



## Fraud: Correspondence of a Large and Grand Size to the Degree of Public Danger Originally Laid Down by the Legislator

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### Abstract

*Introduction:* the article analyzes significance of the degree of public danger in the context of economic corpus delicti and studies compliance of public danger to thresholds of large and grand-scale fraud provided for by Article 159 of the Criminal Code of the Russian Federation originally laid down by the legislator. *Purpose:* to study the size of large and grand damage for corpus delicti most often incriminated to entrepreneurs and analyze legislation in other post-Soviet countries to determine a large and grand size, as well as its use in conditional values. *Methods:* general scientific methods of cognition (analysis, synthesis, induction and deduction), special methods of legal science (comparative legal and normative-logical), individual private methods of social sciences. *Results:* domestic criminal legislation needs to be reconsidered and thresholds of large and grand-scale fraud as aggravating circumstances of many economic crimes should be brought into line with economic changes, including in Article 159 of the Criminal Code of the Russian Federation “Fraud”. This is confirmed by economic changes, as well as experience of other countries. *Conclusion:* the analysis shows the necessity of introducing conditional values that will allow us to respond in a timely manner to changes in the economy without a point-by-point revision of criminal legislation, which will more fully meet the criterion of fairness.

**Key words:** fraud, large and grand size, experience of post-Soviet countries, criminalization and decriminalization of acts in the field of economy, conditional values for determining a large and grand size.

### 5.1.4. Criminal law sciences.

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### Introduction

Today, the criminal policy on business structures is focused on liberalization, while the criminal legal policy – on decriminalization of certain acts, an increase in threshold values

of the amounts defining the act as a crime, as well as an increase in threshold values of large and grand sizes, which serve as an aggravating circumstance for many corpus delicti. The main factor in criminalization or decriminalization

of acts is the public danger, which essentially determines the need to amend criminal legislation. At the same time, some scientists note the change in criminal legislation increasingly due to other factors, such as politics, economics, etc., which inherently leads to the heterogeneity of amendments to criminal legislation, which, with such a chaotic approach, actually make adjustments to the assessment of public danger without proper analysis.

#### *Research*

To analyze the impact of existing trends, let us turn to what constitutes a criterion of public danger for criminalization and decriminalization of acts and what is the role of thresholds of a large and grand size, as well as the prolonged absence of their adjustment, despite economic changes. Having analyzed scientists' view on this issue, we can say that the criterion of public danger is the main factor in criminalizing or decriminalizing certain acts, that is, the introduction or cancellation of a criminal law ban on committing certain actions. At the same time, public danger still belongs to hotly debated criminal law categories with a range of opinions from unconditional approval and acceptance to categorical disapproval [1, p. 23]. According to P.S. Tobolkin, this can be explained by the fact that public danger, being a fundamental category that provides general coverage of all key problems of the criminal law theory, ensuring the conceptual unity of criminal law knowledge, cannot be disclosed with the help of any other criminal law concepts [2, p. 48].

The very change in social danger is caused by socio-economic processes taking place in society [3, p. 248]. Thus, the legislator, when classifying certain acts as socially dangerous, is not determined by some precise concept, elements, and criteria. L.M. Prozumetov points out that public danger is a very dynamic concept in its content, which has characteristic features in relation to a specific historical period of society's development, often the degree of public danger is established on the ground of common sense experience [4].

Speaking about economic crimes, it is the concepts of "large size", "grand size" and "significant damage" that determine public danger of an act and help distinguish a criminally punishable act from an administrative offense, as well as determine the severity of a crime, often

acting as aggravating circumstances in economic corpus delicti. In this article, we will analyze the size of large and grand damage, namely parts 1–4 of Article 159 of the Criminal Code of the Russian Federation. For the considered crimes, a large and grand size is an aggravating circumstance that defines the category of the committed act as grave. Thus, this aggravating circumstance significantly affects the totality of criminal legal consequences for a person accused under Article 159 of the Criminal Code of the Russian Federation. At the same time, categorization of crimes is of great importance, as well as its attribution to one or another category. T.A. Lesnievski-Kostareva in her works points out that categorization of crimes in Article 15 of the Criminal Code should be considered not as a means of differentiating criminal liability, but as the basis of differentiation [5, p. 38]. Attribution of an act to a particular category determines the consequences within the framework of institutions provided for by the General Part of the Criminal Code of the Russian Federation, such as the stage of the crime, recidivism, types and purpose of punishment, exemption from criminal liability and punishment, criminal record, etc. At the same time, for each category of crimes, along with differentiation, the necessary degree of unification is provided, therefore, for example, for persons who have committed any crimes of small or medium gravity (regardless of their generic, specific and direct object and form of guilt) in the presence of additional conditions specified in Articles 75, 76, 76.2 of the Criminal Code, there are types of exemption from criminal liability [6, p. 45].

The legislator expressly provides for the possibility of termination of criminal prosecution or exemption from criminal punishment under a number of articles named in Articles 28.1 of the Criminal Procedural Code of the Russian Federation and Article 76.1 of the Criminal Code of the Russian Federation. Parts 1–4 of Article 159 of the Criminal Code of the Russian Federation do not relate to entrepreneurial crimes, of course, but classifying a crime as medium-gravity allows us to count on the possibility of exemption from criminal punishment if a number of conditions are met by the accused. In this regard, the amount, establishing a large size, as a factor determining the possibility of exemption from criminal punishment or lack

thereof is of paramount importance. Undoubtedly, it is necessary to take into account limitation periods, which vary significantly depending on the category of crime, the difference in the limitation period for criminal prosecution for a serious crime and a medium-gravity crime is 4 years (6 years for medium-gravity crimes and 10 years for serious crimes).

Returning to the amount of large and grand damage in relation to parts 1–4 of Article 159 of the Criminal Code of the Russian Federation, it is necessary to clarify that before December 8, 2003, when the Federal Law “On Amendments and Additions to the Criminal Code of the Russian Federation” was adopted, the threshold for major damage was determined in the amount of 500 minimum wage. The explanatory note does not say anything about the expediency of determining thresholds not with regard to the minimum wage, but in absolute values. It only substantiates the change in calculation of fines. It suggests using absolute values to determine the fine amount instead of referring to the minimum wage, though the argument about the occurrence of confusion is not supported by at least some statistical data.

The above-mentioned federal law in 2003 defined fixed amounts of large and grand damage for property crimes, including introducing such an additional aggravating circumstance as grand damage. So, for crimes against property, most often incriminated to entrepreneurs under Article 159 of the Criminal Code of the Russian Federation, large damage in the amount of 250 thousand rubles and grand damage in the amount of 1 million rubles was fixed. However, the absence of the need to calculate the amount to determine the presence or absence of an aggravating circumstance in connection with the amount of damage due to the introduction of fixed amounts of large and grand damage led to increased criminalization of those acts for which amounts of large and grand damage had not been reviewed for more than 20 years. At the same time, the amounts of “significant damage”, “large size” and “grand size” fixed in parts 5–7 of Article 159 of the Criminal Code of the Russian Federation in 2016 were increased by the Federal Law of April 6, 2024 No. 79-FZ “On Amendments to the Criminal Code of the Russian Federation and the Criminal Procedural Code of the Russian Federation” to liber-

alize criminal legislation against entrepreneurs. Thought the qualification of fraud incriminated to entrepreneurs according to special aggravating circumstances provided for in Part 5–7 of Article 159 of the Criminal Code of the Russian Federation is extremely rare, which is confirmed by the statistics of sentences (slightly more than 100 for a year) [7]. As for parts 3 and 4 of Article 159 of the Criminal Code of the Russian Federation, there are 7 thousand sentences a year, of which it is not possible to single out the number of sentences against entrepreneurs due to the specifics of statistical accounting, which does not necessarily imply affixing of appropriate codes and, as a result, non-recognition of the commission of an act in the field of entrepreneurial activity. The latter thesis is confirmed by judicial practice, which ignores the application of measures to protect the rights of business entities during the investigation of criminal cases, relying on the fact that “within the meaning of current legislation, entrepreneurial activity cannot be carried out for the purpose of illegal circulation of other people’s property by deception in their favor, that is, for selfish purposes” [8, p. 70].

A large size under Article 159 of the Criminal Code of the Russian Federation, in accordance with Article 15 of the Criminal Code of the Russian Federation, classifies the act as serious, since the maximum term of imprisonment for this corpus delicti is 6 years; grand-scale fraud is a serious crime. As for absolute values of a large and grand size, the legislator has not taken into account economic aspects. The value of 1 ruble decreases in a year. And even if one does not rely on the cost of money with regard to the time factor [9, pp. 213–214] or on the change in the cost with regard to the discount rate, then one can be guided by elementary logic and available statistical data.

It is necessary to address the real value of money, taking into account economic changes through the prism of the minimum wage. So, in 2003, the minimum wage was 600 rubles. Since January 1, 2024, the minimum wage is 19,242 rubles, which is 32.07 times more. That is, if no changes were made to the criminal law in 2003, the amount of major damage would amount to 9,621,000 rubles today. However, this would rather be excessive decriminalization if the definition of large and grand damage according

to the minimum wage were maintained, since, according to official statistics, the cumulative percentage of inflation for the period since December 2003 until March 2024 amounted to 397.68%. So, because of inflation, the defined amount of large damage is now devalued and the real value is only 47,381.74 rubles, which means actual criminalization of embezzlement that, based on the real amount, is classified as moderate or minor according to the legislator's plan. When recalculated with regard to inflation, amounts of a large and grand size should correspond to the fair amount of a large and grand size of 1,319,073.55 and 5,276,294.2 rubles, respectively.

It is obvious that a timely increase in the thresholds of large and grand damage as de-

fining elements of special aggravating circumstances, does not pose a threat to public or economic security. This is due to ensuring compliance with the degree of public danger of certain acts at the level that was originally laid down by the legislator. Moreover, given the shortage of personnel in the police [10], it seems advisable to ensure a focus of attention, taking into account the limitation period and the degree of public danger that was originally laid down by the legislator.

For a more complete picture, it is still necessary to analyze thresholds of a large and grand size as an aggravating circumstance used in criminal legislation for an article providing for liability for fraud in the post-Soviet countries – CIS members.

Table

Country	Large fraud	Grand fraud	Assessment methodology	Sum in rubles, large size	Sum in rubles, grand size	Articles of the Criminal Code: fraud/definition of a large and grand size	Minimum wage in rubles recalculation of a large and grand size by the number of minimum wage indicators
1	2	3	4	5	6	7	8
Russian Federation	Value of the property or the amount of damage over 250,000 rubles	Value of the property or the amount of damage over 1,000,000 rubles	National currency	250 000	1 000 000	Art. 159/ Note to Art. 158	19 242 [11] 13 and 51 respectively
Republic of Kazakhstan [12]	Value of the property or the amount of damage 1,000 times higher than the monthly calculation index	Value of the property 4,000 times higher the monthly calculation rate	MCR – monthly calculation rate (3,692 tenge) [13]	771 085.276 (exchange rate 0.208853)	3 084 341.1	Art. 190/ Paragraph 3 of Art. 3	17 752.5 (85 000 tenge) [13] 43.4 and 173.7 respectively.
Republic of Uzbekistan [14]	Value of the property exceeding 300 basic calculation values	Value of the property exceeding 500 basic values	Base value (3 400, 000 soums) [15]	750 618 (exchange rate 0,007359)	1 251 030	Art. 168 / Section 8	7 726.95 (1 050 000 soums) [15] 97.14 and 161.9 respectively
Republic of Tajikistan [16]	Value of the property 1,000 times higher than the calculation rate	Value of the property 2,000 times higher than the calculation rate	Calculation rate (72 somoni) [17]	615 600 (exchange rate 8.55)	1 231 200	Art. 247 / Art. 244	6 840 (800 somoni) [18] 90 and 180 respectively
Republic of Turkmenistan [19]	Value of the property 250 times higher than the size of the base value	Value of the property 500 times higher than the size of the base value	Base value (100 manats) [20]	667 500 (exchange rate 26.7)	1 335 000	Art. 249 / Art. 247	34 176 (1 280 manats) [21] 33 597 19.53 and 39.06 respectively

1	2	3	4	5	6	7	8
Kyrgyz Republic [22]	Value of the property 10,000 times higher than the calculation rate	Value of the property 25,000 times higher than the calculation rate	Calculation rate (100 soms) [23]	1 050 000 (exchange rate 1.05)	2 625 000	Art. 209/ paragraphs 7,8 of Appendix 1 to the Criminal Code	The amount of the minimum estimated income is applied, it varies for regions
Belarus [24]	Value of the property 250 times higher than the base value	Value of the property 1,000 times higher than the base value	Base value (40 bel. rubles) [25]	286 500 (exchange rate 28.65)	1 146 000	Art. 209/ Paragraph 3 of the Note to Chapter 24	17 934,9 (626 bel. rubles) [26] 16 and 64 respectively
Republic of Moldova [27]	Value of the property exceeding 40 projected average monthly salaries (it is not explicitly stated that the size is large, but the size is indicated in the disposition, but it follows that we are talking about large fraud)	Value of the property exceeding 100 projected average monthly salaries (it is not explicitly stated that the size is large, the size is indicated in the disposition, but it follows that we are talking about grand fraud)	Projected average monthly salary (13 700 lei) [28]	2 844 120 (exchange rate 5.19)	7 110 300	Art. 190	25 950 (5 000 lei) [29] 117 and 292 respectively
Republic of Armenia [30]	Value of the property 500 times higher than the minimum wage	Value of property exceeding 3,000 times the minimum wage	Minimum wage (75 000 drams) [31]	8 925 000 (exchange rate 0.238)	53 550 000	Art. 178 / Art. 175	17 850 (75 000 drams) [32] 500 and 3 000 respectively
Republic of Azerbaijan [33]	Value of the property exceeding 50 000 manats	Value of property exceeding 500 000 manats	National currency	2 748 500 (exchange rate 54.97)	27 485 000	Art. 178 / Art. 177	18 964.6 (345 manats) [34] 145 and 1 449.3 respectively

Note: the exchange rate was calculated as of April 20, 2024 on the basis of data provided by the website: <https://finance.rambler.ru/calculators/converter/1-KZT-RUB/?ysclid=lv9s9bpt2r150295847>.

The table above provides a structured view of the thresholds. It can be concluded that the amount of a large and grand size as an aggravating circumstance of the act provided for by the article of the Criminal Code "Fraud" is the lowest in the Russian Federation. Moreover, when assessing the ratio of a large size to the minimum wage, we also have the lowest indicator among the analyzed countries. The minimum wage in Russia is higher than in six of the countries shown in the table. At the same time, only two countries, the Russian Federation and the Republic of Azerbaijan, use absolute values, setting amounts that determine a large and grand size in the national currency, and not in certain conventional values. Thus, other countries use conditional values, the change of

which leads to a uniform increase in all thresholds for a large and grand size, significant damage with regard to inflation, for all corpus delicti where such an aggravating circumstance is present. The minimum wage, which was used in Russian legislation until 2003, the projected average monthly salary, the base value, the calculated indicator and the monthly calculation index are used as such conditional values in criminal codes of the post-Soviet countries. It should be assumed that the criterion "monthly calculation index" can hardly be applied in domestic legislation, since this is a specific economic indicator, the use of which can lead to an excessive reduction in public danger, since it can go up faster, determining the growth of the welfare of the population.

Having analyzed variants of conditional values in criminal law, it should be noted that the experience of the Republics of Belarus and Turkmenistan, where the concept of a base value is introduced, as well as the Kyrgyz Republic, in which the calculation indicator is used, deserves attention. It seems that the introduction of one of these conditional indicators is the most suitable option for Russian legislation, since the minimum wage does not always rise in accordance with the inflation rate; it can be stated that the minimum wage increases are still somewhat faster, therefore it would be more logical to introduce some basic value, the change of which will lead evenly to an increase in thresholds of significant, large and grand damage for all crimes in the field of economics. Such a measure will protect against the selectivity of the legislator in changing thresholds for some *corpus delicti*, leaving the amounts determining a large and grand scale for others.

It should also be noted that excessive criminalization due to the lack of timely changes in a large and grand size has a particularly negative effect on ensuring protection of the rights of business entities [35], since most illegal acts in the business environment are qualified precisely under parts 3, 4 of Article 159 of the Criminal Code of the Russian Federation. In addition, it should be taken into account that fraud borders on a civil dispute [36].

### Conclusion

Thus, it is obvious that Russian criminal legislation needs to be revised and brought into line with economic changes in the thresholds of a large and grand size as aggravating circumstances of many crimes in the field of economics, including under Article 159 of the Criminal Code of the Russian Federation "Fraud". This is confirmed by the changes occurred in the economy and the experience of other countries. It is also necessary to consider the possibility of introducing conditional values that will allow a timely response to changes in the economy without a point-by-point revision of criminal legislation, which will more fully meet the criterion of fairness. At the same time, this will remove an excessive burden on law enforcement bodies, determining the focus of the law enforcement officer's attention on those economic crimes that correspond to the public danger that was originally laid down by the legislator, preventing excessive criminalization of acts. Taking into account the fact that large and grand sizes are only aggravating circumstances and do not imply complete decriminalization of acts that do not correspond to these thresholds, but only determine their low social danger and classify them as crimes of minor or moderate severity, it can be assumed that it does not pose a threat to economic security.

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