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CITIZENSHIP AND SOVEREIGNTY AS DEMOCRATIC VALUES OF A STATE IN GLOBAL WORLD

Abstract. This article mainly focuses on determination of sovereignty as the answer to challenges, caused by globalization, migration, and integration. In the modern view, sovereignty is a fundamental state feature, while citizenship is a real and effective political and legal link between person and state. Citizenship is a primary legal aspect of self-identity from the theoretical, legal and philosophical point of view. It should be mentioned that nowadays, there are a lot of discussions on this issue in order to determine possible strong ideological baggage, the set of rights and duties and full membership in a state (features of citizenship) from daily and personal complexity of social interaction (features of self-identity).

Undoubtedly, the correct, up-to-date application of person's legal status and identity issues is a fundamental tension in frames of such triangle: person – society – sovereign state. The article explains that such importance depends not only upon the level of legal self-consciousness of a person, geopolitical, social and economic, demographic development of society and state's place on the international arena, but also on active state (governmental) policy in the field of citizenship. Authors pay particular attention to the grounds for terminating the citizenship of a person, as a result of which a person may become "apatride" (a stateless person). In addition, this study is aimed to generalize the common and distinctive features of the main grounds for

termination of citizenship of a person, which depends on the will of last one or is foreseen as the state "punishment" for his/her activity. According to the results of this research, the value of citizenship in the modern world is inevitably to become lower. Therefore, in the ideal scenario, it is necessary to upgrade the citizenship concept, to proceed with real, proper and useful, but not cosmetic changes. In addition, there is a need to allow drifting on the citizenship front to secure values and shared symbols of citizenship in the sovereign state.

Keywords: sovereignty, citizenship, loss of citizenship, withdrawal of citizenship, lapse of citizenship, denaturalization

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Introduction. Citizenship might be considered to be a perfect legal and political phenomenon that can establish visible and invisible walls between sovereign states (nations), can help their citizens legally cross borders between them and build bridges for their citizens in order to enjoy freedom of movement. Moreover, citizenship related issues might produce modern challenges for law and society in an inter-connected world in terms of globalization, migration and consumerism. Those three words appeared to be modern megatrends in XXI century because of their application in everyday life and precise influence on state politics, national security and national identity preservation rooted in grounds of loss of citizenship.

Previously citizenship has been associated with the pure allegiance (loyalty) to the sovereign state, but now we observe a tremendous effect of consumerism on it specifically in the light of such movements as cash-for-passport, citizenship-by-investment, citizenship-for-sale. Sure, those movements are not traditional, but enough usual for majority of modern countries and they are beneficial both for countries and foreigners, who want to improve their own welfare, to live more comfortable, to feel themselves and their family safer, not to pay attention to bureaucracy while doing business and not applying for visa every time they travel worldwide (visa-free travel). But simultaneously those trends can cause loss of citizenship of a target person.

Literature review and the problem statement. The core concept of citizenship was a trendy topic during last centuries to discuss among many scholars worldwide in different fields of science, specifically in sociology, political science, history, law, anthropology, economy etc. (D. Beland [Béland 2005], R. Bellamy [Bellamy 2015], J. Blatter [Blatter 2011], I. Bloemraad [Bloemraad, Korteweg, Yurdakul 2008], D. Heater [Heater 1990], M. M. Howard [Howard 2012], J. Fox [Fox 2005], L. Jamieson [Jamieson 2002], T. H. Marshall [Marshall 1949/92], F. Mazzolari [Mazzolari 2009], S. Pogonyi [Pogonyi 2011], S. Sassen [Sassen 2003], S. Seubert [Seubert 2014], M. F. Steinhardt [Steinhardt 2012], Ch. Tilly [Tilly 1995], B. S. Turner [Turner 1990], V. J. Vanberg [Vanberg 2006]). In the majority, they concentrated on issues of self-awareness, self-definition, and self-consciousness because those features help to discover self-identity as a fundamental concept of selfhood. A lot of European scholars (S. Carrera [Carrera 2014], G. R. de Groot [de Groot, Vonk 2018], J. Habermas [Habermas 1992], Ch. Joppke [Joppke 2012], P. Mouritsen [Mouritsen 2002; Mouritsen 2013], L. Orgad [Orgad 2018], H. Schneider [Schneider 2005], J. Shaw [Shaw, J. (2007], J. H. H. Weiler [Weiler 1997], etc.) analyzed in their scientific researches specifically legal connotation of the citizenship concept which is supposed to play an essential role in legal (exclusively constitutional) determination of personal identity of a citizen.

The aim of this article is to show how to bring together the relationships between a person, society and the state, to preserve the unity of this unique complex "person, society and the sovereign state" in its permanent development and civic transformations as the most comfortable and

desirable for everyone. We try to extrapolate main resons of loss of citizenship (notwithstanding voluntarily or involuntarily, automatically or by an act by the public authorities), where target person usually lost his/her link to particular sovereign state.

Research results. The notion of sovereignty is multifold and a complex one that transforms its content depending on its carrier's awareness. If at first, it was about the monarch, the supreme body of state power, then specific historical conditions and political events became a catalyst for the rising of the sovereignty of the people, the nation; but now at the beginning of the XXI century the state sovereignty is an answer to numerous challenges of globalization and integration [Topchiy 2016]. Thanks to the principle of loyalty, sovereignty is directly linked to the doctrine of citizenship, as evidenced by the British Calvin's Case (the so-called Postnati case) of 1608, which played a significant role in the emergence of the concept of citizenship in the United States [Price 1997; Postnati. Calvin case 1608]. In the paragraph 5b of the British Court decision on the case, it was noted that "those born under obedience, power, faith, loyalty, or affection of the king are British citizens, not foreigners" [Flournoy 1921]. The study of both constructs was primarily undertaken by J. Boden and T. Hobbes, who substantiated the main features of the theory of sovereignty. These include, first and foremost:

- recognition of sovereignty as a mandatory attribute of the state;
- almost compete for identification of the sovereignty with its carrier;
- recognition of the monarch as the carrier of the absolute sovereignty of the state;
- basic recognition of unlimited, indivisible, inalienable and consistent sovereignty [Ludvik 2009].

The main work of the French thinker Jean Boden is Les Six Livres de la République written in 1576 [Six Books of the Commonwealth by Jean Bodin 1955]. In this treatise the philosopher clearly defines the limits of the absolutism of state power, taking justice, truth, law, as well as the goals and objectives of the state as the basis. Thus, Boden was deeply convinced that the principal, single, indivisible and unconditional feature of the state is the sovereignty as the ownership of power to any one subject [Kresina, Skrypnjuk 2007]. We share the position of the scientist that this subject (monarch or ruler) can certainly use and freely dispose of power taking into account the absolute nature of state power.

The sovereignty of the state is intended to be realized under the authority of the state power to solve all the most critical questions of the state's life: the issuance of laws, amendments and additions to them, the right to war and peace, the appointment of officials, the collection of taxes and fees, etc. Boden in his treatise Les Six Livres de la République expressed true belief that the citizenship is the collection of political rights and privileges, but the privileges don't make a man more or less citizen [Six Books of the Commonwealth by Jean Bodin 1955]. In his opinion, every citizen is a subject whose freedom is to some extent diminished by the majesty of the person to whom he must obey, but not every subject is a citizen, as we will say about a slave. In the epoch of medieval monarchy, citizenship is a relationship, first of all, between a free man and a ruler [European Dictionary of Philosophy: Lexicon of Implications 2009]. In Les Six Livres de la République Boden makes certain critical remarks as far as the status of a citizen is concerned [Six Books of the Commonwealth by Jean Bodin 1955]. According to him, a citizen is not only a bourgeois but can also be a peasant, since the city walls do not make a citizen of a person, but culture and laws, as well as actions of the ruler. Both a citizen by birth and a naturalized person or a person released from serfdom.

In our opinion, special attention should be paid to the well-known treatise of the British philosopher Thomas Hobbes De Cive of 1641 [Velyka ukrainska yurydychna entsyklopediia 2017]. We

emphasize that this treatise is preliminary for the more famous work of T. Hobbes Leviathan, as well as the phrase "war of all against all (bellum omnium contra omnes)" was also used for the first time in the beforementioned treatise De Cive [Bellamy 2015]. This particular treatise consists of three books: Freedom (on natural law), Empire (on state governance) and Religion. It is in the second book of this treatise T. Hobbes discusses citizenship as a political-legal relationship between a person and a state (paragraphs IX-XII of Part V of the treatise) [Sofinska 2018].

Since the time of T. Hobbes, the issue of sovereignty has been discussed in scientific circles in the context of the implementation of two leading concepts. In the first concept of national sovereignty, the emphasis is placed on the notion of "nation", which offers its understanding as an indivisible and distinctive collective entity of the individuals that make up the latter. The second concept of national sovereignty sees the people as a main bearer of the sovereignty, a certain community of citizens bound with relations on a joint social contract (according to J. J. Rousseau). Both variants can be interpreted from the position of the representational essence.

The first position implies an interpretation according to which sovereignty belongs to the nation of the abstract entity, since it consists of people who live in this area at a given time and maintain the connection of generations. The second position presented the expediency of using the concept of "people", and popular sovereignty belongs to the people as a group of persons living on the territory of a particular state. The people are a collection of persons, connected by one unity of language, religion, origin, traditions, values, and customs, etcю [Shcherbanyuk 2013]. Confirming this thesis, Ernest Renan, a French philosopher of the nineteenth century, promoted the concept of "subjective nationality", the essence of which manifests itself in the desire of a group of people not related to each other by a common race, language or ethnicity, living in a certain territory on the basis of "daily plebiscite » (un plébiscite de tous les jours) [Abraham 2008]. It is about such a concept of citizenship; he pondered in his main work What is a nation? (Qu'est-ce qu'une nation?) of 1882. It is about the right of the soil ius soli, the principle of acquiring citizenship from birth, which in France replaced the right of blood ius sanguinis in 1889. Subsequently, its most serious application this concept obtained in the situation associated with the self-identification of the inhabitants of Alsace and Lorraine (the German territories that, following the defeat of Germany in the First World War, retreated to France under the provisions of the Versailles Peace Treaty of June 28, 1919). In both cases, citizenship is directly related to national identity, but from a different perspective. However, in our study, the identity of a person is identical to a person's self-identification, and national identity is only an elementary part of the general concept, and therefore we believe that the beginning of the development of the concept of modern citizenship was introduced by J. J. Rousseau in his treatise Du contrat social ou Principes du droit politique of 1762 [Habermas 1994].

During the twentieth century, the development of the concept of citizenship and its axiological characteristics took place mainly by vivid geopolitical and civilizational transformations. The relationship between citizenship and sovereignty is first of all observed in decisions of international arbitration tribunals such as Canevaro (Italy v. Peru) of 1912 [The Canevaro Case at the Hague Source 1912], Mergé (United States of America v. Italy) of 1955 [Mergé 1955] and Flegenheimer (the USA v. Italy) of 1958 [U. S. A. ex rel. Flegenheimer v. Italy 1959]. But the most essential legal basis forthe the formation of citizenship concept is the decision of International Court of Justice of the United Nation on the case of Nottebohm (Lichtenstein v. Guatemala) of 1955 [Nottebohm Case 1955], where in paragraph 23, citizenship is referred to as "a real and effective legal link between a state and a person that exists both on the basis of interests and feelings, and of mutual rights and obligations" [Pilgram 2011].

Drawing on the discourse of the actual philosophical and legal doctrine of citizenship in the world, scholars traditionally reflect on citizenship in four values: as the formal legal status of a person, which provides for a continuous effective communication between the state and a person; as a kind of "construct" of rights, duties and privileges belonging to a citizen of a particular state; as an obvious set of responsibilities, virtues and skills that underline the democratic nature of a particular state; as a collective identity of a group of people, who live within the same state, share the same values and lifestyle regardless of their ethnic, racial, and religious affiliation (the "club", the membership of which involves both the fulfillment of formal requirements and the receipt of a kind of "bonus" in the form of social security, visa-free traveling to other countries or facilitating business) [Sofinska 2018]. V. Pohorilko argues that citizenship is one of the characteristic factors (elements) of the legal status of a person, determining the ability of each citizen to engage in the political, economic, legal and cultural life of society and the state, in particular by implementing participative democracy [Pohorilko 2006]. It seems that citizenship is gradually losing its, primarily, territorial "attachment" to a particular state, as well as a real and effective political and legal relationship between the state and the individual (as foreseen by the decision of the International Court of Justice of the United Nations in the Nottebohm case in 1955) gradually disappears [Nottebohm Case 1955]. Citizenship ceases to be solely a sign of affiliation of a person to a particular state, since it additionally provides for the existence of rights, duties, and privileges that characterize the level of relations between a person and a state based on the principle of fidelity. We share the convictions of modern scholars in the field of law, political science and sociology (B. Turner) that in the modern matrix of citizenship it is expedient to ponder over the three main issues: first, how far the limits of human rights in the state will be commensurate with the boundaries between states (degree); secondly, how much the benefits and limits of human rights in the state will be recognized in the legislation (content); and finally, how much the "thickness" of the identity of citizens as members of the state will be meaningful and understandable to them (depth) [Isin, Turner 2002]. The answer to all these questions, and each of them in particular, in our opinion, should be clear, logical, reasoned and legally grounded, since citizenship, traditionally, is at the crossroads of ensuring national security and guaranteeing human rights, the influence of consumerism and manifestation of loyalty to a state of its own citizenship.

The loss of a mutual relationship between a person and a state most often takes place in case of termination of citizenship. As it is known, the European Convention on Citizenship of 1997 (hereinafter - ECN) provides for the basic legal grounds for terminating the citizenship of a person: if in Art. 7 it refers to the loss of citizenship ex lege or on the initiative of the state, a party of the ECN, then Art. 8 provides for the loss of citizenship at the initiative of the individual (we underline that in fact it is a question of release from nationality (voluntarily loss of citizenship)) [European convention on nationality 1997]. Thus, all grounds for terminating the citizenship of a person provided for in Art. 7 of the ECN can be divided into several logical groups notwithstanding voluntarily or involuntarily, automatically or by an act by the public authorities: renunciation of citizenship (release from citizenship, voluntarily loss of citizenship, initiated by a declaration or application by the target person or his or her legal agent addressed to the relevant authorities concerning his or her intention or desire to give up the citizenship in question); lapse of citizenship (automatic loss of citizenship by the target person); withdrawal of citizenship, including denaturalization (non-automatic loss of nationality based on a decision by a public authority to deprive the target person of his or her citizenship); nullification of acquisition of citizenship (due to the act of a public authority, pronouncing the acquisition of nationality null and void because it is established ex post that conditions required for the acquisition were in

fact not met at the time of application or declaration by the person in question or at the time of decision by the responsible authority (whichever is applicable)).

It is worth to mention that the first three groups of legal grounds for loss of citizenship of a person cannot be applied if as a result, this person becomes a stateless. However, this provision does not usually apply to the nullification of acquisition of citizenship by a person and the deprivation of citizenship in the form of denaturalization. Nevertheless, we assume that these ECN provisions of 1997 can be applied only in those European countries where ECN is in force. Currently, ECN is in effect in 21 member-states of the Council of Europe, while Greece, Italy, Latvia, Malta, Poland, Russia, France, and Croatia signed, but did not ratify it till now [European convention on nationality 1997].

Consequently, any methods after application of which a particular person ceases to be a citizen, are termed a loss of citizenship (this is its broadest concept). We know several ways to terminate citizenship, depending on the will of a person: the release from citizenship, when the person voluntarily terminates his/her citizenship; withdrawal of citizenship, including denaturalization, when a person is deprived of the citizenship of a particular state on the compulsory basis on the initiative of the public power authorities), lapse of citizenship. It should be emphasized that in Ukraine the distinction between these concepts has not yet become officially interpreted and described, therefore the author's definition is based on European and world experience in the legal doctrine of citizenship. Withdrawal of citizenship is often interpreted by researchers as a kind of punishment by the state authority of a person for committing any actions contrary to the interests of the state. Often such a forced termination of citizenship is prohibited at the legislative (constitutional) level. However, it can be applicable only in exceptional cases.

The constitutional principle of "impossibility of depriving a citizen of Ukraine of Ukrainian citizenship" (Article 25 of the Constitution of Ukraine 1996) requires a thorough rethinking since it is often used in the connotation of "preventing cases of statelessness." [Constitution of Ukraine 1996]. Of course, this applies primarily to those who have acquired citizenship from birth by the right of blood (ius sanguinis), that is, by origin. But a completely different situation arises in the case of a person becoming a citizen in connection with naturalization (ordinary, exclusive or privileged), option or transfer. Also, deprivation of citizenship may relate to those who have acquired citizenship in connection with naturalization (in the context of denaturalization). An obvious example of denaturalization is observed in the decision of the Court of Justice of the European Union (the CJEU, at that time European Court of Justice, the ECJ) in Janko Rottmann's case (2010), when the ECJ found that the state could independently determine the grounds for deprivation of citizenship (so-called denaturalization), but the result of such action cannot be the stateless of a eфкпye person [Rottman, Bayern 2010]. In this case the applicant, Mr Janko Rottmann, a citizen of Austria, who received German citizenship in connection with naturalization, and therefore automatically lost Austrian. Subsequently, the German authorities found that during naturalization, Rottmann had provided false information, since he did not indicate that he had been on the wanted list in Austria for the crimes committed. As a result, the German authorities deprived him of German citizenship and nullified naturalization.

The deprivation of German citizenship might have been the reason for Janko Rottman's stateless status. Thus, in paragraph 57 of the decision the ECJ it is set forth that in this situation the principle of proportion cannot be outraged between the prospect of statelessness of a person whose naturalization has been abolished and denial of citizenship in connection with the false information submitted during naturalization. It is necessary to take into account, firstly, the severity of the offense committed by a person, a naturalized citizen; secondly, the period between the decision

of the authorities on the naturalization of a person and the decision to cancel it; and thirdly, the possibility of restoring the previous citizenship of a person [Rottman, Bayern 2010]. In accordance with the United Nations Convention on the Reduction of Statelessness of 1961 , each signatory state has a possibility to make an appropriate application and reserve the right to deprive a person of nationality for acts performed by him/her contrary to the interests of the sovereign state, even if such person, as a result, will become a stateless person [UN Convention on the Reduction of Statelessness 1961].Probably it is all about deprivation of citizenship when it comes to individuals w ho have acquired it in connection with naturalization - in this context it appears as denaturalization. But here it is necessary to define clear criteria of division between denaturalization and the nullification of acquisition of citizenship. Traditionally, denaturalization involves depriviation of a target person' citizenship acquired due to naturalization for acts contrary to the interests of the state of citizenship from the time of the discovery of these acts (a priori). Denaturalization is foreseen in the legislation of many countries of the world (including Argentina, Brazil, Brunei, Bhutan, Venezuela, Honduras, Costa Rica, Kuwait, Laos, Malaysia, Mexico, Nicaragua, New Zealand, Pakistan, South Africa, Singapore, Thailand, the Philippines, etc.). Conversely, the nullification of acquisition of citizenship has the retroactive effect, since the act of the competent authority cancels the very fact of the person's acquisition of citizenship (regardless of time, a posteriori) and such a person is considered to have never been a citizen of that sovereign state.

Confirmation of this view is observed, for example, in Article 21 of the Basic Law of Ukraine on Citizenship of 2001, which reads that "the decision on the registration of the acquisition of citizenship of Ukraine is canceled if a person acquired citizenship of Ukraine in accordance with Articles 8 and 10 of this Law by deception, as a result of submission deliberately false information or false documents, concealment of any substantial fact in the presence of which a person cannot acquire Ukrainian citizenship" [Law of Ukraine on Citizenship 2001]. Similar provisions for the nullification of acquisition of citizenship because of falsified / inaccurate documents are present in the legislation of such states as Barbados, Bahrain, Belize, Botswana, Guatemala, Ecuador, Israel, Indonesia, Kazakhstan, Canada, Qatar, Kenya, Colombia (10 years since the acquisition of citizenship), Mauritius, Morocco, Myanmar, Nepal, New Zealand, UAE, Saudi Arabia, the USA and others.

If we synchronize the application of the ECC of 1997, the provisions of the national legislation on denaturalization and the nullification of citizenship as admissible means of termination of citizenship in view of the probability of such a person becoming a stateless person, then we will see that only in 19 European countries (in particular, in Austria, Albania, Belgium, Bulgaria, Bosnia and Herzegovina, Denmark, Macedonia, Moldova, Netherlands, Germany, Norway, Portugal, Romania, Slovakia, Hungary, Ukraine, Finland, Czech Republic and Montenegro) denaturalization and nullification of acquisition of citizenship are legitimate and acceptable in the legal field. Assume that such grounds for loss of citizenship of a person as nullification of acquisition of citizenship and withdrawal of citizenship in the form of denaturalization can be applied, even if as a result of this the person becomes stateless. Lapse of citizenship of a particular state cannot be regarded as the punishment of a person, but rather an action (or rather a reaction) of a sovereign state in response to person's activity. The typical reason for loss of citizenship due to its lapse is the exercise of (public) service in favor of another state. It should be noted here that, in world practice, the main form of loss of citizenship, in this case, is the lapse of citizenship previously obtained on the basis of naturalization.

The loss of citizenship in the form of its lapse, as a rule, appears in two kinds: firstly, on the basis of a decision of the state body and, secondly, automatically. The first type of loss of citizenship can be applied on the basis of a decision of the state authority as a result of 'person who renders

services to a foreign country' (performed services abroad that are incompatible with his/her status as citizen of particular state):

- Austria (her/his actions substantially damage the interests and reputation of Austria);
- Azerbaijan (person voluntarily serves in state or municipal bodies of a foreign country);
- Bahrain (person helps or engages in the service of an enemy country);
- Belarus (person enlists in the security or justice services or any other public agency of a foreign country);
- Canada (person is convicted for espionage for sharing vital information with a foreign entity);
- Chile (person has in any way assisted the enemy in a war in which Chile was engaged);
- Denmark (person acquires citizenship of another country by undertaking public service there);
- Egypt (person accepts a post abroad with a foreign government or a foreign or international body);
- Estonia (person enters state public service of another country without permission of Estonia);
- France (person is in public service of another country despite a request to resign from that function from the French government, BUT this provision does not apply if person would thereby become stateless);
- Greece (person has accepted a public service position in another country against the express prohibition by the Greek government);
- Indonesia (person entered the state public service of another country);
- Italy (person serves in the civil service of another country despite a request from the Italian government to resign from this function);
- Kazakhstan (person joins the justice agencies, State government bodies or other administrative bodies of another state with the exception of cases stipulated by international treaties);
- Lebanon (person accepts a public office from a foreign government and maintains such office despite that he has been instructed by the Lebanese government to abandon it);
- Lithuania (person is in the service of another state without authorisation of the Lithuanian state and prejudices the state);
- Qatar (Person is employed by a country with which Qatar is at war);
- Saudi Arabia (person worked for the benefit of a foreign Government during wartime with the Kingdom of Saudi Arabia, however, target person is given a three months warning before citizenship is withdrawn);
- Spain (person acquired citizenship after birth and exercises a political office in another country against the express prohibition of the Spanish government);
- Turkey (person renders services to another country against the interests of Turkey and does not voluntarily terminate these services within three months after receiving a notification issued by the Turkish authorities);
- UAE (person works for the interest of an enemy country);
- USA (person serves in government of a foreign state with the citizenship of such foreign state, with the intention of relinquishing US citizenship, however, loss cannot result in statelessness of target person).

The Ukrainian legislation (Article 17 of the Basic Law on Citizenship) stipulates that the Ukrainian citizenship may be terminated: firstly, as a result of expulsion from the citizenship of Ukraine; secondly, due to the loss of citizenship of Ukraine; thirdly, on the grounds provided by international treaties of Ukraine. Based on official data of the State Migration Service of Ukraine in 2017, by the first method, almost 4,3 thousand people were deprived of citizenship, by the second - 47, the third - 825 people. The main grounds for loss of citizenship (disloyalty or treason) are deeply

connected with state sovereignty. That means that a target person who is disloyal to the country of which he/she is a citizen or whose conduct is seriously prejudicial to the vital interests of that country can lose his/her citizenship.

Conclusions. As conclusions, it should be emphasized that in the modern sense, the sovereignty of the people is inextricably linked with the rights and freedoms of a man and a citizen, because they are the legal expression of the will of the people [Shcherbanyuk 2013]. People's sovereignty as a fundamental principle of constitutionalism implies the possession of socio-economic and political means by the people that ensure their real participation (as citizens) in state activity and public administration (primarily citizens by active and passive electoral law). People can lose their citizenship voluntarily or involuntarily, automatically or by an act by the public authorities because of disloyalty or treason, rendering services to a foreign country, receive remuneration from a foreign country, etc.

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