ED/0215/01/20

VERDICT

IN THE NAME OF THE REPUBLIC OF ARMENIA

GENERAL JURISDICTION COURT OF FIRST INSTANCE OF YEREVAN CITY

June 10, 2020

Judge: D. Balayan
Secretary: S. Kirakosyan

Prosecutor: V. Harutyunyan
Counsel: A. Juvanova
Defendant: V. Ghulyan

The General Jurisdiction Court of First Instance of the city of Yerevan considered at an open court session the case on charges against:

Vazgen Armen Ghulyan, born on February 1, 1993 in Chambarak, Gegharkunik region, Armenian, national of the Republic of Armenia, with secondary professional education, not married, no person in care, in poor health, previously not convicted, unemployed, repairs phones and computers, is registered at 9 Tigran Mets Street, apartment 9, Chambarak, lives at 85 Bashinjaghyan Street, Yerevan, own recognizance chosen as a preventive measure, charged with Part 1 of Article 190 of the Criminal Code.

I. Judicial background of the case

...

On September 2, 2019 Vazgen Ghulyan was charged with Part 1 of Article 181 of the Criminal Code in 4 counts (volume 1, pages 144-148).

On March 5, 2020, a decision was made to change the charges and bring new charges against the defendant. On the same day, Vazgen Ghulyan was indicted of the following:

Within the period from June 17, 2019 to August 24, 2019 with the common intent to commit embezzlement through the use of computer equipment, he guessed by chance phone numbers used as login names and passwords for accessing electronic wallets of Ruzanna Hamlet Zohrabyan, Levon Gegham Sahakyan, Arman Ararat Kirakosyan and Nelli Simon Simonyan with "Idram" payment system, accessed their electronic wallets withdrawing and stealing a total of AMD 416.185, then transferring the funds to the bank card and the accounts in "Idram" and "Kiwi" payment systems controlled by him. Thereafter, AMD 387.985 of the stolen money was transferred to other accounts with "Idram" and "Kiwi" payment systems, with the aim of concealing their criminal origin and movement. He also accessed in the same way electronic

wallet of Vagharshak Samvel Khachatryan with “Idram” payment system in order to steal AMD 73.000, but did not accomplish the crime due circumstances beyond his control.

In particular:

Vazgen Ghulyan guessed by chance the phone number used as a login name and the password for accessing electronic wallet 159372569 of Ruzanna Hamlet Zohrabyan with “Idram” payment system, accessed the electronic wallet withdrawing and stealing a total of AMD 71.000. Then, upon receiving access to the Internet via Dell brand Vostro V130 laptop at his sister's apartment in Agarak town, on June 17, 2019 at 07:57 a.m. he transferred AMD 28.000 to the account of the bank card 5406610000526810 issued by Inecobank CJSC in the name of his father, Armen Atabek Ghulyan, as well as transferred the remaining AMD 42.900 to the accounts with “Kiwi” and “Idram” payment systems controlled by him in order to conceal the criminal origin and movement of the funds. In particular, on June 23, 2019 at 12:01 p.m., upon receiving access to the Internet via Dell brand Vostro V130 laptop at his friend's apartment on Bashinjaghyan Street in Yerevan, he transferred AMD 9.900 to his electronic wallet 988869297 with “Idram” payment system. On July 17, 2019 at 06:47 a.m., he transferred to his electronic wallet 37443387848 with “Kiwi” payment system AMD 33.000 again using the same laptop at his apartment on Tigran Mets Street in Chambarak town. Thereafter, he transferred the mentioned funds to the bank card account of his father controlled by him.

In addition, on June 23, 2019 he guessed by chance the phone number used as a login name and the password for accessing electronic wallet 379981647 of Vagharshak Samvel Khachatryan with “Idram” payment system and, upon receiving access to the Internet via Dell brand Vostro V130 laptop at his friend's apartment on Bashinjaghyan Street in Yerevan, he accessed the electronic wallet in order to steal AMD 73.000 AMD, but there was no money in the account, and he did not accomplish the crime due circumstances beyond his control.

...

Thus, by making transfers in order to conceal the criminal origin and movement of AMD 387.985 through the use of computer equipment, Vazgen Ghulyan committed a crime under Part 1 of Article 190 of the Criminal Code (volume 2, pages 111-116, 117-120, and 121-122).

On March 5, 2020 a decision was made to terminate criminal prosecution of Vazgen Ghulyan under Part 1 of Article 181 of the Criminal Code based on reconciliation of the victims R. Zohrabyan and L. Sahakyan with the defendant, and to refrain from criminal prosecution of Vazgen Ghulyan based on absence of complaints from the victims V. Khachatryan, A. Kirakosyan and N. Simonyan (volume 2, pages 129-136).

II. Expedited trial

Before commencing the trial, the defendant Vazgen Ghulyan petitioned the court to conduct expedited trial announcing that he submitted the motion voluntarily, in consultation with the counsel, realized the legal consequences of conducting an expedited trial, was clear about the charges against him, agreed with the charges, and pleaded guilty.

...

Making sure that the conditions provided for in Articles 375.1 and 375.2 of the Criminal Procedure Code were met, the court decided to hold an expedited trial.

According to Part 5 of Article 375.3 of the Criminal Procedure Code, "when holding an expedited trial, the court shall not conduct examination of the evidence obtained in the criminal case in accordance with the general procedure. However, it shall examine the information characterizing the defendant, the circumstances mitigating and aggravating the defendant's liability and punishment".

III: Reasoning and conclusions of the court

Based on the evidence underlying the indictment, the testimonies of the defendant and the witnesses, the records of examination of the documents recognized as other evidence, the existence of material evidence, the court considers it proven that Vazgen Ghulyan has committed the act for which he is indicted, which corresponds to the features of Part 1 of Article 190 of the Criminal Code.

Considering that the committal of the crime and the guilt of Vazgen Ghulyan in its commitment are proven, the court finds that he is subject to punishment for his actions.

When determining a punishment for a defendant, the court takes into account both the nature and the degree of public danger of the committed crime, as well as the information characterizing the defendant's personality, in this case particularly the fact that he is young, has not been previously convicted, is in poor health and has been recognized unfit for military service based on the orders of the Minister of Defense No 410 of 2013 and No 404-N of 2018, as well as on the decisions of the conscription commission from 15 January, 2014 and 15 July, 2019 (volume 1, page 41; volume 3, page 59).

Being guided by Part 1(9) of Article 62 of the Criminal Code, pursuant Part 2 of the same Article the court takes into account as a circumstance mitigating the liability and punishment of the defendant that he facilitated the disclosure of the crime, as demonstrated though the facts that he confessed the crime, presented the statement of the bank card of his father Armen Ghulyan showing the history of his transactions, provided the computer with which he made the transactions, and sincerely repented for what he had done (volume 1, pages 59-65, 129, 152-153, 160-163, 227-229; volume 2, pages 68-71, 124-126, minutes of the court session).

The court notes that there are no circumstances aggravating the defendant's liability and punishment.

Being guided by Part 1 of Article 10, Part 2 of Article 48, and Article 61 of the Criminal Code, the court finds that the minimum punishment provided for in the sanction of Part 1 of Article 190 of the Criminal Code, that is imprisonment for two years, should be imposed on the defendant.

With regards to the issue whether it is expedient that Vazgen Ghulyan serves the sentence or whether conditional non-application of the punishment is applied, the court is guided by the legal positions expressed in, *inter alia*, the decisions of the Court of Cassation VB-192/07, VB-50/07, VB-124/07, VB-01/08, AVD 2/0059/01/08, EACD/0078/01/09, AVD/0082/01/12 and EACD/0091/01/14.

In its decision VB-124/07 of June 12, 2007 the Court of Cassation expressed a legal position regarding application of Article 70 of the Criminal Code in the case of Susanna Nersisyan, concluding that application of the cited article is not subject to any restrictions depending on the type of the crime. Its application also is not limited by the nature and the degree of danger of the criminal act, as well as by the scope of the persons to whom it cannot be applied. The Court of Cassation at the same time noted that "the main condition for the application of Article 70 of the Criminal Code that such application should be reasoned. In case of conditional non-application of the determined punishment, the court must thoroughly examine all the circumstances related to the commission of the crime, as well as to the personality of the offender. The important thing is to come to a reasonable conclusion that the correction of the offender is possible without serving the determined sentence".

In another case, that of Gurgen Martirosyan, the Court of Cassation noted in its decision VB-01/08 of February 1, 2008 that in order to reveal the legal grounds for conditional non-application of the punishment, it is necessary to interpret the provisions of Article 70 of the Criminal Code in the context of the purposes of punishment as set forth in Part 2 of Article 48 of the Criminal Code, i.e. when deciding on conditional non-application of the punishment, the competent court must in each case consider the realization of the objectives of restoring social justice and correcting the sentenced person. At the same time, the Court of Cassation noted that the restoration of social justice and the correction of the sentenced person may be evidenced by the behavior of the offender after the crime, in particular, by compensating the damage caused to the victim or taking reasonable measures to do so.

In the case of John Sargis Shirvanyan and Arsen Muradyan, the Court of Cassation stated in its decision EAKD/0091/01/14 of December 18, 2015 that in each case of determining the expediency of whether the offender should serve the sentence, a comprehensive analysis of the information characterizing the personality of the offender is important in the context of the nature and the degree of danger of the crime. In particular, socio-psychological and socio-demographic characteristics that positively characterize the offender, the positive behavior displayed after the crime (repenting for what happened, giving true testimony, not obstructing the investigation, compensating for the damage caused, etc.) may evidence in terms of achieving the objectives of punishment there is no need for factually serving the sentence. In other words, the obligation of the court to disclose and objectively take into account the information characterizing the personality of the offender directly stems from the logic of Article 48 of the Criminal Code, according to which the objective of punishment is not only to restore social justice, but also to correct the offender and to prevent new crimes.

Analyzing the circumstances established in this case in the light of the cited precedent decisions, the court notes that Vazgen Ghulyan, after committing the acts underlying his indictment under Part 1 of Article 181 of the Criminal Code, took measures and compensated the material damage caused to 5 persons as a result of his actions, due to which the criminal prosecution against him in 2 counts was terminated, and the criminal prosecution in 3 counts was not carried out based on, respectively, reconciliation with the victims and absence of complaints from the victims (volume 1, pages 177-179, 232-233; volume 2, pages 47, 97-98, 76-78, 129-136). The above-

mentioned circumstances prove that, after committing the crime, V. Ghulyan by his actions has demonstrated a behavior that significantly reduces the degree of public danger of his act, allows to infer that he repents for what he had done. In addition, one has to take into consideration that the defendant is young, he has never been prosecuted, which suggests that his correction can be achieved without serving the sentence. V. Ghulyan's behavior after committing the crime, in particular, the facts that he pleaded guilty to the charges, confessed the crime, repented for what he had done, did not obstruct the investigation of the case while in freedom but even assisted the disclosure of the crime, as demonstrated through the fact that he presented the statement of the bank card of his father Armen Ghulyan and the computer through which he stole money from bank accounts, also evidence that there is no need for him to serve the sentence in order to achieve the objectives of punishment.

It is also worth noting that Part 1 of Article 190 of the Criminal Code does not stipulate a minimum amount of the proceeds of crime, while Part 4 of the same article defines that "for the purposes of this article, "large amount" shall mean the amount (value) exceeding 5000-fold of the minimal salary set at the time when the offence was committed". Considering the mentioned provisions together with the factual circumstances of the case, the court establishes that V. Ghulyan obtained money in a criminal way, the amount of which does not exceed 10% of the large amount. Juxtaposing the mentioned circumstance with the other data concerning the personality of V. Ghulyan, the presence of circumstances mitigating and the absence of circumstances aggravating his liability and punishment, the court finds that the mentioned circumstances in their entirety enable concluding that, in the case under consideration, it is possible to provide for correcting and rehabilitating Vazgen Ghulyan, who committed a moderate crime for the first time, without him serving the sentence, and as well as for achieving the objectives of punishment as set out in in Article 48 of the Criminal Code, that is restoration of social justice, correction of the offender and prevention of crimes, with conditional non-application of the punishment. In this case, the general principles defined by Articles 10 and 61 of the Criminal Code regarding provision of justice, individualization of liability and determination of punishment will also be complied with.

Considering that, in accordance with Part 8 of Article 375.3 of the Criminal Procedure Code, the court costs are not subject to confiscation from the defendant in case of conducting an expedited trial, the issue of court costs should be considered as resolved.

Regarding the issue of possession of the Dell brand Vostro V130 laptop and its charging device, which are recognized as material evidence, pursuant to Part 1(1) of Article 119 of the Criminal Procedure Code the court considers that they should be confiscated in favor of the state.

Examining the issue of the preventive measure chosen against the defendant, the court finds that it should be left unchanged until the verdict enters into force. Once the verdict enters into force, the ban on Vazgen Ghulyan to cross the state border should be lifted.

Based on the above, pursuant to Articles 357-360, 365 and 369-372 of the Criminal Procedure Code, the court:

DECIDED

To find Vazgen Armen Ghulyan guilty of committing the act provided for in Part 1 of Article 190 of the Criminal Code, and to sentence him to 2 (two) years of imprisonment. Pursuant to Article 70 of the Criminal Code, the punishment will be subject to conditional non-application, setting a probation period of 2 (two) years.

To assign the control over Vazgen Ghulyan's behavior to Yerevan city department of the State Probation Service of the Ministry of Justice. To oblige Vazgen Ghulyan to inform the supervising body in case of changing his permanent residence.