selling mobile phones in the rented premises of the store "Global Mobile", located at 27 Tumanyan Str., Yerevan, Republic of Armenia, Arsen Hayk Sargsyan undertook measures to obtain a POS terminal in order to accept payments for sales of mobile phones with bank cards: as a result, a POS terminal was installed in the store, pursuant to an agreement signed on June 23, 2008 between "ATA Mobile" LLC and "Inecobank" CJSC. Afterwards, Arsen Hayk Sargsyan acquired counterfeit copies of bank cards from individuals still unknown to the investigation, and, in the period from September 29 to October 25, 2008, by means of swiping the cards through the POS terminal with 18 transactions, he committed theft in an amount equal to 17,163,000 Armenian drams from several accounts of customers holding bank accounts with banks in the U.S.A. As a result, the proceeds of theft were transferred to the bank account of "ATA Mobile" LLC with "Inecobank" CJSC, showing as if payments were made for sales of phones from the store, thus, disguising the true nature and origin of the proceeds of theft in an amount equal to 17,163,000 Armenian drams, that is, legalizing a particularly large amount of illicit proceeds. Besides, in some cases, Arsen Hayk Sargsyan withdrew the proceeds of theft from the bank account of "ATA Mobile" LLC with "Inecobank" CJSC and used the funds for at his own discretion. In particular, on September 29, 2008, showing as if payments were made for sales of mobile phones from the store, Arsen Hayk Sargsyan thieved an amount equal to 427,000 Armenian drams from the bank account No. 4001383577 of a customer at "Chase Manhattan Bank USA" in the U.S.A., by means of swiping a counterfeit copy of bank card No. 5466264001383577 through the POS terminal installed in the store "Global Mobile", thus, transferring the amount to the bank account of "ATA Mobile" LLC with "Inecobank" CJSC and withdrawing the whole amount in cash. On October 3, 2008, with the same method, Arsen Hayk Sargsyan thieved an amount equal to 982,000 Armenian drams from the bank account No. 8311026349 of a customer at "MBNA America Bank" in the U.S.A., by means of swiping a counterfeit copy of bank card No. 5490998311026349 through the POS terminal installed in the store "Global Mobile", thus, transferring the amount to the

bank account of "ATA Mobile" LLC with "Inecobank" CJSC and withdrawing the whole amount in cash. On October 8, 2008, with the same method, Arsen Hayk Sargsyan thieved an amount equal to 2,946,000 Armenian drams from the bank account No. 9370256355 of a customer at "MBNA America Bank" in the U.S.A., by means of swiping (with 3 transactions) a counterfeit copy of bank card No. 5490999370256355 through the POS terminal installed in the store "Global Mobile", thus, transferring the amount to the bank account of "ATA Mobile" LLC with "Inecobank" CJSC and withdrawing the whole amount in cash. On October 17, 2008, with the same method, Arsen Hayk Sargsyan thieved an amount equal to 5,892,000 Armenian drams from the bank account No. 0213934498 of a customer at "MBNA America Bank" in the U.S.A., by means of swiping (with 6 transactions) a counterfeit copy of bank card No. 5490990213934498 through the POS terminal installed in the store "Global Mobile", thus, transferring the amount to the bank account of "ATA Mobile" LLC with "Inecobank" CJSC and withdrawing the whole amount in cash. On October 25, 2008, with the same method, Arsen Hayk Sargsyan thieved an amount equal to 6,916,000 Armenian drams from the bank account No. 0089627168 of a customer at "MBNA America Bank" in the U.S.A., by means of swiping (with 7 transactions) a counterfeit copy of bank card No. 5490990089627168 through the POS terminal installed in the store "Global Mobile", thus, transferring the amount to the bank account of "ATA Mobile" LLC with "Inecobank" CJSC; however, he did not manage to withdraw the whole amount in cash, since the crime was already disclosed".

In the course of the preliminary investigation, the accused, Arsen Hayk Sargsyan, did not plead guilty, denying his committal of the criminal actions. Concurrently, according the indictment, he gave testimony that: "He is the founder of "ATA Mobile" LLC. The store "Global Mobile", located at 27 Tumanyan Str., Yerevan, Republic of Armenia, is run by "ATA Mobile" LLC, and the store is the place where he runs his business of selling mobile phones. He has an agreement with "Inecobank" CJSC, which installed a POS terminal in the store, pursuant to this agreement. The POS terminal provides the opportunity for the salespersons of the store to accept payments for sales with bank cards. The rules of exploitation of the POS terminal are as follows: with an intention of making a payment with a "Master Card", the customer provides the card, which is then swiped through the POS terminal, and in case a code "00" shows on the screen of the POS terminal, the transaction is considered processed, but in case a code other than "00" (i.e. "01" or other) shows on the screen of the POS terminal, then the transactions is not considered processed, and the salesperson is ought to call and inform the bank about the problem. The store has had a history of only 8 transactions with the POS terminal, while he remembers the details of the last 2 transactions only. These transactions were made on October 17 and 25, 2008, respectively. On October 17, 2008, a tall man (about 30-33 years old and speaking a dialect common to Armenians from Diaspora) walked into the store and expressed his interest to buy 12 phones "8800 Arte" and to pay with a "Master Card". The customer gave him the card, which he swiped through the POS terminal and asked the customer to input the pin code into the POS terminal. The customer dialed the pin code on the POS terminal, and a slip was printed with a code "00" written on it. He charged 5,982,000 Armenian drams for the 12 phones. Since he did not have 12 "8800 Arte" phones in the store, he ensuring that the slip included the code "00" and reached an oral agreement with the customer, so that the latter would return back to the store in

a few days to pick up the phones. On October 21, 2008, he withdrew the amount of 5,982,000 Armenian drams from the bank account of "ATA Mobile" LLC with "Inecobank" CJSC and went to the store. On the same day, the customer came to the store to pick up the phones. He told the customer that the phones would arrive in the evening or the next day. Hearing this, the customer got upset and demanded the money back. In avoiding a conflict, he returned an amount of 5,100,000 Armenian drams and kept the rest. Taking the money, the customer left the store and never returned again. The second instance occurred on October 25, 2008. In this case, a Russian man (about 40-42 years old) walked into the store and expressed his interest in buying mobile phones for a total amount of approximately 7,000,000 Armenian drams. Just like in the previous case, the customer gave him the card, which he swiped through the POS terminal and asked the customer to input the pin code into the POS terminal. The customer dialed the pin code on the POS terminal, and a slip was printed with a code "00" written on it. At that time, he did not have the required number of phones for the customer, and, again, he reached an oral agreement with the customer to provide him the phones in a few days. After reaching an agreement, the customer left the store, and he did not see him thereafter. On October 27, 2008, they called and invited him to "Inecobank" CJSC. He was explained that a thieved bank card was serviced in his store, and that he had facilitated a fraudulent transaction. After that, he signed a compensation agreement (in an amount equal to 5,982,000 Armenian drams) with "Inecobank" CJSC, and "ATA Mobile" CJSC compensated the whole amount. He did not withdraw the underlying amount of the transaction from October 25, 2008. Knowing that in case of servicing "Visa Electron" cards, the customer had to dial the pin code on the POS terminal, and that he had no rights to look at the pin code, he serviced the "Master Cards" in the same way during the foregoing transactions and did not look at the pin code dialed on the POS terminal by the customer. He did not order the phones, since he waited for the amount to become available on the bank account, so that he could withdraw it and buy the required phones. He did not ask for any documents, and the customers refrained from leaving their phone numbers, expressing their readiness to come and pick up the phones. On October 21, 2008, he went to "Inecobank" CJSC and withdrew the amount of the underlying transaction from October 17, 2008 from the bank account of "ATA Mobile" LLC. He returned 5,100,000 Armenian drams from the total amount of 5,982,000 Armenian drams to the customer and kept the rest, while paying his employees' salaries and other business-related expenses".

The preliminary investigation authority proved the charges pressed against the accused, based on testimonies of witnesses and the representative of the victim, as well as based on material evidences, other documents and conclusions of experts.

Circumstances established by the Court

The judicial examination established that the accused, Arsen Hayk Sargsyan, was the founder of "ATA Mobile" LLC, and although his friend, the witness, Hakob Ktikyan, was assigned as the director of the LLC, the accused, Arsen Hayk Sargsyan, was the one running the activities of the LLC, including the retail business of selling mobile phones in the premises of the rented store "Global Mobile", located at 27 Tumanyan Str., Yerevan, Republic of Armenia. The accused, Arsen Hayk Sargsyan, obtained a POS

terminal in order accept payments for sales of mobile phones with bank cards, and, as a result, a POS terminal was installed in the store, pursuant to an agreement signed on June 23, 2008 between "ATA Mobile" LLC and "Inecobank" CJSC. Afterwards, the accused, Arsen Hayk Sargsyan, acquired counterfeit copies of bank cards from individuals still unknown to the investigation and, in the period from September 29 to October 25, 2008, by means of swiping the cards through the POS terminal with 18 transactions (ignoring the code shown on the POS terminal inhibiting the transaction), he committed theft in an amount equal to 17,163,000 Armenian drams from several accounts of customers holding bank accounts with banks in the U.S.A., while showing as if payments were made for sales of phones from the store. The accused, Arsen Hayk Sargsyan, withdrew part (in equivalence of 10,247,000 Armenian drams) of the total amount transferred to the bank account of "ATA Mobile" LLC and did not manage to withdraw the remaining amount of 6,916,000 Armenian drams, since the crime was already disclosed.

In particular, on September 29, 2008, showing as if payments were made for sales of phones from the store, the accused, Arsen Hayk Sargsyan thieved an amount equal to 427,000 Armenian drams from the bank account No. 4001383577 of a customer at "Chase Manhattan Bank USA" in the U.S.A., by means of swiping a counterfeit copy of bank card No. 5466264001383577 through the POS terminal installed in the store "Global Mobile", thus, transferring the amount to the bank account of "ATA Mobile" LLC with "Inecobank" CJSC and withdrawing the whole amount in cash.

On October 3, 2008, with the same method, the accused, Arsen Hayk Sargsyan thieved an amount equal to 982,000 Armenian drams from the bank account No. 8311026349 of a customer at "MBNA America Bank" in the U.S.A., by means of swiping a counterfeit copy of bank card No. 5490998311026349 through the POS terminal installed in the store "Global Mobile", thus, transferring the amount to the bank account of "ATA Mobile" LLC with "Inecobank" CJSC and withdrawing the whole amount in cash.

On October 8, 2008, with the same method, the accused, Arsen Hayk Sargsyan thieved an amount equal to 2,946,000 Armenian drams from the bank account No. 9370256355 of a customer at "MBNA America Bank" in the U.S.A., by means of swiping (with 3 transactions) a counterfeit copy of bank card No. 5490999370256355 through the POS terminal installed in the store "Global Mobile", thus, transferring the amount to the bank account of "ATA Mobile" LLC with "Inecobank" CJSC and withdrawing the whole amount in cash.

On October 17, 2008, with the same method, the accused, Arsen Hayk Sargsyan thieved an amount equal to 5,892,000 Armenian drams from the bank account No. 0213934498 of a customer at "MBNA America Bank" in the U.S.A., by means of swiping (with 6 transactions) a counterfeit copy of bank card No. 5490990213934498 through the POS terminal installed in the store "Global Mobile", thus, transferring the amount to the bank account of "ATA Mobile" LLC with "Inecobank" CJSC and withdrawing the whole amount in cash.

On October 25, 2008, with the same method, the accused, Arsen Hayk Sargsyan thieved an amount equal to 6,916,000 Armenian drams from the bank account No. 0089627168 of a customer at "MBNA America Bank" in the U.S.A., by means of

swiping (with 7 transactions) a counterfeit copy of bank card No. 5490990089627168 through the POS terminal installed in the store "Global Mobile", thus, transferring the amount to the bank account of "ATA Mobile" LLC with "Inecobank" CJSC; however, he did not manage to withdraw the whole amount in cash, since the crime was already disclosed.

For part of the transactions, chargeback claims were received in an amount of 6,519,000 Armenian drams, which was entirely compensated by "Inecobank" CJSC, by means of demanding the amount from the accused, Arsen Hayk Sargsyan, and recovering the funds at the expense of "ATA Mobile" LLC with the mediation of the latter.

Examination and assessment of evidence

In the course of the judicial examination, the accused, Arsen Hayk Sargsyan, did not plead guilty and gave testimony that that he was the founder of "ATA Mobile" LLC and was running a retail business of selling mobile phones at the rented premises of the store "Global Mobile", located at 27 Tumanyan Str., Yerevan, Republic of Armenia. Although his friend was assigned as the director of the LLC, it was only a formality, since he was the one running the activities of the LLC. Pursuant to an agreement with "Inecobank" LLC, he obtained a POS terminal, which was installed in the premises of the store, making it possible to accept payments from customers with credit cards. Several sales transactions were conducted through the POS terminal, while two transactions from the total were conducted by him. In case of the first transaction, part of the transaction amount, which was transferred to the bank account of the LLC, was maintained as profit, while the remaining amount of 5,100,000 Armenian drams was refunded to the customer, since he was upset, when he found out that he would not get his phones on the day promised. In case of the second transaction, the transaction amount was left on the bank account of the LLC, since the bank had found out that a fraudulent transaction was conducted. In cases of both transactions, he provided the POS terminal to the customers, and ensured that the transaction was processed as soon as the customers dialed their pin codes on the POS terminal and the code "00" was produced. Since he had no doubts with regard to the customers, he did not demand their passports. Afterwards, in cooperation with the bank, he recovered almost 6,000,000 Armenian drams from the total amount of the loss caused to the bank.

The representative of the victim ("Inecobank" CJSC), Arman Mnatsakanyan, gave testimony that the accused, Arsen Hayk Sargsyan, conducted two transactions (5,892,000 Armenian drams on October 17, 2008 and 6,916,000 Armenian drams on October 25, 2008) by means of using copies of bank cards belonging to customers of banks in the U.S.A., and that the funds were transferred to the bank account of "ATA Mobile" LLC with "Inecobank" CJSC, where a total of 5,892,000 Armenian drams were withdrawn from, while the remaining amount of 6,916,000 Armenian drams was frozen. Chargeback claims were received with regard to the amount other than 6,916,000 Armenian drams, the claims were paid by the bank, and the losses incurred by the bank were recovered by the accused. The transactions were conducted through the POS terminal, which was installed in the store of "ATA Mobile" LLC, pursuant to

the agreement with "Inecobank" CJSC. Although the POS terminal produced the code "01" during the transactions, which meant that the transactions were not authenticated, and the issuing bank should be contacted, the transaction was not terminated, and the funds were thieved (after the security system was surpassed by means of inputting the pin code several times): 10,000,000 Armenian drams from the proceeds of theft were withdrawn in cash from the bank account of "ATA Mobile" LLC by the accused, Arsen Hayk Sargsyan.

The witness, Aghavni Poghosyan, working as a salesperson at the store "Global Mobile", gave testimony that the representative of the bank was the one, who taught the other salesperson, Anna Okishor, and her how to accept payments through the POS terminal. The payments she had accepted through the POS terminal were around 200,000 Armenian drams, since, for larger payments, she had turned to the accused, Arsen Hayk Sargsyan, who had learned how to use the POS terminal from her. Such transactions, including the one by an individual speaking a dialect common to Armenians from Diaspora, and the other one by an individual speaking Russian, were conducted by her.

The witness, Anna Okishor, working as a salesperson at the store "Global Mobile", gave testimony that the representative of the bank was the one, who taught the other salesperson, Aghavni Poghosyan, and her how to accept payments through the POS terminal: however, she never accepted payments through the POS terminal and had no information on such transactions.

The witness, Hakob Ktikyan, gave testimony that he had given his consent to the proposal of his friend, the accused, Arsen Hayk Sargsyan, and was assigned as the director of "ATA Mobile" LLC. However, this was only a formality, since the real director was the accused, Arsen Hayk Sargsyan, who had asked him to sign the documents presented to him, including bank documents, which were possibly used to receive funds. He remembered that he had signed an agreement with a bank, upon the solicitation of the accused, Arsen Hayk Sargsyan.

The witness, David Serobyan, working as the senior specialist in cards department of "Inecobank" CJSC, gave testimony that, in accordance with the agreement signed between "Inecobank" CJSC and "ATA Mobile" LLC on June 23, 2008, he went to the mobile phones' store "Global Mobile" of "ATA Mobile" LLC, installed the POS terminal therein, and taught the salespersons of the store how to use the POS terminal, explained the rules for servicing bank cards, and provided a written guidance with explanations in Armenian, Russian, and English texts.

The charges pressed against the accused, Arsen Hayk Sargsyan, are also proved based on the following documents, identified as material evidence under the decisions from May 7, 2009 on "Identifying as material evidence" and on "Identifying documents as evidence and attaching to the criminal case":

The photocopies of slips No. 000015, 000016, 000017, 000018, 000019, 000020 from October 17, 2008 and No. 000021, 000022, 000023, 000024, 000025, 000026, 000027 from October 25, 2008, as produced by the POS terminal No. 29010283 installed in the mobile phones' store "Global Mobile".

The cash register order No. 0027164 from October 6, 2008, which indicates that the accused, Arsen Hayk Sargsyan, has withdrawn a total of 428,000 Armenian drams from the bank account No. 2224090 of "ATA Mobile" LLC with "Inecobank" LLC.

The cash register order No. 0027165 from October 7, 2008, which indicates that the accused, Arsen Hayk Sargsyan, has withdrawn a total of 1,013,000 Armenian drams from the bank account No. 2224090 of "ATA Mobile" LLC with "Inecobank" LLC.

The cash register order No. 0027168 from October 10, 2008, which indicates that the accused, Arsen Hayk Sargsyan, has withdrawn a total of 2,853,000 Armenian drams from the bank account No. 2224090 of "ATA Mobile" LLC with "Inecobank" LLC.

The cash register order No. 0027173 from October 21, 2008, which indicates that the accused, Arsen Hayk Sargsyan, has withdrawn a total of 5,694,000 Armenian drams from the bank account No. 2224090 of "ATA Mobile" LLC with "Inecobank" LLC.

The agreement signed on June 23, 2008 between "Inecobank" CJSC and "ATA Mobile" LLC on "Accepting bank cards as means of payment in commercial premises".

The extracts from petition claims received from "Master Card".

The inventory registers of the store "Global Mobile", which indicate information on the goods delivered into the inventory of the store.

The list of suspicious transactions (including transactions through the POS terminal, installed in the store "Global Mobile") conducted by means of "Master Cards" swiped through POS terminals registered in the system of "Armenian Card" CJSC.

The registers of the store "Global Mobile", which include information on the good sold from the store.

The account turnover of the bank account No. 205002224090-1001 of "ATA Mobile" LLC with "Inecobank" CJSC, extracted for the period from September 1, 2008 to January 1, 2009.

The records of examination from May 4, 2009, which indicate that the slips from the POS terminal, installed in the store "Global Mobile", have been examined.

The records of examination and seizure from February 25, 2009.

The records of examination from May 7, 2009, which indicate that simplified tax payer's profit and loss registers of "ATA Mobile" LLC and the inventory registers of the store "Global Mobile", located at 27 Tumanyan Str., Yerevan, Republic of Armenia, have been examined.

The records of examination from May 4, 2009, which indicate that the list (provided by "Armenian Card" CJSC) of suspicious transactions, conducted by means of "Master Cards" swiped through POS terminals registered in the system of "Armenian Card" CJSC, has been examined.

The records of examination from May 4, 2009, which indicate that the account turnover (provided by Arsen Hayk Sargsyan) of "ATA Mobile" LLC with "Inecobank" CJSC, extracted for the period from September 1, 2008 to January 1, 2009, and the extracts from petition claims (provided by "Inecobank" CJSC with its official letter No. 946) received from "Master Card" have been examined.

The records of examination from May 4, 2009, which indicate that the registers (provided by Arsen Hayk Sargsyan) of goods sold from the store "Global Mobile", located at 27 Tumanyan Str., Yerevan, Republic of Armenia, of "ATA Mobile" LLC have been examined.

The records of examination from May 4, 2009, which indicate that the agreement (provided by Arsen Hayk Sargsyan) on "Accepting bank cards as means of payment in commercial premises", the appendix of the agreement on "Guidance for the person servicing cards in the infrastructure of the payment system", and the "Table of authentication codes" have been examined.

The official letter No. 946, received on April 18, 2009 from "Inecobank" CJSC, which indicates that, pursuant to the rules of "Master Card", the maximum period for presenting chargeback claims is 540 days, and other chargeback claims can still be presented to "Inecobank" CJSC during this period.

The conclusion of the judicial-accounting examination No. 09-0361 from March 31, 2009, which indicates that the transactions from October 17 and 25, 2008, were documented and registered in the accounting system. The registration of the transactions, as if goods were sold, was actually aimed at the concealing of the fact of theft (through the POS terminal installed in the store of "ATA Mobile" LLC) of 5,892,000 Armenian drams from the bank account No. 0213934498 of the customer at "MBNA America Bank" in the U.S.A. and of 6,916,000 Armenian drams from the bank account No. 0089627168 of a customer at "MBNA America Bank" in the U.S.A., thus, legalizing proceeds of theft in total of 12,808,000 Armenian drams, by means of disguising the true nature and origin of the illicit proceeds. From the standpoint of accounting provisions and the data obtained in the course of the preliminary investigation, the transactions, in essence, are actually considered consistent. As a result of these transactions, two customers at "MBNA America Bank" in the U.S.A. incurred direct losses (caused by "ATA Mobile" LLC) in amounts of 5,892,000 and 6,916,000 Armenian drams, respectively, while an indirect loss of 12,080,000 Armenian drams was caused to "Inecobank" CJSC.

The conclusion of the judicial-accounting examination No. 09-0779 from May 5, 2009, which indicates that the foregoing transactions from September 29, October 3, and October 8, 2008, were documented and registered in the accounting system. In such circumstances, the registration of the transactions, as if goods were sold, was actually aimed at the concealing of the fact of theft (through the POS terminal installed in the store of "ATA Mobile" LLC) of 427,000 Armenian drams from the bank account No. 4001383577 of the customer at "Chase Manhattan Bank USA NA" in the U.S.A., of 982,000 Armenian drams from the bank account No. 8311026349 of a customer at "MBNA America Bank" in the U.S.A., and of 2,946,000 Armenian drams from the bank account No. 9370256355 of a customer at "MBNA America Bank" in the U.S.A., thus, legalizing proceeds of theft in total of 4,355,000 Armenian drams, by means of disguising the true nature and origin of the illicit proceeds. From the standpoint of accounting provisions and the data obtained in the course of the preliminary investigation, the transactions, in essence, are actually considered consistent. As a result of these transactions, two customers at "MBNA America Bank" in the U.S.A. incurred direct losses (caused by "ATA Mobile" LLC) in amounts of 982,000 and 2,946,000 Armenian drams, respectively, and one customer at "Chase Manhattan

Bank USA NA” in the U.S.A. incurred a direct loss (caused by “ATA Mobile” LLC) in an amount of 427,000 Armenian drams, while an indirect loss of 4,355,000 Armenian drams was caused to “Inecobank” CJSC.

Analysis of the Court

In analyzing the charges pressed against the accused, Arsen Hayk Sargsyan, and assessing in conjunction all the evidence examined under the judicial examination, the Court establishes that the preliminary investigation authority has rightfully revealed the factual circumstances of the criminal case, which were also proved based on the evidence examined under the judicial examination, and has given a rightful legal-criminal assessment to the actions of the accused, Arsen Hayk Sargsyan, while pressing charges 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 accused, Arsen Hayk Sargsyan, shall be sentenced pursuant to the foregoing articles.

In determining the punishment for the accused, Arsen Hayk Sargsyan, the Court takes into consideration the character of the offense, the severity of social ramifications, his personal characteristics, and the factors mitigating or aggravating the liability and punishment. As factors mitigating the liability and punishment for the accused, Arsen Hayk Sargsyan, the Court takes into consideration the fact that he is positively characterized in his place of residence; he has three dependent persons under his care, while two of them are underage children; and he has no prior convictions. No factors aggravating the liability and punishment for the accused, Arsen Hayk Sargsyan, were found under the judicial examination.

In considering the question of imposing an additional punishment on the accused, Arsen Hayk Sargsyan, in the form of confiscation of property, the Court establishes that such a punishment shall be imposed pursuant to Part 4, Article 55 of the Criminal Code of the Republic of Armenia.

In considering the question of maintaining the arrest imposed on the property (bank accounts of “ATA Mobile” LLC) of the accused, Arsen Hayk Sargsyan, the Court establishes that the arrest shall be maintained as a buffer for further confiscations and possible recoveries of material claims.

In considering the question of keeping the material evidence, the Court establishes that the documents, identified as material evidence, shall be kept with the criminal case.

In considering the question of provisional measure imposed on the accused, Arsen Hayk Sargsyan, the Court establishes that the provisional measure imposed on the accused, Arsen Hayk Sargsyan, shall be maintained, until the Verdict has entered into force.

Based on the foregoing and guided by Articles 119, 357-360, 365, and 369 of the Criminal Procedure Code of the Republic of Armenia, the Court:

DECIDES

To declare Arsen Hayk Sargsyan 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 to sentence him to imprisonment for a term of 5 (five) years, with confiscation of property in equivalence of 17,163,000 (seventeen million and hundred sixty-three thousand) Armenian drams, 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, with confiscation of property in equivalence of the illicit proceeds in the amount of 17,163,000 (seventeen million and hundred sixty-three thousand) Armenian drams, while applying confiscation on the balance of the bank account of “ATA Mobile” LLC with “Inecobank” CJSC and on the amount of 6,585,294 Armenian drams paid (as compensation of losses) to “Inecobank” CJSC by “ATA Mobile” LLC, through the mediation of Arsen Hayk Sargsyan.

To add 2 (two) years from the punishment imposed pursuant to Clause 1, Part 3, Article 190 of the Criminal Code of the Republic of Armenia to the punishment imposed pursuant to Clause 1, Part 3, Article 177 of the Criminal Code of the Republic of Armenia, by means of a partial addition of main punishments and a full addition of additional punishments, pursuant to Parts 4 and 5, Article 66 of the Criminal Code of the Republic of Armenia; and to impose a total punishment in the form of imprisonment for a term of 9 (nine) years, with confiscation of property in equivalence of 17,163,000 (seventeen million and hundred sixty-three thousand) Armenian drams and with confiscation of property in equivalence of the illicit proceeds in the amount of 17,163,000 (seventeen million and hundred sixty-three thousand) Armenian drams, while applying the confiscation on the balances of the bank account of “ATA Mobile” LLC with “Inecobank” CJSC and on the amount of 6,585,294 Armenian drams paid (as compensation of losses) to “Inecobank” CJSC by “ATA Mobile” LLC, through the mediation of Arsen Hayk Sargsyan. The punishment shall be born in the penitentiary institution under the Ministry of Justice of the Republic of Armenia. The beginning of the term shall be considered February 10, 2009.

To keep the documents, identified as material evidence, with the criminal case.

To maintain the arrest imposed on the property of Arsen Hayk Sargsyan.

To maintain the provisional measure imposed on Arsen Hayk Sargsyan, until the Verdict has entered into force.

This Verdict may be appealed to the Court of Appeals of the Republic of Armenia within a month from its official publication.

JUDGE, G. POGHOSYAN

(Extract)

Case No. EKD/0090/01/10

October 14, 2010

Yerevan, Republic of Armenia

VERDICT

IN THE NAME OF THE REPUBLIC OF ARMENIA

CRIMINAL COURT OF APPEALS OF THE REPUBLIC OF ARMENIA

Presiding Judge:	M. Rehanyan
Judges:	A. Danielyan, M. Arghamanyan
Assistants:	A. Hambardzumyan, M. Melkonyan
Prosecutor:	H. Sargsyan
Counsel:	V. Babayan

An open-court examination of the appeals filed by the counsel, K. Grigoryan, and the victim, against the verdict issued on April 14, 2010 by the Common Jurisdiction Court in Kentron and Nork-Marash Administrative Regions of Yerevan on the offender, Arsen Sargsyan, charges 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:

(...)

DECIDES

To maintain the legal force of the verdict issued on April 14, 2010 by the Common Jurisdiction Court in Kentron and Nork-Marash Administrative Regions of Yerevan on the offender, Arsen Sargsyan, charges 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 and to reject the appeals filed by the counsel and the victim.

This Verdict may be appealed to Court of Cassation of the Republic of Armenia within a month from its publication.

PRESIDING JUDGE, M. REHANYAN

COURT OF CASSATION OF THE REPUBLIC OF ARMENIA

CRIMINAL CHAMBER

VERDICT ON LEAVING THE CASSATION APPEAL UNEXAMINED

Presiding Judge: D. Avetisyan

Judges: H. Asatryan, S. Ohanyan, E. Danielyan, H. Ghukasyan, A. Poghosyan

Assistant: M. Petrosyan

Counsel: K. Grigoryan

Examining the question of satisfying/rejecting the cassation appeal filed by the counsel, K. Grigoryan, of the offender, Arsen Sargsyan, against the verdict issued on October 14, 2010 by the Criminal Court of Appeals of the Republic of Armenia on the offender, Arsen Sargsyan, charges 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:

ESTABLISHES

1. Judicial Background of the Case

1. Criminal case No. 58202109 was instigated on February 2, 2009 by the Investigative Department of the National Security Service adjunct to the Government of the Republic of Armenia, pursuant to Clause 1, Part 3, Article 177, Clauses 1 and 2, Part 2, Article 190, and Clauses 1 and 2, Part 2, Article 34-190 of the Criminal Code of the Republic of Armenia, for a group of persons, in prior agreement, thieved a particularly large amount of 12,808,000 Armenian drams, legalized 5,892,000 Armenian drams from the total amount of the proceeds of crime, and attempted to legalize the remaining 6,916,000 Armenian drams from the total amount of the proceeds of crime.

On February 10, 2009, Arsen Hayk Sargsyan was arrested. Upon the decision from February 12, 2009 of the preliminary investigation authority, Arsen Hayk Sargsyan was indicted, and charges were pressed against him pursuant to Clause 1, Part 3, Article 177, Clauses 1 and 2, Part 2, Article 190, and Clauses 1 and 2, Part 2, Article 34-190 of the Criminal Code of the Republic of Armenia.

Upon the verdict from February 13, 2009 of the Common Jurisdiction Court of First Instance in Kentron and Nork-Marash Administrative Regions of Yerevan, a provisional measure in the form of detention was imposed on accused, Arsen Hayk Sargsyan.

On May 7, 2009, the charges pressed against Arsen Hayk Sargsyan were changed, supplemented, and new charges were 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.

On May 21, the criminal case with an indictment was filed to the Common Jurisdiction Court of First Instance in Kentron and Nork-Marash Administrative Regions of Yerevan (hereinafter: Court of First Instance).

2. Upon the verdict from April 14, 2010 of the Court of First Instance, Arsen Hayk Sargsyan was declared 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. He was sentenced to imprisonment for a term of 5 years, with confiscation of property in equivalence of 17,163,000 Armenian drams, pursuant to Clause 1, Part 3, Article 177 of the Criminal Code of the Republic of Armenia, and for a term of 7 years, with confiscation of illicit proceeds in equivalence of 17,163,000 Armenian drams (with applying of confiscation on the balances of bank accounts of "ATA Mobile" LLC with "Inecobank" CJSC and on the funds in the amount of 6,585,294 Armenian drams, paid as compensation of losses from "ATA Mobile" LLC to "Inecobank" CJSC with the mediation of Arsen Hayk Sargsyan), pursuant to Clause 1, Part 3, Article 190 of the Criminal Code of the Republic of Armenia.

Upon partial addition of the punishments, pursuant to Article 66 of the Criminal Code of the Republic of Armenia, a final punishment in the form of imprisonment for a term of 9 years was imposed on Arsen Hayk Sargsyan, with confiscation of property in equivalence of 17,163,000 Armenian drams and of illicit proceeds in equivalence of 17,163,000 Armenian drams (with applying of confiscation on the balances of bank accounts of "ATA Mobile" LLC with "Inecobank" CJSC and on the funds in the amount of 6,585,294 Armenian drams, paid as compensation of losses from "ATA Mobile" LLC to "Inecobank" CJSC with the mediation of Arsen Hayk Sargsyan).

3. In examining the criminal case upon the appeal filed by K. Grigoryan (acting as the counsel of accused, Arsen Hayk Sargsyan), the Court of Appeals issued a verdict on October 14, 2010 on rejecting the appeal and keeping in force the court verdict issued by the Court of First Instance on April 14, 2010.

4. K. Grigoryan (acting as the counsel of accused, Arsen Hayk Sargsyan) filed a cassation appeal against the verdict issued by the Court of Appeals on April 14, 2010.

The cassation appeal was taken into examination, pursuant to the decision from December 21, 2010 of the Court of Cassation.

No answer to the cassation appeal was filed by the participants of the judicial proceeding.

2. Factual Circumstances of the Case

5. Arsen Hayk Sargsyan was sentenced for he, being the sole founder of "ATA Mobile" LLC and running a retail business of selling mobile phones in the rented premises of the store "Global Mobile" (located at 27 Tumanyan Str., Yerevan, Republic of Armenia) undertook measures to obtain a POS terminal in order accept payments from sales of mobile phones with bank cards: as a result, a POS terminal was installed in the store, pursuant to an agreement signed on June 23, 2008 between "ATA Mobile" LLC and

“Inecobank” CJSC. Afterwards, Arsen Hayk Sargsyan acquired counterfeit copies of bank cards from persons unknown to the investigation, and, in the period from September 29 to October 25, 2008, by means of swiping the cards through the POS terminal with 18 transactions, he thieved an amount equal to 17,163,000 Armenian drams from several accounts of customers holding bank accounts with banks in the U.S.A. As a result, the proceeds of theft were transferred to the bank account of “ATA Mobile” LLC with “Inecobank” CJSC, showing as if payments were accepted from sales of phones from the store, thus, disguising the true nature and origin of the proceeds of theft in an amount equal to 17,163,000 Armenian drams; that is, he legalized a particularly large amount of illicit proceeds. Arsen Hayk Sargsyan withdrew in cash part of the proceeds of theft from the bank account of “ATA Mobile” LLC with “Inecobank” CJSC and used the funds at his own discretion.

In particular, on September 29, 2008, showing as if payments were accepted from sales of mobile phones, Arsen Hayk Sargsyan thieved an amount equal to 427,000 Armenian drams from the bank account No. 4001383577 of a customer at “Chase Manhattan Bank USA” in the U.S.A., by means of swiping a counterfeit copy of bank card No. 5466264001383577 through the POS terminal installed in the store “Global Mobile”, thus, transferring the proceeds to the bank account of “ATA Mobile” LLC with “Inecobank” CJSC and personally withdrawing the funds in cash.

On October 3, 2008, Arsen Hayk Sargsyan thieved an amount equal to 982,000 Armenian drams from the bank account No. 8311026349 of a customer at “MBNA America Bank” in the U.S.A., by means of conducting a similar transaction with a counterfeit copy of bank card No. 5490998311026349, thus, transferring the proceeds to the bank account of “ATA Mobile” LLC with “Inecobank” CJSC and personally withdrawing the funds in cash.

On October 8, 2008, Arsen Hayk Sargsyan thieved an amount equal to 2,946,000 Armenian drams from the bank account No. 9370256355 of a customer at “MBNA America Bank” in the U.S.A., by means of conducting three similar transactions with a counterfeit copy of bank card No. 5490999370256355, thus, transferring the proceeds to the bank account of “ATA Mobile” LLC with “Inecobank” CJSC and personally withdrawing the funds in cash.

On October 17, 2008, Arsen Hayk Sargsyan thieved an amount equal to 5,892,000 Armenian drams from the bank account No. 0213934498 of a customer at “MBNA America Bank” in the U.S.A., by conducting six similar transactions with a counterfeit copy of bank card No. 5490990213934498, thus, transferring the proceeds to the bank account of “ATA Mobile” LLC with “Inecobank” CJSC and personally withdrawing the funds in cash.

On October 25, 2008, Arsen Hayk Sargsyan thieved an amount equal to 6,916,000 Armenian drams from the bank account No. 0089627168 of a customer at “MBNA America Bank” in the U.S.A., by means conducting seven similar transactions with a counterfeit copy of bank card No. 5490990089627168, thus, transferring the proceeds to the bank account of “ATA Mobile” LLC with “Inecobank” CJSC; however, he did not manage to withdraw all the funds in cash, since the crime was already disclosed.

3. Grounds, Reasoning, and Requests under the Cassation Appeal

The cassation appeal is examined in the framework of the following grounds and with the following reasoning:

6. The author of the appeal argues that the Court of Appeals has violated several provisions of material and judicial laws, by keeping the court verdict on the conviction of Arsen Hayk Sargsyan in force. In particular, the following provisions were violated: Article 21 of the Constitution of the Republic of Armenia, Articles 177 and 190 of the Criminal Code of the Republic of Armenia, and Articles 18, 23, 25, 107, 108, 127, 216, 353, 358, 360, and 365 of the Criminal Procedure Code of the Republic of Armenia.

In substantiating his argument, the author presents and analyzes the factual circumstances of this case, and draws a conclusion that the charges pressed against Arsen Hayk Sargsyan are groundless and illegal. According to author of the appeal, the conclusion drawn on the guilt of the accused, as presented in the court verdict issued by the Court of Appeals, are based on assumptions and are not backed by a sufficient combination of relevant, interrelated, and reliable evidences.

7. Based on the foregoing, the author of the appeal solicits the reversion of the court verdict (issued by the Court of Appeals on October 14, 2010) and the acquittal of the accused, Arsen Hayk Sargsyan.

4. Reasoning and Conclusion of the Court of Cassation

The Court of Cassation establishes that a problem of ensuring equal application of the law is inherent to this case, relating to the correct interpretation of the elements of crime in the offence of legalizing illicit proceeds (money laundering), as specified under Article 190 of the Criminal Code of the Republic of Armenia.

Therefore, before considering the question raised in the appeal, the Court of Cassation finds it necessary to examine the elements of crime in the offence of legalizing illicit proceeds (money laundering), as specified under Article 190 of the Criminal Code of the Republic of Armenia, in order to ensure equal application of the law in criminal prosecutions with this offence.

1. Elements of Crime in the Offence of Legalizing Illicit Proceeds (Money Laundering)

8. The legalization of illicit proceeds is considered a transnational crime, just like terrorism, trafficking, narcotic drugs business, etc.

The availability of several international legal instruments against the legalization of illicit proceeds speaks of its serious social ramifications. In particular, in the context of the international legal framework, the concept of legalizing illicit proceeds (money laundering) is defined in the 1988 Vienna Convention of United Nation against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (hereinafter: Vienna Convention), which was ratified by the Republic of Armenia in 1993. For the purpose of preventing the traffic in narcotic drugs, Vienna Convention envisages the implementation of an international-legal complex of measures and, for the first time in the international arena, identifies the fight against legalization of illicit proceeds, as an element in the envisaged complex of measures. Vienna Convention requires the member states to criminalize the legalization of illicit proceeds on the level of national legislation.

The fight against legalization of illicit proceeds gained international development by the 1990 Strasbourg Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime (hereinafter: Strasbourg Convention), which was ratified by the Republic of Armenia in 2003. Strasbourg Convention is the first international-legal instrument, which is entirely focused on the fight against legalization of illicit proceeds. Strasbourg Convention requires the member states to undertake domestic criminal-legal measures for fostering the fight against legalization of illicit proceeds and for the development of international cooperation in the investigations of criminal cases.

Vienna and Strasbourg Conventions were the cornerstones that many countries used to develop their national legislations against legalization of illicit proceeds.

The Financial Actions Task Force (hereinafter: FATF) was established in Paris in 1989, with an initial goal of coordinating the international effort against money laundering. For the Council of Europe's member states, the FATF recommendations, which have been developed through many years, envisage measures on criminal justice and legal regulation, serving for the fight against money laundering and terrorism financing. The recommendations also include international cooperation and preventative measures to be undertaken by financial institutions, other entities, and persons. The FATF recommendations have gained wide recognition, turning into international standards for combating money laundering and terrorism financing.

In year 2000, the United Nations adopted the Palermo Convention against Transnational Organized Crime (hereinafter: Palermo Convention), which was ratified by the Republic of Armenia in 2003. Palermo Convention requires the member states to criminalize the legalization of illicit proceeds and recommends considering all grave crimes predicate for legalization of illicit proceeds. Palermo Convention also touches upon issues in judicial cooperation and confiscation of illicit proceeds.

In year 2005, the Council of Europe adopted the Warsaw Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds of Crime and on the Financing of Terrorism (hereinafter: Warsaw Convention), which was ratified by the Republic of Armenia in 2008. In essence, Warsaw Convention is the improved version of Strasbourg Convention. Warsaw Convention further develops the preventative criminal-legal measures against legalization of illicit proceeds, as specified in Strasbourg Convention. Warsaw Convention regulates issues related to the financing of terrorism, national measures, international cooperation, monitoring mechanisms, and resolution of conflicts.

The Republic of Armenia Law on Combating Money Laundering and Terrorism Financing was adopted on May 26, 2008, for the purpose of providing a legal framework for fight against money laundering.

9. In the legal framework of the Republic of Armenia, the concept of money laundering is defined under Article 190 of the Criminal Code of the Republic of Armenia:

“[Legalization of illicit proceeds] is the conversion or transfer of property, knowing that such property is proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the

commission of the predicate offence to evade the legal consequences of his actions; or the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds of crime; or the acquisition, control, use or disposition of property, knowing, at the time of receipt, that such property was proceeds of crime”.

5. For the purpose of this Article, illicit proceeds can be of any form, including monetary values, securities, property rights, and other objects of civil rights (if specified under the international agreements of the Republic of Armenia), which are direct or indirect proceeds of crimes specified under Articles 104, 112-113, 117, 122, 131-134, 166, 168, 175-224, 233-235, 238, 261-270, 281, 284, 286-289, 291-292, 295, 297-298, 308-313, 329, 352, 375, 383, 388, and 389.

The offence in question is considered a crime against economic activity, and, therefore, the purpose of this provision is to safeguard the economic system of the country from the uncontrolled turnover of illicit proceeds in monetary instruments and other assets, as well as to combat crimes related to the acquiring and legalizing of illicit proceeds (property).

10. The typical object of crimes (including the legalization of illicit proceeds) against economic activity is the combination of civil relationships for ensuring a normal turnover of economic activity. The direct object of the offence in question is the combination of civil relationships for ensuring a legal turnover in assets and monetary values.

The additional objects of the offence in question are quite different, including public security interests (if legalization of illicit proceeds is related to the activities of organized criminal groups), public health (if objects of crime include arms, narcotic drugs, etc.), combination of civil relationships for ensuring state service interests (in case of abusing power), etc.

11. Monetary values, securities, any property, or property rights, whether acquired in the Republic of Armenia or abroad, can be the object of the offence of legalizing illicit proceeds.

Article 190 of the Criminal Code of the Republic of Armenia directly specifies the illicit origin of the proceeds, that is, proceeds should be derived from an action prosecuted under the criminal law. At that, Part 5 of the Article provides a closed-end list of offences, which can result in proceeds and property rights considered objects of money laundering.

Therefore, an action can be classified as legalization of illicit proceeds only in case of one of the offences specified under Part 5, Article 190 of the Criminal Code of the Republic of Armenia. At that, legalization of illicit proceeds should come after (in terms of timing) this offence, and the illicit proceeds should be the object of the predicate offence. The absence of a predicate offence excludes the possibility of legalization of illicit proceeds; therefore, before issuing a conviction in such cases, the court should first of all establish the committal of a predicate offence and should verify that the object of money laundering has derived from the predicate offence.

The Court of Cassation highlights the point that, in such cases, it should not be necessary to have a court verdict with a conviction for the predicate offence, and,

equally, it should not be necessary for the person accused of legalizing illicit proceeds to have any relation to the predicate offence. In subjecting a person to criminal liability for legalizing illicit proceeds, it should be proved that the proceeds are illicitly acquired and that the person has acknowledged and foreseen the illicit nature of the proceeds.

12. Pursuant to Part 4, Article 55 (confiscation of property) of the Criminal Code of the Republic of Armenia, "Confiscation is mandatory with regard to illicit property, i.e. the property derived or acquired, directly or indirectly, from legalization of illicit proceeds and commission of offences defined by article 190 of this Code, including income or other benefits from the use of that property, the instruments used or intended for use in the commission of those offences, and, if the illicit property has not been discovered, other property of corresponding value. The property should be confiscated regardless of whether owned or controlled by an offender or a third party".

13. Based on the provision presented in the previous point of this verdict, the Court of Cassation establishes that the property (considered objects of the crime specified under Article 190 of the Criminal Code of the Republic of Armenia) and the benefits gained from the use of this property shall be confiscated, regardless of whether owned or controlled by an offender or a third party.

14. The offence in question has a complicated and alternative objective side. The classification of an action as legalization of illicit proceeds has an underlying precondition that actions with property/property rights should be conducted with knowledge about the illicit origin thereof and should be specifically aimed at the concealing and disguising of the illicit origin of the underlying property/property rights or at the assisting of the offender to avoid criminal liability.

The analysis of the legal provision under Article 190 of the Criminal Code of the Republic of Armenia concludes that the objective side of the offence in question is characterized with the following actions:

- a) Conversion or transfer of illicit proceeds (if known that such property is proceeds of crime), aimed at the concealing or disguising of the illicit origin of the proceeds or at the assisting of any person to avoid criminal liability;
- b) Concealing or disguising of the true nature, origin, location, controlling method, transfer, rights, and ownership of the property (if known that such property is proceeds of crime);
- c) Acquiring, controlling or using of property (if known at the time of receipt that such property is proceeds of crime).

The offence of money laundering is formal and is considered completed from the moment of committing one of the actions specified above.

15. In assessing the legal provision on defining liability for legalization of illicit proceeds, the Court of Cassation establishes that its obscure text can in some cases lead to difficulties in applying the offence, as well as in differentiating it from adjacent offences.

In particular, this refers to following text: "... or the acquisition, control, use or disposition of property, knowing, at the time of receipt, that such property was proceeds of crime". The literal interpretation of this text concludes that if someone acquires and uses illicit proceeds for personal purposes, then this person will automatically become the object of the foregoing crime, pursuant to the condition specified under Article 190 of the Criminal Code of the Republic of Armenia. This approach does not conform to the concept of legalizing illicit proceeds, since the intention of laundering is not present herein. In other words, this person has no intention of legalizing the illicit proceeds and only intends to use the proceeds, since the purpose of the crime is to acquire and use the underlying property.

In this case, the legal provision under Article 190 of the Criminal Code of the Republic of Armenia can coincide (with its objective side) either with the assistance in committing a crime (if the acquiring of proceeds was promised in prior) or with the legal provision under Article 216 of the Criminal Code of the Republic of Armenia (if the acquiring of proceeds was not promised in prior).

Nevertheless, in this case, the person commits all the actions with the illicit proceeds with a sole intention of concealing and disguising the illicit origin of the proceeds and giving an apparently legal appearance to thereon.

16. Based on the reasoning presented in the previous point of this verdict, the Court of Cassation establishes that the corresponding article of the Criminal Code of the Republic of Armenia does not clarify enough the principle and essential character of the subjective side of this offence, which is the intention of concealing or disguising the true origin of the proceeds as a result of actions specified under Article 190 of the Criminal Code of the Republic of Armenia.

Therefore, the practical application of Article 190 of the Criminal Code of the Republic of Armenia should be based on a conclusion that the mandatory element of the subjective side of the offence in question contains a specific intention to conceal or disguise the true origin of the illicit proceeds, and to integrate these funds into legitimate businesses. The absence of such an intention excludes the possibility of the offence in question.

17. The subjective side of the offence is characterized with a direct intention. The offender acknowledges his legalizing of the illicit proceeds and intends to do so.

An offender of at least 16 years of age, who conducts financial and other transactions with the proceeds or other property derived from the crime or uses this material property for entrepreneurial and other economic activities, can be considered a subject of the money laundering offence (general subject). Only a person holding official functions can be considered a specific subject of the offence in question (Clause 3, Part 3, Article 190 of the Criminal Code of the Republic of Armenia).

II. Conviction of Arsen Hayk Sargsyan for Thieving a Particularly Large Amount of Funds and for Legalizing the Illicit Proceeds

18. The question outstanding for the Court of Cassation in this case is the following: Is the conviction of Arsen Hayk Sargsyan, for committing actions specified under Clause 1, Part 3, Article 177 and Clause 1, Part 3, Article 190 of the Criminal Code of the

Republic of Armenia, backed with a combination of relevant, interrelated, and reliable evidence?

19. Upon examining (in the framework of the underlying grounds of the filed appeal) the accuracy in disclosing the factual circumstances of the criminal case and in applying the criminal law, the compliance with criminal-legal provisions in investigating and resolving the case, and the materials in the criminal case, the Court of Cassation establishes that the lower courts, in examining the sources of evidence underlying the criminal case, assessing each of the evidences for acceptability and relevance, assessing all the evidences in conjunction for sufficiency in resolving the case, and being guided by law and internal determination, have issued accurate court verdicts on the conviction of Arsen Hayk Sargsyan.

Arsen Hayk Sargsyan's guilt in charges pressed against him, pursuant to Clause 1, Part 3, Article 177 and Clause 1, Part 3, Article 190 of the Criminal Code of the Republic of Armenia, is established, while the reasoning forwarded by the author of the appeal is discarded with testimonies (given by witnesses, A. Poghosyan, A. Okishor, H. Ktikyan, and D. Serobyan), documents (identified as material evidence under the decision of the preliminary investigation authority from May 7, 2009 on "Identifying as material evidence" and on "Identifying other documents as evidence and attaching them to the criminal case", as referred to in judicial documents), and expert examination reports No. 09-0361 and 09-0779.

20. The foregoing evidences in conjunction are sufficient to establish that accused, Arsen Hayk Sargsyan, in the period from September 29 to October 25, 2008, used fake counterfeit copies of bank cards acquired from persons unknown to the investigation and by means of conducting 18 transactions through the POS terminal installed in the commercial premises of his mobile phones' retail store, thieved funds in equivalence of 17,163,000 Armenian drams from several accounts of customers holding bank accounts with banks in the U.S.A. That is, he has committed actions specified under Clause 1, Part 3, Article 177 of the Criminal Code of the Republic of Armenia.

Besides, the underlying evidences of the criminal case establish that accused, Arsen Hayk Sargsyan, transferred the proceeds of theft to the bank account of "ATA Mobile" LLC with "Inecobank" CJSC, showing as if payments were accepted from sales of phones from the store, thus, disguising the true nature and origin of the proceeds of theft in equivalence of 17,163,000 Armenian drams, and giving an apparently legal appearance thereon.

In applying the legal analysis presented under points 8-17 of this verdict to the foregoing factual circumstances, the Court of Cassation establishes that accused, Arsen Hayk Sargsyan, has committed actions specified under Clause 1, Part 3, Article 190 of the Criminal Code of the Republic of Armenia.

21. Thus, Arsen Hayk Sargsyan's guilt in thieving a particularly large amount of funds and legalizing these illicit proceeds is proved with a combination of relevant, interrelated, and reliable evidences, the corresponding conclusions of the Court of Appeals are substantiated and well-reasoned, while the arguments of the author of the appeal, that the conclusions of the court on the factual circumstances of the case do not conform to the examined evidences and that the indictment is not substantiated, are not confirmed with materials of the criminal case, and, therefore,

these are not grounds for the Court of Cassation to reverse the verdict of the Court of Appeals.

22. Based on the foregoing reasoning, the Court of Cassation establishes that the verdict of the Court Appeals is lawful, substantiated, and well-reasoned (in the framework of the underlying grounds of the filed appeal), the arguments of the author of the appeal on violations of material and judicial laws are not confirmed with the materials of the criminal case, therefore, the cassation appeal shall not be satisfied.

Based on the foregoing and guided by Article 92 of the Constitution of the Republic of Armenia, Articles 21, 403-406, 419, 422-424 of the Criminal Procedure Code of the Republic of Armenia, the Court of Cassation:

DECIDES

To reject the cassation appeal and to maintain the legal force of the verdict issued on October 14, 2010 by the Criminal Court of Appeals of the Republic of Armenia on the offender, Arsen Sargsyan, charges 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, while taking into consideration the position of the Court of Appeals stated in its verdict.

This Verdict enters into force from the moment of its publication; it is final and not subject to appeal.

PRESIDING JUDGE, D. AVETISYAN

JUDGES, H. ASATRYAN, S. OHANYAN, E. DANIELYAN, A. POGHOSYAN, H. GHUKASYAN

(Extract)

Case No. EKD/0090/01/10

March 7, 2012

Yerevan, Republic of Armenia

VERDICT

IN THE NAME OF THE REPUBLIC OF ARMENIA

CRIMINAL COURT OF APPEALS OF THE REPUBLIC OF ARMENIA

Presiding Judge: S. Chichoyan
Judges: E. Darbinyan, G. Avetisyan
Assistant: T. Hakobyan
Representative of victim: A. Mnatsakanyan

An open-court examination (in compliance with appeal procedures) of the appeal filed by the victim, "Inecobank" CJSC, against the verdict issued on April 14, 2010 by the Common Jurisdiction Court in Kentron and Nork-Marash Administrative Regions of Yerevan on the offender, Arsen Sargsyan, charges 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:

(...)

DECIDES

To satisfy the appeal filed by the victim, "Inecobank" CJSC.

To reverse and change (for the part related to the confiscation of 6,585,294 Armenian drams, which was paid by "ATA Mobile" LLC, with the mediation of Arsen Sargsyan, to "Inecobank" CJSC, as compensation of losses caused) the verdict issued on April 14, 2010 by the Common Jurisdiction Court in Kentron and Nork-Marash Administrative Regions of Yerevan on the offender, Arsen Sargsyan, charges 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.

To withdraw the confiscation of 6,585,294 Armenian drams, which was paid to "Inecobank" CJSC as compensation of losses caused, and to leave these funds under the possession of the bank.

This Verdict may be appealed to Court of Cassation of the Republic of Armenia within a month from its publication.

PRESIDING JUDGE, S. CHICHOYAN

(Extract)

Case No. EKD/0090/01/10

March 31, 2011

Yerevan, Republic of Armenia

COURT OF CASSATION OF THE REPUBLIC OF ARMENIA

CRIMINAL CHAMBER

VERDICT ON LEAVING THE CASSATION APPEAL UNEXAMINED

Presiding Judge: D. Avetisyan

Judges: H. Asatryan, S. Ohanyan, E. Danielyan, H. Ghukasyan, A. Poghosyan

Examining the question of satisfying/rejecting the cassation appeal filed by the victim, “Inecobank” CJSC, against the verdict issued on October 14, 2010 by the Criminal Court of Appeals of the Republic of Armenia on the offender, Arsen Sargsyan:

(...)

DECIDES

To leave the cassation appeal filed by the victim, “Inecobank” CJSC, against the verdict issued on October 14, 2010 by the Criminal Court of Appeals of the Republic of Armenia on the offender, Arsen Sargsyan, unexamined.

This Verdict enters into force from the moment of its adoption; it is final and not subject to appeal.

PRESIDING JUDGE, D. AVETISYAN

JUDGES, H. ASATRYAN, S. OHANYAN, E. DANIELYAN, A. POGHOSYAN, H. GHUKASYAN

(Extract)

Case No. EKD/0090/01/10

September 7, 2011

Yerevan, Republic of Armenia

COURT OF CASSATION OF THE REPUBLIC OF ARMENIA

CRIMINAL CHAMBER

VERDICT ON CEASING THE ENFORCEMENT OF THE COURT VERDICT

Presiding Judge: H. Asatryan

Judges: S. Ohanyan, E. Danielyan, A. Poghosyan

Assistant: M. Petrosyan

Counsel: K. Grigoryan

Examining the question of satisfying/rejecting the petition filed by the victim, "Inecobank" CJSC on ceasing the enforcement of the verdict issued on April 14, 2010 by the Common Jurisdiction Court of First Instance in Kentron and Nork-Marash Administrative Regions of Yerevan on the offender, Arsen Sargsyan, and of the verdict issued on October 14, 2010 by the Criminal Court of Appeals of the Republic of Armenia on maintain the legal force of the verdict:

(...)

DECIDES

To cease the enforcement (for the part related to the confiscation of 6,585,294 Armenian drams from "Inecobank" CJSC) of the verdict issued on April 14, 2010 by the Common Jurisdiction Court of First Instance in Kentron and Nork-Marash Administrative Regions of Yerevan on the offender, Arsen Sargsyan, and of the verdict issued on October 14, 2010 by the Criminal Court of Appeals of the Republic of Armenia on maintain the legal force of the verdict, until a decision is made by the Court of Cassation as a result of re-examining the verdict.

This Verdict enters into force from the moment of its publication; it is final and not subject to appeal.

PRESIDING JUDGE, H. ASATRYAN

JUDGES, S. OHANYAN, E. DANIELYAN, A. POGHOSYAN

(Extract)

Case No. EKD/0090/01/10

October 20, 2011

Yerevan, Republic of Armenia

COURT OF CASSATION OF THE REPUBLIC OF ARMENIA

CRIMINAL CHAMBER

Presiding Judge: D. Avetisyan

Judges: S. Ohanyan, E. Danielyan, A. Poghosyan, H. Asatryan

Assistant: M. Petrosyan

An open-court examination of the cassation appeal filed by the victim, “Inecobank” CJSC against the verdict issued on October 14, 2010 by the Criminal Court of Appeals of the Republic of Armenia on the offender, Arsen Sargsyan, charges 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:

(...)

DECIDES

To satisfy the cassation appeal, to review the verdict issued on October 14, 2010 by the Criminal Court of Appeals of the Republic of Armenia on the offender, Arsen Sargsyan, charges 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 and to reverse part of the verdict related to the confiscation of 6,585,294 Armenian drams from “Inecobank” CJSC, and to forward the case (for the foregoing part) to the re-examination of the same court.

This Verdict enters into force from the moment of its publication; it is final and not subject to appeal.

PRESIDING JUDGE, D. AVETISYAN

JUDGES, S. OHANYAN, E. DANIELYAN, A. POGHOSYAN, H. ASATRYAN

(Extract)

Case No. EKD/0090/01/10

June 18, 2012

Yerevan, Republic of Armenia

COURT OF CASSATION OF THE REPUBLIC OF ARMENIA

CRIMINAL CHAMBER

VERDICT ON REJECTING THE CASSATION APPEAL

Presiding Judge: D. Avetisyan

Judges: S. Ohanyan, E. Danielyan, A. Poghosyan, H. Asatryan

Examining the question of satisfying/rejecting the cassation appeal filed by the counsel, T. Grigoryan, of the offender, Arsen Sargsyan, against the verdict issued on October 14, 2010 by the Criminal Court of Appeals of the Republic of Armenia on the offender, Arsen Sargsyan:

(...)

DECIDES

To reject the cassation appeal filed by the counsel, T. Grigoryan, of the offender, Arsen Sargsyan, against the verdict issued on October 14, 2010 by the Criminal Court of Appeals of the Republic of Armenia on the offender, Arsen Sargsyan.

This Verdict enters into force from the moment of its publication; it is final and not subject to appeal.

PRESIDING JUDGE, D. AVETISYAN

JUDGES, S. OHANYAN, E. DANIELYAN, A. POGHOSYAN, H. ASATRYAN