

# **BANKRUPTCY OF INDIVIDUALS: RUSSIAN AND FOREIGN EXPERIENCE**

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## **ABSTRACT**

*The article is devoted to the investigation of the problems of bankruptcy of individuals and the possibility of using foreign experience in Russia. The purpose of the work is to study the Russian and foreign experience of legal regulation of the procedures of recognizing an individual as a bankrupt, which is achieved by delving into bankruptcy issues in higher educational establishments and analyzing bankruptcy laws, statistical data, and experience of bankruptcy procedures abroad.*

*The object of the study is the legal regulation of the procedure of the bankruptcy of individuals in Russia and abroad. The subject of the study-is the legal relations arising in the course of bankruptcy procedures for individuals. In the process of research, methods of comparative legal analysis, formal-logical methods, historical and logical methods, the method of interpreting law, methods of system analysis were used. The results of the research showed that bankruptcy procedures in Russia are aimed not at realizing the state's social policy and supporting honest citizens in hard life situations, but in fact acting as a legal debt relief. In contrast, there is an effective foreign practice of recognizing an individual as a bankrupt, which is widely used in developed countries. In a result of the study, the possibilities of practical use of foreign experience in the Russian practice of legal regulation of the procedure for the bankruptcy of individuals are described.*

**Keywords:** Bankruptcy, Entrepreneurship Education, Individual, Insolvency, Creditor, Consumer Bankruptcy, Educational Restructuring, Legal Regulation of Bankruptcy.

## **INTRODUCTION**

Bankruptcy of individuals is a fairly new procedure in the civil law of Russia, designed to protect the rights and legitimate interests of economic entities and aimed both at satisfying the claims of creditors, and at meeting the interests of the debtor.

Increasing the effectiveness of bankruptcy procedures for individuals requires special legal regulation and associated changes in the education programs so that future specialists could make independent decisions on bankrupt enterprise development (Harrington & Maysami, 2015; Sukavejworakit et al., 2018)

The bankruptcy of individuals in Russia is regulated by Federal Law (*O nesostoyatel'nosti* (bankrotstve)), in the application of which problems arise that require a search for a solution, including on basis of using foreign practice of bankruptcy of citizens.

Modern scientists pay enough attention to issues of bankruptcy procedures for legal entities. In most cases, the international scientific community examines the problems associated with the practice of collecting unsecured debt and the rights of an unsecured creditor in the order of debt collection and lack of collateral (Antia et al., 2017; Athreya et al., 2012). Also researchers are engaged in problems of franchising within the financial issues of lack of funds for the development of the franchising network and disputes between the franchisor and the franchisee (Antia et al., 2017). The relevant of the research topic is mortgage in the framework of macroeconomics, social and migration policy (Charters et al., 2016), the methodology of the bankruptcy process, including undue bankruptcy (Jenkins & McKelvie, 2016; Paseková et al., 2016; Von-Stumm et al., 2013), the effectiveness of legislation and its relevance to the current situation with physical bankruptcy (Azmi et al., 2017; Fu et al., 2018). Including issues of debt financing (Domino, 2017; Kumar & Vig, 2017) as well as general issues of bankruptcy of legal entities, procedures for recognizing and collecting money (Chen & Zhao, 2017; Ivanchev, 2017; Lawless & Warren, 2012).

In the past few years, scientists have raised the issue of regulating the bankruptcy of individuals. So, first of all researchers make analysis of legal documentation, among which one can underline research by (Vitryanskiy, 2015), as well as works on the procedures for the recognition of a debtor citizen bankrupt (Tkachev, 2008). Bankruptcy is a legally defined procedure conducted over the property of debtors for settlement with creditors. It is a path for business entities with poor business results to further economic performance (Dessie, 2015).

By regulating bankruptcy offences, a legislator indicates the importance of protecting creditors and adjudicated bankrupts before and during the bankruptcy proceedings (Bachvarova, Margarita, 2016).

But at present, as Alferova notes, the principle of regulating the bankruptcy of individuals is constantly changing along with the increase in cases of bankruptcy of individuals, which requires both detailed economic and legal study (Alferova, 2017). The authors of Betti and Lemmi propose the application of decisions on individuals individually, since this procedure has its own peculiarities and depends more on the economic component, which, if the rules of law are tighter, can lead to negative consequences for society (Betti & Lemmi, 2013). And as for all researches, it is important to research international experience of regulating the bankruptcy of individuals, in particular the United States of America, which according to national legislation is referenced in the research of Hermann (2017). Variability of political value commitments is reflected within many deep transformations of bankruptcy regimes in the legal evolution of most national jurisdictions. The evolution of bankruptcy laws proves by its alternation of ideological changes the deep political dimension of bankruptcy regulation (Lomfeld, 2017).

This problem of regulating the bankruptcy of individuals now generates a large number of questions, and has been insufficiently studied and elaborated. The creation of a legal framework without gaps and conditions for the functioning of the mechanism for the recognition of individuals as a bankrupt represent the most important prospects for the development of an insolvency institution.

The system of Russian legislation is crucial to the improvement of legal policy affecting legal life, as well as the formation of lawful behavior as a value of public relations in banking, and an unconditional priority of the principle of legality, showcased in the system of financial law principles (Pastushenko, 2018).

Nonetheless, the relevance of the problem posed is due to a number of macroeconomic factors. Primarily, experts note that in Russia in 2008-2010, there was an economic crisis that was part of the global crisis, then in 2014-2015 there was a sharp decline in the exchange rate of the Russian ruble relative to foreign exchange, associated with a decline in world oil prices and economic sanctions were imposed on Russia in connection with the aggravation of international relations and the political situation in Ukraine (Alekseyev, 2016).

These specified economic crises led to a decrease in real incomes of the population, an increase in unemployment, which, combined with relatively high lending rates of commercial banks, led to an increase in the credit debt of the population. Often, the bankruptcy procedure for the debtor is the only way to get rid of the excessive credit burden and "*brand new life*". Carrying out of procedure of bankruptcy for the creditor is the only lawful way to return the means or at least their part. Analysts say that in a number of regions of Russia there is an aggravation of the situation with retail loans, the debt of the population is increasing, which can result in mass refusal of citizens to fulfill credit obligations. Such a situation can lead to a systemic financial crisis (Sholokhova, 2016). In this connection, the issues of improving the legal regulation of the bankruptcy of individuals taking into account the world experience of conducting bankruptcy procedures acquire particular urgency in Russia.

## METHODOLOGY

The methodological framework of research is a set of methods and methods of scientific research, including theoretical methods of analysis of processes and phenomena.

This is an analysis of regional lending activities performed in 2016 and 2017, and published by the United Credit Bureau (UCB) ([bankrot.fedresurs.ru](http://bankrot.fedresurs.ru)).

In particular, to conduct research on the potential of bankruptcy of individuals, the method of statistical analysis of public information, methods of incomparable and inconsistent with the situation abroad was used.

To study the experience of foreign countries, the methods of legal analysis of documents, content analysis of information, system analysis were used.

In the process of assessing the possibility of using the experience of foreign countries for application in law enforcement practice in Russia, methods were used to predict the potential development of the situation and to study the social and economic consequences, including negative ones.

## RESULTS AND DISCUSSION

In accordance with the legislation in force of the Russian Federation, citizens who have accumulated debts to creditors in the amount of 500 thousand rubles and there is an arrear of 90 days can recognize themselves bankrupt. In particular, it may be a growing outstanding principal amount, which the debtor cannot repay in time, or loss of employment, because of which the debtor will not be able to settle with the creditors.

Analysis of the results of credit activity of regions in 2017, published by the United Credit Bureau (UCB) on February 20, 2018 (Itogi Kreditovaniya Regionov, 2017), showed that in 2017, 34.82 million loans were granted, the total volume of loans amounted to more than 5.68 trillion. Rub Compared to 2016, the increase in the number of issued loans was 12% and lending increased by 37%. In 2017, there is an increase in the number of mortgage loans (+30%) with an increase in lending (+42%). The average size of the new mortgage loan increased by 9% and amounted to 1.87 million rubles. Analysis of the results of car loans also indicates an increase in the number of loans issued (+25%), with the growth in lending increased by 36%. The growth rate of the average size of the new car loan is similar to the growth rate of the mortgage loan (+9%), which amounted to 764 thousand rubles.

Thus, the popularity of lending services becomes evident in the population, and as the volume of lending for all types of loans increases, so, respectively, the amount of credit debt of the population as a whole increases, which leads to an increase in the number of potential bankrupts.

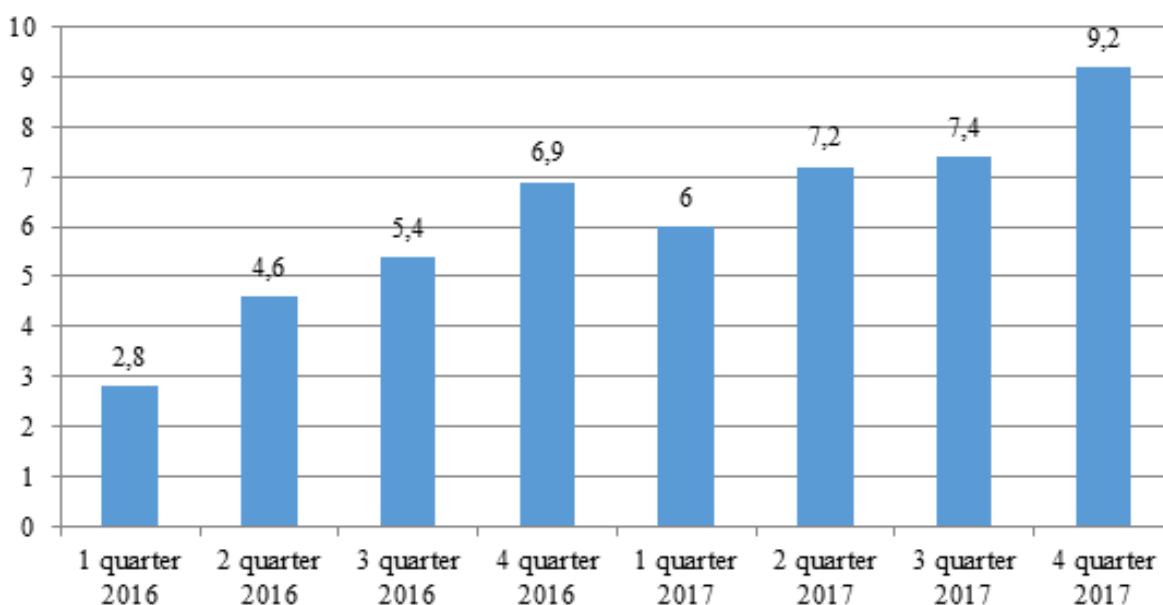
Despite the fact that the idea of applying the bankruptcy mechanism not only of legal entities, but also of individuals has long been known, in Russia there is still no stable practice in resolving the issues of this category of cases, since the procedures for the bankruptcy of individuals in Russia are carried out only from October 1, 2015 of the year.

According to the analysts of the UCB and the "*Fedresource*" project, by the end of 2017 potential bankruptcies in Russia were more than 600 thousand Russians or about 1.4% of the total number of borrowers. At the same time, the average debt for each of them amounted to 1.77 million rubles. In 2017, 29.9 thousand citizens began the procedure of bankruptcy, which is 4.3% of the total number of potential bankrupts.

In absolute terms, Moscow is leading in the number of bankrupts-almost 123 thousand people, St. Petersburg and the region-about 42 thousand people, Krasnodar Region-29 thousand people, Sverdlovsk Region-24 thousand people, and Bashkortostan-22 thousand people.

Today in Russia, according to the Statistical Bulletin of the UFRBI for 2017, there are 34 bankruptcies per 100,000 people (Statisticheskiy Byulleten YEFRSB, 2017). Russian courts in 2017 adopted 29,876 decisions to recognize citizens and individual entrepreneurs as bankrupt, which is 1.5 times more than in 2016 (Figure 1).

The highest number of decisions was made in Q4 2017 - 9204, which is 34% more than in Q4 2016. It is noted that citizens in 2017 became bankrupt two times more often than companies. Since the entry into force of the law on bankruptcy of individuals, 50,405 citizens have been declared insolvent. This is about 8% of potential bankruptcies, the number of which, according to the United Credit Bureau, is 660 thousand people. The number of rehabilitation procedures (restructuring of debts and decisions on the approval of the restructuring plan) for 2017 increased by 3% compared to 2016 and amounted to 8,213 or 22% of all procedures. In 2016, the share of rehabilitation procedures was 29%.



**FIGURE 1**  
**NUMBER OF COURT DECISIONS ON RECOGNITION OF CITIZENS AND**  
**INDIVIDUAL ENTREPRENEURS AS BANKRUPT, IN THOUS FOR THE QUARTER**

The length of bankruptcy procedures for citizens is presented in Table 1.

<b>Table 1</b> <b>LENGTH OF BANKRUPTCY PROCEDURES FOR CITIZENS</b>				
<b>Category of Debtor/Procedure</b>	<b>2016</b>		<b>2017</b>	
	<b>Number of Reports, pcs.</b>	<b>Average Time of Procedure, days</b>	<b>Number of Reports, pcs.</b>	<b>Average Time of Procedure days</b>
All Citizens	3508	183	11395	230
Individuals	3111	181	10556	226
Realization of Property of a Citizen	1918	190	8052	239
Debt Restructuring of a Citizen	1193	167	2504	181
Individual Entrepreneur	397	195	839	289
Realization of Property of a Citizen	222	223	461	373
Debt Restructuring of a Citizen	175	160	378	187

The data show that the duration of the bankruptcy procedure for citizens often exceeds the time limits established by law. For example, the duration of bankruptcy procedures for individuals in the procedure for selling property is on average 239 days or about 8 months, and for individual entrepreneurs this period increases to 373 days or more. It should be noted that in

2017, compared with 2016, the average time of bankruptcy procedures increased (for individuals by 25% and for individual entrepreneurs by 48%).

Taking into account that the procedure for the bankruptcy of individuals is aimed not only at the lawful release of the debtor from the debt burden, but also in order to pay off creditors' claims, the data of the UFRBI on the structure of citizens of debtors on the availability of property (Table 2).

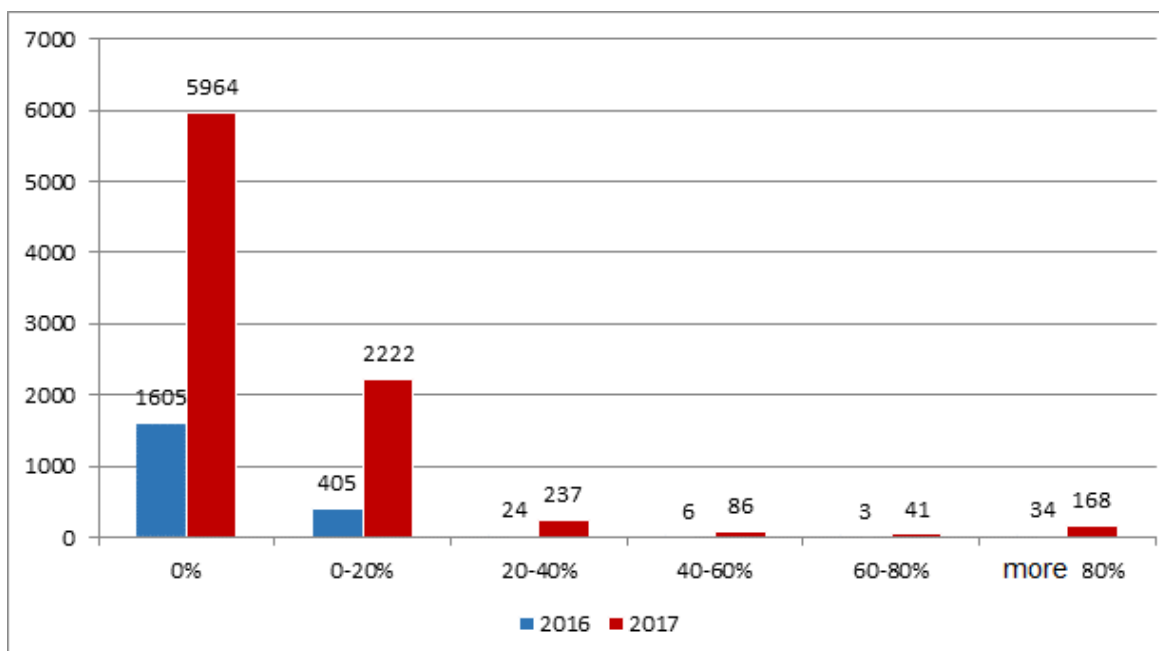
<b>Table 2</b> <b>STRUCTURE OF CITIZEN-DEBTOR</b>		
<b>Index</b>	<b>2016</b>	<b>2017</b>
Total reports on Individuals and Individual Entrepreneurs, pcs.	2,077	8,718
The number of cases in which the property as a result of the inventory is zero	1,562	6,499
The share of cases in which the property as a result of the inventory is zero	75%	75%
The number of cases in which the property is valued at zero	2,056	6,706
The share of cases in which the property is valued as a result of the valuation is zero	99%	77%
Number of cases in which creditors received zero	1,605	5,964
The share of cases in which creditors received zero	77%	68%

Mostly, creditors do not receive at the end of the bankruptcy procedure of debt repayment (77% in 2016 and 68% in 2017). This state of affairs is due to the fact that the overwhelming majority of debtors-75% on the results of the inventory do not reveal any property that can be sold at auction during the process of bankruptcy. That is, the situation develops when the debtor is declared bankrupt, all debts are written off, but the lender remains with nothing.

Analysis of the data shown in Figure 2 showed that the stake of the satisfied requirements of creditors more than 80% were satisfied in 2016 in only 1.6% of cases of bankruptcy, in 2017 - in 1.9% of cases. In addition, the above data indicate that creditors' claims of more than 20% are satisfied in less than 10% of cases. So in 2016, this figure was 3.2% of all cases of bankruptcy of citizens, in 2017 there was an increase in this category of cases, and the claims of creditors of more than 20% were satisfied in 6.1% of all cases of bankruptcy of citizens.

This state of affairs indicates that the bankruptcy of individuals in Russia actually acts as a legal debt relief (Karelina & Frolov, 2016). On the one hand, the mechanism of bankruptcy of individuals can be regarded as an element of social policy of the state, since the application of the law on bankruptcy allows conscientious citizens who fell into a difficult life situation for objective reasons and could not overcome obstacles to restoration of their solvency independently and assert their rights.

The stake of the satisfied requirements of creditors is illustrated in Figure 2.



**FIGURE 2**  
**AMOUNT OF CASES ABOUT BANKRUPTCY OF CITIZENS ON THE STAKE OF THE SATISFIED REQUIREMENTS OF CREDITORS**

On the other hand, according to Stasiuk (2016) "the law on the bankruptcy of individuals does not and should not presuppose a bankruptcy procedure as a bureaucratic mechanism for witnessing the lack of property and the inability to pay off debts". And in current conditions in Russia, unfortunately, just this situation is observed.

The solution of these problems can be based, among other things, on the use of foreign experience. In economically developed countries, consumer bankruptcy procedures have been going on for quite some time. Thus, Golubtsov, describing the specifics of dealing with bankruptcy cases in Russia and the United States and conducting their comparative analysis, suggests that the use of foreign experience in resolving the problem in question can significantly improve law enforcement practice in Russia (Golubtsov, 2016). In the world practice, the regulation of bankruptcy procedures is based on the fact that bankruptcy of a citizen is regarded as a blessing for a conscientious citizen. That is, a conscientious citizen gets an opportunity to get rid of debts and pay off his property with creditors (Khlyustov, 2016).

In particular, Germany introduced a special procedure for insolvency of consumers, the order of which is regulated by § 304-314 part 9 Insolvenzordnung (Shishmareva, 2015). "The course of the procedure depends on who submitted the application. If the application is submitted by creditors, and not by the debtor, then the prescriptions for an extra-judicial or judicial agreement (para 3 § 306 Insolvenzordnung) are not applied in this case. If an application to a court is filed by one debtor or debtor along with creditors, the accelerated proceedings are opposed by a mutual solution of the problems of the insolvent debtor and its creditors"

(Shishmareva, 2015). Proceeding from the provisions of the German legislation, there is not enough evidence of bankruptcy to apply to the court with the relevant application to the debtor. The debtor is obliged to take measures on the pre-trial settlement of the dispute. At the same time, the duty is not formal; the debtor must take real steps to settle the dispute. If the attempt to settle the debts was unsuccessful, then the debtor has the right to apply to the court to impose a procedure for insolvency of the consumer over his property. In the application, the debtor should explain why the out-of-court settlement agreement was unsuccessful according to the proposal. 1 Para 1 § 305 Insolvenzordnung» (Shishmareva, 2015). A distinctive feature of German bankruptcy law was that after the bankruptcy procedure was over, creditors could file their claims against the debtor, which were not satisfied during the bankruptcy procedure. Subsequently, instead of the right to unlimited collection of the remaining debt, the German lawmaker preferred to ensure the interests of civil turnover in general, introducing the possibility of “*freshstart*” for the debtor modeled on US law (Shishmareva, 2015).

In the US, the problem of non-repayment of consumer loans has acquired a large scale. In order, to prevent abuse of certain categories of debtors, the Bankruptcy Abuse Prevention and Consumer Protection Act, act was adopted on 16 October 2005 (Chuprova & Korolev, 2008). "*In the US, the right to bankruptcy is one of the constitutional rights, because it is aimed at protecting the economic interests of citizens as a weak side in relations with legal entities and the government*" (Kirillovykh, 2015). The mechanism of bankruptcy in the United States is well-established and widely used. The procedure for the bankruptcy of individuals in this case is targeted specifically at the debtor. The citizen who is in a difficult financial situation is offered alternatives to get rid of debts. First, it is a bankruptcy proceeding, in which the debtor transfers a part of the available property to the creditor, which allows satisfying the claims of creditors and preserving future incomes. Secondly, it is drawing up a plan for debt management. Meanwhile, the debtor retains his property, but loses some of his future income (Badakhova, 2010). It should also be noted that the US also has specialized courts dealing with bankruptcy cases. Perhaps, considering the number of potential bankrupts in Russia, in the future and in our country it will be expedient to consider the possibility of creating such ships.

In Japan, the term "*bankruptcy*" in relation to citizens is practically not applied. In cases of repayment of a citizen's debts through the sale of property, a "*liquidation*" procedure is applied, as a result of which a citizen is released from debts, and for life is deprived of the right to run companies, work as lawyers, notaries, accountants and act as guardians of minors (Frolov, 2016). Thus, a citizen found bankrupt in Japan faces significant restrictions. First of all, the blame for the fact that the citizen did not cope with his financial situation, falls on the debtor himself. That is, the causes of bankruptcy are not the life circumstances, but the human qualities of the debtor.

Under the legislation of the Democratic People's Republic of Korea for an individual, it is possible to restore solvency without extrajudicial means. Extra-judicial procedure for the settlement of an individual's debts, or financial restructuring, applies only to the debt of citizens to financial organizations. These issues are dealt with by the Financial Recovery Service, formed with the support of the Government. If there is a permanent income that covers the living expenses of the debtor's family and sufficient amount to pay off the debt, the debtor can participate in the debt repayment program. In the absence of sufficient income at the time of treatment, the debtor may be granted a delay of up to 2 years (Pirogova & Zhukova, 2015). The



advantage of this mechanism is that it is not public, and citizens are interested in its application, since they often do not want to publicly cover their financial problems. The use of such a mechanism of pre-trial settlement can be very effective in terms of both economic and social consequences.

## CONCLUSION

According to the results of the study, it can be concluded that in Russia, since the entry into force of the law on bankruptcy of individuals, a certain practice has developed. The results of the research shows that in the coming years there will be a need to revise the legislation regarding the bankruptcy of individuals. There is a situation in which there is an opinion that the legislator needs to go on to tighten the consequences of bankruptcy for a citizen. However, a differentiated approach is necessary here. On the one hand, opportunities should be considered for toughening the consequences of declaring bankrupt for individuals, for example, if the debtor lacks property or the amount received from its implementation is insufficient to satisfy about 50% of creditors' claims. In such a situation, the debt is legally written off, and the citizen does not take any action to restore his solvency and repayment of creditors' claims. It is necessary for the debtor to realize the gravity of the consequences of declaring him bankrupt and more responsibly approaching planning his budget. On the other hand, measures should be developed to prevent bankruptcy, including the need to work out mechanisms for pre-judicial settlement of the debt of citizens. At the same time, it is necessary to create conditions in which both sides of bankruptcy will be interested in pre-trial settlement. The developed measures, in addition, should be directed to the interests of not only debtors, but also to the interests of creditors, whose claims are currently not being paid off. To optimize the procedures for bankruptcy of individuals in Russia, the advantages of the considered models of bankruptcy regulation in foreign countries can be used.

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