

STATE (OFFICIAL) LANGUAGE PROFICIENCY AS AN OBLIGATORY CONDITION TO ACQUIRE CITIZENSHIP: UKRAINIAN AND EUROPEAN EXPERIENCE

In the modern world citizenship is one of the constitutional law key concepts, commonly enshrined in the basic law or state constitutional act along with other regulatory instruments.

Citizenship is verified in the manner prescribed by the state and is subject to set of requirements and preconditions (adulthood to be reached, certain period spent in the status of a permanent resident, knowledge of the state history, allegiance oaths, etc.).

Citizenship acquisition procedure is unique in each state, with a number of particular differences and features. However, the key condition of acquiring citizenship, uniting all countries of the world, is the verified state language proficiency.

According to European integration practice, process of accession to the European Union is facilitated by creation of democratic foundation for functioning and further development of civil society in the candidate country, formation and implementation of the law-governed state principles, reforming the legal and institutional components of domestic legal system¹.

According to Common European Framework of Reference for Languages there is a six-level scale of language proficiency designed by Association of Language Testers in Europe (ALTE): introductory or primary (Breakthrough or A 1), intermediate (Waystage or A 2), borderline (Threshold or B 1), advanced (Vantage or B 2), independent (Effective Operational Proficiency or C 1) and competent (Mastery or C2). These categories cover all mastering stages – from basic comprehension to literally complete fluency. Any existing textbook or tutorial, reference book, vocabulary or test for European languages is built upon mentioned classification².

Still, language itself is a fundamental social value which affects and shapes all other public domains, an important mechanism ensuring our productive coexistence and interaction. Language is a means of expressing the national identity, structure of social, political, cultural, economic life, state affairs administering, establishing relations between individuals and groups, ensuring educational process etc.

Legal encyclopaedia reveals the meaning of «state language» definition through the prism of multicontextuality as it is also used as:

- the official communication language for the citizens of relevant state;
- official language in state power bodies and local-self government agencies;
- language taught on a mandatory basis in educational establishments located within the territory of relevant state;
- language used by domestic media;
- primary language used in activities performed by political parties and other civil associations/unions/organizations;
- official language of political, educational, scientific and other forums (meetings, gatherings, conferences, congresses etc)³.

The Constitution of Ukraine grants Ukrainian the status of state language. The decision of the Constitutional Court of Ukraine of December 14, 1999 clearly states that under provision of Article 10(1) of the Constitution of Ukraine «Ukrainian language is the state language in Ukraine» – it is unambiguously formulated that Ukrainian language is given an official status throughout the territory of Ukraine and used by public authorities and local self-government agencies exercising their powers (acts, performance of activities, record management, documents, etc.), as well as in other public life domains, as prescribed by the law (Article 10(5) of the Constitution of Ukraine)⁴.

Since Ukraine has proclaimed its independence certain unfavourable environment exists and society is forced to protect and nurture the state language. Its essential right to function in all spheres was put under threat by the Law of Ukraine “On Principles of State Language Policy” dd. July 3, 2012 – under the decision of the Constitutional Court of Ukraine (case of constitutional petition signed by 57 MPs) “On the Principles of State Language Policy” dd. February 28, 2018 № 2-р / 2018 was recognized as inconsistent with the Constitution of Ukraine.

If we analyze various scientific approaches to interpretation of the «state language» term, we will see that certain differences are present. Some authors highlight different essential features of the analyzed concept, and therefore definitions are somewhat diverse. In particular, these features include: language used by the majority of state population; language of official communication; symbol of the state; language of state power bodies; legally established language, etc.

It should be noted that status of state language is not always granted to the language used by majority of the population living in a particular country. This phenomenon is backed by certain real cases – for example, Swiss experience, where the Retho-Romance language is officially declared to be the state language, but used for communication by only 3% of the population.

In Great Britain, the official language of state is not enshrined elsewhere in law, but established according to tradition. In some countries the state language does not perform the function of symbol. After all, such feature is typical for primarily those states where the state language coincides with the language of the titular nation.

Given the above considerations, we believe that term «state language» cannot have a single definition as the concept itself is shaped by numerous factors arising from historical, cultural, economic and other unique areas of state development.

We support the opinion of those scholars stating that it is expedient to single out the duty of each Ukrainian citizen – state language proficiency and active use; its performance is a key prerequisite in the context of consolidation of the Ukrainian nation.

Therefore, it gives grounds to claim that the state language may perform the function of interethnic communication in the country. There is no special legally set standard for such obligation to be met by all citizens of Ukraine, but analysis of other provisions (including the state language mastering, state language proficiency for persons aiming to obtain Ukrainian citizenship or hold certain public positions in Ukraine, etc.) justifies that such obligation is enshrined.

Apart from Ukrainian citizens, foreigners or stateless persons who wish to become the citizens of Ukraine are also obliged to master the official language. Of course, certain regulatory framework must be presented for such cases, enabling to analyze the procedure for testing the state language proficiency level as a necessary condition for acquiring citizenship in Ukraine.

Thus, according to Article 9 (Part 2(5)) of the Law of Ukraine «On Citizenship of Ukraine»: «A foreigner or a stateless person may be granted Ukrainian citizenship at one's request. State language proficiency (or its comprehension) at level sufficient for communication is a requirement to be met by the requestors. This requirement does not apply to persons with certain physical disabilities (blind, deaf-mutes)»⁵.

Provisions of the abovementioned article stipulate that:

– state language proficiency or sufficient comprehension is one of requirements to be met by persons aiming to acquire Ukrainian citizenship,

– the level of such comprehension is defined – sufficient communication;

– these requirements do not apply to all persons aiming to acquire the Ukrainian citizenship – persons with impaired hearing/vision and speech pathologies are excluded.

The term «language comprehension» is unclear as certain questions arise concerning the actual testing of such knowledge: who defines the comprehension/proficiency levels of state language etc.

As an example we can use the legislation of Baltic states. Thus, according to Article 5 of Estonian language law state officials, employees of subordinate governmental agencies, state power bodies and local self-governance agencies, public legal entities and its organizations, notary officers, bailiffs, sworn interpreters and bureau staff are obliged to be fluent in Estonian at level sufficient for performance of relevant duties and functions. Language proficiency levels are clearly defined in accordance with Common European Framework of Reference for Languages. With this aim a Decree of the Government of Estonia № 105 was issued on July 26, 2008 where different language proficiency levels are described in details (A1, A2, B1, B2, C1, C2) along with situations of language use and characteristics of functions and professional duties for people who have mastered the relevant level; correspondence of the language proficiency level to relevant state officials' positions (state power bodies, local self-government, public officials and organizations, commercial and non-profit entities, individual entrepreneurs).

For example, state language proficiency at C1 level is necessary for the following categories of officials: top-level officials; senior officials; regular NCOs and officers; border guard NCOs and officers; lawyers – filing clerks, record-keepers and courtroom secretaries; heads of entities and their deputies; heads of educational establishments, their deputies and curriculum directors; teachers and tutors of Estonian language and subjects delivered in Estonian; doctors (including veterinarians), psychologists, druggists and pharmacists; special education teachers (except those whose services are requested by people with other native languages); bailiffs; legal professions (general recorders, chief assistants/assistants of general recorders); notary officers; bankruptcy trustees; judges and their assistants; prosecutors; law enforcement and emergency service staff.

A similar requirement is contained in Article 6 of the Law of the Republic of Lithuania «On the State Language»: heads, employees and officials of state and self-governance institutions, identities, services, heads, employees and officials of the police and law enforcement agencies, communication infrastructure entities, transport, healthcare, social protection and other public service providers must use state language in accordance with the language proficiency categories established by the Government of the Republic of Lithuania.

According to the Decree of the Government of the Republic of Lithuania «On the implementation and approval of state language proficiency categories» № 1688 adopted on 24.12.2003, there are three categories of state language mastering skills, in particular:

– the first category – for employees in the sector of services, transport, trade;

– the second category – employees in the sector of education, culture, health care, social protection;

– the third category – heads of state power bodies, teachers, etc.

Article 6 of the Law of the Republic of Latvia on the State Language stipulates that employees of state and municipal institutions, courts and ones subordinated to judicial system institutions, state and municipal companies, as well as enterprises with the capital owned mostly by the state or self-governance bodies are fluent and use the state

language to the extent necessary to perform their professional and official duties. At the same time, such classification of state language proficiency levels and the testing procedure shall be established by the Cabinet of Ministers⁶.

For example, the first – A1 level – category is obligatory for persons whose positions are related to unskilled (manual) labour – animal handlers, janitors, kitchen workers; A2 level – obligatory for persons whose functions stipulate compliance with instructions and technologies, use and maintenance of equipment, devices and machines (construction workers, plumbers, auto mechanics, ticket inspectors etc); second category – functions related to public services provision (massage therapist, chef, nail designer – B1 level) or public order maintenance, manufacturing operations execution/control, accounting and bookkeeping (accountant, salesperson, security staff – B2 level); third category is required for managerial staff, highly-qualified personnel, medical and social staff, teaching staff of higher educational establishments and pedagogues (construction cycle manager, director, captain, chief accountant, hotel manager, researcher, doctor, software programmer – C1 level) or heads of public administration bodies and its structural units, employees involved in document processing and recordkeeping, interpreters/translators (school headmaster, teacher, lawyer, court staff – C2 level).

In Latvia fluency in Latvian is required to obtain citizenship. The concept of «language proficiency» is clearly defined. In accordance with Article 20 of the Law of the Republic of Latvia «On Citizenship» a person's level of Latvian is sufficient if one:

- fully comprehends different types of information (general and official)
- can verbally express oneself, communicate and answer questions of general nature;
- reads and understands various texts (general topics), laws and other regulations, instructions etc;
- can write a statement on a general topic.

At the same time, graduates of state secondary schools where subjects were delivered in Latvian are exempt from the proficiency test as well as persons with special needs (I category of disability, dateless status)⁶.

Also, according to the Decree of the Government of the Republic of Estonia № 68 dd. 20.03.2008 «Conditions for alignment of the Estonian language exam for persons applying for citizenship and passing the proficiency exam and the examination procedure» a person wishing to obtain Estonian citizenship must verify the language proficiency at least at B1 level.

Currently in Ukraine National Commission on the State Language Standards functions according to provisions of Decree of the Cabinet of Ministers of Ukraine № 911 dd. November 6, 2019 as a central executive power body with a special status⁷ coordinated and guided by the Cabinet of Ministers of Ukraine via the Ministry of Education and Science of Ukraine. Its key task is to preserve and develop the state language by establishing relevant standards and methodology for proficiency verification to ensure the acquisition of Ukrainian citizenship or holding offices defined by law. This commission is obliged to design and approve the Classification of State Language Proficiency Levels with consideration of CEFR recommendations.

Models of language relations legal regulation are determined by the language environment that has historically developed in a particular country. The traditional international legal norm, according to which the determination of languages status and the procedure of its use is the prerogative of the state and remains within its jurisdiction exclusively, remains inviolable for all countries. The adoption of a special law, that ensures the state language functioning, is a typical European practice, which emphasizes the importance of the state language as an element of the constitutional order⁸.

Thus, state language proficiency is clearly regulated in the world is regulated and approved by relevant standards globally. As for the verification of the state language proficiency level the for those who want to acquire Ukrainian citizenship, accordingly, the Ukrainian language is perceived as a foreign language.

The concept of improvement of the state language proficiency testing is not new – some scholars note that it is necessary to make the requirements for citizenship acquisition more complicated, namely by establishing the set of exams for applicants (language proficiency, Ukrainian legislation, geography and history). In their opinion this must be done as applicant expresses a wish to reside within the territory of Ukraine, communicate and interact with its citizens, take part in country's political life, so proper attention must be paid to the motivation and patriotic attitude of the future citizens⁹.

Based on the results of research on assessment of the procedures for citizenship acquisition and permit issuance for foreigners, carried out by Ukrainian CO «Europe without barriers», it is justified that at the stage of preparation respondents who launched the procedure of citizenship acquisition had certain difficulties with issuance of certificates on language proficiency, withdrawal from the previous citizenship and certificate verifying absence of criminal records. The problem with issuance of the former ones which are required in case if the acquisition procedure is initiated is a result of imperfect state policy on foreigners' integration. Interviewed experts consider that there are systemic problems in Ukraine related to teaching Ukrainian as foreign language, absence of unified standard on Ukrainian proficiency assessment. The official list of educational establishments which are authorized to perform such assessment is not publicly available; absence of assessment standards leads to certain abusive practice when relevant certificates are purchased by foreigners and intermediators and the proficiency level remains unidentified¹⁰.

Currently any person wishing to verify one's fluency in foreign language (in this specific case – Ukrainian) must pass the test based on the unified scale – A1, A2, B1, B2, C1, C2. These standards are designed by the specialized EU commission and enshrined in the Law of Ukraine «On Ukrainian language functioning as state (official)»¹¹. In general, this law contains efficient legal mechanisms to ensure protection, development and functioning of Ukrainian language, its active and unhindered use in all domains of public life but still it has not been implemented to the fullest extent.

The procedure of testing the state language proficiency as an obligatory requirement for persons who want to acquire Ukrainian citizenship is integrated in the legal framework that only requires improvement and extension.

Namely, the adaptation of the EU legislative provisions made it possible to reach higher level in the abovementioned area and establish open, transparent algorithms for those who desire to acquire Ukrainian citizenship.

¹ Сюр Н.В. Правова інтеграція України до Європейського Союзу: теоретико-правове дослідження: Автореф. дис. ... канд. юрид. наук: 12.00.01 / Н.В. Сюр ; Київ. нац. ун-т внутр. справ. Київ, 2006. 20 с. С. 6.

² Загальноєвропейські Рекомендації з мовної освіти: вивчення, викладання, оцінювання / Наук. ред. укр. видання д. пед. н., проф. С.Ю. Ніколаєва. Київ: Ленвіт, 2003. 273 с.

³ Погорілко В.Ф. Державна мова // Юридична енциклопедія : [в 6 т.] / Інститут держави і права імені В.М. Корецького НАН України, Вид-во "Українська енциклопедія" ім. М.П. Бажана; редкол.: Шемшученко Ю. С. (голова) [та ін.]. Київ: Юридична думка, 2011. URL: http://leksika.com.ua/13250215/legal/derzhavna_mova

⁴ Рішення Конституційного Суду України у справі за конституційними поданнями 51 народного депутата України про офіційне тлумачення положень статті 10 Конституції України щодо застосування державної мови органами державної влади, органами місцевого самоврядування та використання її у навчальному процесі в навчальних закладах України (справа про застосування української мови) від 14 грудня 1999 року № 10-рп/99. URL: <https://zakon.rada.gov.ua/laws/show/v010p710-99#Text>

⁵ Про громадянство України: Закон України від 18.01.2001 // Відомості Верховної Ради України (ВВР), 2001, № 13, ст. 65. URL: <https://zakon.rada.gov.ua/laws/show/2235-14#Text>

⁶ Закон Литовської Республіки від 31 січня 1995, № I-779 "Про державну мову" URL: <http://language-policy.info/movne-zakonodavstvo/zakonodavstvo-pro-movy-lytovskoji-respubliki/zakon-lytovskoji-respubliki-pro-derzhavnu-movu/>

⁷ Постанова Кабінету Міністрів України від 6 листопада 2019 р. № 911 URL: <https://zakon.rada.gov.ua/laws/show/911-2019-%D0%BF#Text>

⁸ Шевченко В.С. Інститут державної мови в Україні: історико-правовий вимір. Автореф. дис. ... канд. юрид. наук: 12.00.01 / В.С. Шевченко ; Приватний вищий навчальний заклад Університет Короля Данила. Івано-Франківськ, 2019. 20 с. С. 16.

⁹ Дробуш І.В., Кутинець В.В. Проблеми набуття громадянства України. *Молодий вчений*. 2017. № 5.1 (45.1). С. 35–38.

¹⁰ Політика іміграції: аналіз процедур і законодавчі новели України (аналітична записка). С. 3. URL: <https://europewb.org.ua/wp-content/uploads/2019/03/Zvit-Polityka-gromadyanstva-povnyj.pdf>

¹¹ Закон України «Про функціонування української мови як державної» від 25.04.2019 № 2704-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2704-19#Text>

Резюме

Сподинський О.О. Володіння державною (офіційною) мовою як необхідна умова набуття громадянства: український та європейський досвід.

Статтю присвячено дослідженню такої підстави набуття громадянства як володіння державною (офіційною) мовою, а також у ній проаналізовано європейський досвід перевірки рівня володіння мовою для його отримання.

Набуття громадянства в кожній державі унікальне, має ряд відмінностей і особливостей, притаманних виключно для конкретної держави. Проте ключовою умовою набуття громадянства, характерною для всіх країн світу, є знання державної мови на високому рівні.

Слід констатувати, що державна мова не завжди є мовою більшості населення, що проживає в певній країні. Цей факт яскраво підкреслює, наприклад, досвід Швейцарії, у якій ретороманська мова проголошена державною, однак її використовують під час спілкування лише 3 % населення.

Окрім громадян України, обов'язок володіти державною мовою покладається й на іноземців або осіб без громадянства, які хочуть бути прийнятими до громадянства України. Безумовно, у таких випадках має існувати певна нормативна правова база, відповідно до якої можна проаналізувати процедуру перевірки знань державної мови як необхідної умови набуття громадянства в Україні.

Автором наголошено, що володіння державною мовою у світі є чітко регламентованим і затвердженим відповідними стандартами. Що ж стосується перевірки рівня володіння державною мовою для того, хто хоче набути громадянство України. Відповідно українська мова сприймається як іноземна мова.

Констатовано, що сьогодні кожен, хто виявив бажання засвідчити, що він володіє іноземною мовою (в цьому випадку українською), проходить тест за стандартизованою шкалою А1, А2, В1, В2, С1, С2. Це стандарти, які розроблені мовною комісією Європейського Союзу. Ці стандарти відображені і в Законі України «Про функціонування української мови як державної». Зазначений закон містить дієві правові механізми захисту, розвитку і функціонування української мови, впровадження її в усіх сферах суспільних відносин, однак він повною мірою неререалізований у життя.

Процедура перевірки знань державної мови як необхідної умови набуття громадянства в Україні інтегрована в правове поле, яке потрібно лиш наповнювати і вдосконалювати. Саме запозичення норм права Європейського Союзу дозволили вийти на зовсім інший рівень у зазначеній сфері і створити відкриті і прозорі процедури для можливості набуття громадянства України.

Ключові слова: громадянство, мова, право ґрунту, право крові, біпатрид, державна політика.

Резюме

Сподинський А.А. Владение государственным (официальным) языком как необходимое условие приобретения гражданства: украинский и европейский опыт.

Статья посвящена исследованию такого основания приобретения гражданства как владение государственным (официальным) языком, а также в ней проанализирован европейский опыт проверки уровня владения языком для его получения.

Ключевые слова: гражданство, язык, право почвы, право крови, бипатрид, государственная политика.

Summary

Oleksandr Spodynskyi. State (official) language proficiency as an obligatory condition to acquire citizenship: Ukrainian and European experience.

Article presents study of state (official) language proficiency as a ground facilitating the acquisition of citizenship along with thorough analysis of European practices related to verification of language mastering level.

Key words: citizenship, language, law of the soil (jus soli), right of blood (jus sanguinis), bipatride, state policy.