

# ABOUT SOME FEATURES OF THE LEGAL STATUS OF MUNICIPAL COUNCILORS IN EU MEMBER STATES: EXPERIENCE FOR UKRAINE

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## INTRODUCTION

The aim of the decentralization reform of public power in Ukraine is to create effective governance mechanisms at all levels of the administrative-territorial structure. As a result, of structural and functional changes, the Law of Ukraine “On local self-government in Ukraine”, the Tax Code of Ukraine and the Budget Code of Ukraine have enshrined significant financial resources and new powerful powers for local self-government bodies. In view of this and to provide the full development of local self-government in Ukraine, it is necessary to modernize the status of local council deputies – representative the interests of the primary subject of local self-government – the territorial community. The basic subject of representative bodies is the deputy, his status reflects all main shortcomings and advantages of appropriate representative bodies, his activity – the level and efficiency of the work of councils, his guarantees – the providing of the work of councils<sup>1</sup>.

Thus, local council deputies must demonstrate the most effective work in the councils, be able to communicate and organize the public relations, to build and provide community participation mechanisms in decision-making. Without improving the activity of each deputy, it is impossible to successfully organize the work of the local council as the collegial authority. Only providing the effective work of representative bodies of councils will ensure the successful functioning of the entire system of the local self-government<sup>2</sup>.

The relevance of the scientific research on the organization and function of deputies of local councils is driven by the demand for the working of a new modern concept of the legal status of deputies of local councils, which should according to international and European standards of the local democracy and be implemented in the Law of Ukraine “On local self-government in Ukraine”». Following the ratification of the European Charter

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<sup>1</sup> Чернецька О.В. Конституційно-правовий статус депутатів місцевих рад в Україні : автореф. дис. ... канд. юрид. наук : 12.00.02. Київ, 2006. С. 1.

<sup>2</sup> Баюк М.І., Войт М.І., Панасюк М.В. Депутату місцевої ради: практичні поради щодо організації діяльності : навчальний посібник. Хмельницький : Центр перепідготовки та підвищення кваліфікації працівників органів державної влади, органів місцевого самоврядування, державних підприємств, установ і організацій, 2015. С. 5.

of Local Self-Government by Ukraine and the signing by our country Association agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, Ukraine took the clear course on building of European approaches in all spheres activities, including in issues of local self-government. Considering Ukraine's obligation to adapting national legislation to EU norms and principles, the study of some features of the legal status of municipal councilors in EU member states will provide an opportunity to formulate few of proposals on optimizing the organization and activities of local deputies.

It should be noted that Ukrainian scientists analyzing existing problems in the sphere of functioning of local deputies in Ukraine, are increasingly turning to the experience of the EU member states. Basically in monographs fully reveal the whole system-structural organization of local self-government on the example of EU member states<sup>3</sup>. Despite the demand of research for these problems, in Ukraine no complex works on the legal status of municipal councilors in the EU member states.

The elements of the legal status of municipal councilors in the EU member states are variety. Therefore, identical guarantees, forms and methods of work of municipal deputies to distinguish completely it is quite difficult. The paper is carried out the comparative institutional and functional analysis of main elements of the legal status of local council members in EU member states, which provide the implementation of the representative and political role of municipal councilors. Municipal councilors have main roles to play in municipality – a representative and policy-maker. These roles may often overlap councilors consider and make decisions on issues that will sometimes be complex and controversial. Many of those decisions will have long-term consequences for the municipality and should be made in the context of municipality's plans for the long-term health and welfare of the community.

The paper is divided into two sections. The first section describes representative role municipal councilors. In the second section defined policy-making role municipal councilors.

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<sup>3</sup> Бодрова І.І., Любченко П.М. Європейський досвід удосконалення місцевого самоврядування: наук. доповідь. Харків : Оберіг, 2012. 61 с.; Маринів А.В. Системно-структурна організація місцевого самоврядування у Французькій Республіці : дис. ... канд. юрид. наук : 12.00.02. Нац. юрид. ун-т ім. Ярослава Мудрого. Харків, 2018. 238 с.; Серьогіна С.Г. Напрями вдосконалення правового регулювання місцевого самоврядування в аспекті європейської інтеграції. *Вісник Національної академії правових наук України*. 2016. № 3 (86). С. 46–47; Чиркін А.С. Конституційні засади організації місцевого самоврядування в Польщі, Угорщині, Чехії : дис. ... канд. юрид. наук : 12.00.02. Національний юридичний університет імені Ярослава Мудрого. Харків, 2017. 236 с.

## 1. Representative role of municipal councilors

In the EU member states, local deputies can work professionally and while continuing to have profitable activities. At the same time, always municipal councilors represent of community interests. Therefore, legal acts provide for legal, financial, social, labor and organizational guarantees, which are intended to ensure the independence and impartiality of deputies and the effectiveness of their work. In particular, article 7.2 of the European Charter of Local Self-Government stipulates that people serving local authorities, either as elected officials or as employees, should receive sufficient allowances, salaries or compensation for their duties<sup>4</sup>. In view of this, one of the important principles of the legal status of municipal councilors is the principle of the incompatibility of the deputy's mandate with the carry out of activities that may lead to cases of conflicts of interest.

For example, in the Italian Republic according to the Agrigento Municipal Charter the conduct of municipal councilors when carry out of their functions must be based on impartiality and the principle of good governments. Councilors represent the community and are accountable to it. Councilors not be appointed auditors to other bodies, elected to the advisory bodies of the municipality, they cannot carry out functions delegated by the mayor. The municipal council's regulation for councilors provides for compensation for attending meetings and the carry out of functional powers (Art. 22)<sup>5</sup>. The Somali Municipal Council Regulation states that each municipal councilor represents the community and the carry out functions without its mandate. The counselor has complete freedom of action, expression and voting (Art. 22). Municipal counselors should refrain from directly or indirectly participation in services, inspections, administrations, contracts, concessions and management of services etc. This prohibition also applies to members of the municipal councilor's family (Art. 24)<sup>6</sup>.

In the Italian Republic according to "The Consolidated Texts of the laws on the status of local self-government bodies" municipal councilors have the salary for attending councils and commissions. The monthly salary may not exceed the amount equal to a quarter of the maximum allowance of the syndicates and shall be fixed in the decree of the Minister of the Interior,

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<sup>4</sup> European Charter of Local Self-Government. URL: <https://rm.coe.int/168007a088> (Last accessed: 20.02.2020).

<sup>5</sup> Statuto Comune di Agrigento. URL: <http://www.comuni-italiani.it/statuto/084/001/a22.html> (Last accessed: 20.02.2020).

<sup>6</sup> Regolamento per il funzionamento del Consiglio comunale. URL: <https://www.comune.somaglia.lo.it/il-comune/atti-e-regolamenti/regolamento-per-il-funzionamento-del-consiglio-comunale/> (Last accessed: 19.02.2020).

in agreement with the Minister of Finance, Budget and Economic Planning. The remuneration councilors depending mostly on the type of local governments and the number of inhabitants<sup>7</sup>.

According to art. L2123-17 of the General Code of Territorial Collectives of the French Republic the mandate of a municipal councilor is free<sup>8</sup>. The principle of the incompatibility of the deputy's mandate with the carry out of the other activities is found in the Electoral Code of the French Republic (cr. L46, L46-1, L46-2, L 237–239)<sup>9</sup>. In particular, the functions of a municipal councilor are incompatible: prefect, subprefect, secretary general of the prefecture; in the bodies of design, management and supervision of the national police; legal representative of municipal communal institutions; in communal centers of social activity; in an inter-municipal center of social activity established by a public institution for inter-municipal cooperation; a member of another municipal council in France or another EU member state; professional military; member of the Regional Council, the Assembly of Corsica, Guyana, Martinique, the Council of the Department, the Council of Paris; member of the European Parliament. According to Art. L2123-1 of the General Code of Territorial Collectives of the French Republic the employer is obliged to provide any employee of his company, who is a member of the municipal council, with the time necessary to participate in the work: 1) in plenary meetings of this council; 2) at the meetings of municipality commissions; 3) at the meetings of the advisory bodies and bureaus. The employer is not obliged to pay the hours spent carry out for functions of the municipal councilor.

Art. L2123-2 of the General Code of Territorial Collectives provides an algorithm for accruing to the municipal councilor state compensation payments, which allow effective work in the municipal council. This is an hourly, one-off and quarterly payment, which depends on the payment of legal weekly working time. The salary of municipal councilors is the directly proportional to the population of the community. The salary is equal to: 100% of legal working time paid for municipal councilors of municipalities, with a population of 30,000 to 99,999 people; 60%

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<sup>7</sup> Testo unico delle leggi sull'ordinamento degli enti locali approvato con Decreto Legislativo 18 agosto 2000, n. 267. URL: [https://dait.interno.gov.it/documenti/testo\\_unico\\_febbraio\\_2019.pdf](https://dait.interno.gov.it/documenti/testo_unico_febbraio_2019.pdf) (Last accessed: 19.02.2020).

<sup>8</sup> Code général des collectivités territoriales URL: <https://www.legifrance.gouv.fr/affichCode.do;jsessionid> (Last accessed: 19.02.2020).

<sup>9</sup> Code électoral. URL: [https://www.legifrance.gouv.fr/affichCode.do;jsessionid=8AB77B8651A889E828F2CFFBE96B6882.tplgfr25s\\_2?idSectionTA=LEGISCTA000006164065&cidTexte=LEGITEXT000006070239&dateTexte=20191216](https://www.legifrance.gouv.fr/affichCode.do;jsessionid=8AB77B8651A889E828F2CFFBE96B6882.tplgfr25s_2?idSectionTA=LEGISCTA000006164065&cidTexte=LEGITEXT000006070239&dateTexte=20191216) (Last accessed: 16.12.2019).

of legal working time for municipal councilors of municipalities with a population of 10,000 to 29,999 residents; 30% payment of legal working time for municipal councilors of municipalities, which live from 3500 to 9 999 inhabitants; 20% of legal weekly working time paid to municipal councilors of municipalities with less than 3,500 residents<sup>10</sup>. This fact depends on the need for more time and effort to manage the large municipality. In recent years, the rapporteurs of the Congress have estimated that some countries, even though they have not ratified Article 7.2, nevertheless have seen their national legislations evolving to such a point that they are practically now in compliance with it. This is namely the case of France with a Law ratified in 2015 incorporating a “Charte de l’*é*lu local”<sup>11</sup>.

The principle of incompatibility of the mandate of the local deputy and the principle of financial transparency of its activity are detail in the Law of the Republic of Poland “On municipal self-government” (Art. 24–24i, 25–25b)<sup>12</sup>. The councilor is obliged to follow the best interests of the local community. Councilors may not conduct business on their own account or with others using the communal property of the municipality where he was elected councilor, as well as manage such activities or be representative or representative in the conduct of such activities. Councilors may not be of greater than 10% of the shares in commercial companies with the participation of the municipal legal entities or entrepreneurs, involving such persons. Councilor is obliged to stop doing this business within 3 months from the date of submission of the vows. Councilor shall be required to make a statement about your financial status, hereinafter referred to as the “financial statement”. Councilor declaration of financial interests concerns their property separate and marital assets, commonality assets. Declaration of financial interests includes information about:

1) cash resources, real estate, shares and shares in commercial companies and the acquisition of State, other State legal persons, local government units, their unions or from municipal legal person property, which is subject to sale by tender, as well as information about doing business and taking up positions in commercial companies; 2) income derives from

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<sup>10</sup> Code général des collectivités territoriales. URL: <https://www.legifrance.gouv.fr/affichCode.do;jsessionid> (Last accessed: 19.02.2020).

<sup>11</sup> Financial compensation of local and regional elected representatives in the exercise of their office: 36th Session Report CG36(2019)10 final 3 April 2019. URL: <https://rm.coe.int/financial-compensation-of-local-and-regional-elected-representatives-i/1680931258> (Last accessed: 18.02.2020).

<sup>12</sup> Ustawa z dnia 8 marca 1990 r. o samorządzie gminnym. URL: <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19900160095/U/D19900095Lj.pdf> (Last accessed: 18.02.2020).

employment or any other activity or activities, with the sums obtained from each title; 3) property moving above 10 000 EUR; 4) cash commitments with a value in excess of 10 000 Gold, including contracted loans and advances and conditions on which they are granted. Such restrictions are imposed not only on councilors, but also on their families. Councilors and their spouses may not be members of the management or inspection and control authorities or representatives of commercial companies with the participation of the municipal legal entities or entrepreneurs, involving such persons. The selection or appointments of such persons for these functions are by law void.

The mandate of the Council of the municipality may not be combined with: 1) the mandate of a Deputy or Senator; 2) the exercise of the functions of the Governor or the Vice-Governor; 3) membership in the authority of other government entities. Councilor may not take part in the vote in the Council or the Commission, if it relates to his interest in bringing proceedings. Therefore, the municipal council is guarantor for councilor the right to work. In connection with the performance of the mandate of Councilor uses legal protection for public officials. Termination of a councilor of employment requires the prior consent of the Municipal Council, of which it is a member. The Municipal Council refuses to consent to the termination of employment of a councilor, if the Foundation of your solution those relationships are the events related to the performance by the Council of the mandate. The employer is obliged to release the Councilor from work in order to enable it to participate in the work of the municipal authorities. On the basis of established by the Council of the municipality of radnemu have diet and reimbursement of travel expenses.

In contrast to the Republic of Poland, in another post-socialist country – the Republic of Bulgaria is law clearly defines the dependence of the salary for deputy's activity on the number of residents of the community. Article 34 of the Law of the Republic of Bulgaria "On Local Government and Local Administration" defines the following. Municipal councilors are remunerated for their participation in plenary sessions and commissions. The remuneration varies according to the population of the municipality and is based on the principle that, for municipalities of more than 100000 inhabitants, it should not exceed 70% of the gross wage of the President of the Municipal Council, or (for municipalities under 100000 inhabitants) of the average gross wage in municipal administration. The remuneration of the President of the Municipal Council cannot be higher than 90% of the one of the Mayor. The salaries of councilors are determined by the Municipal Council, but

within the limits set out in national Decree No. 67 from 14.04.2010, limits which vary according to the population of the municipality.

With regard to the principle of the incompatibility, municipal councilors may not:

1) be a member of the management, supervisory board, board of directors, controller, manager, prosecutor, trade commissioner, trustee in bankruptcy or liquidator of commercial companies that have a municipal entity or directors enterprises;

2) hold the office of a municipal councilor in another community or similar position in any EU member state;

3) be a sole proprietor, partner, shareholder, member of the management, supervisory board of a company which has concluded contracts with a municipality in which it is a municipal councilor, and to participate in the work of commercial companies with municipal involvement or with municipal enterprises<sup>13</sup>.

Similar provisions are fixed in Act “On Municipalities” of the Czech Republic According to Act “On Municipalities” member of the municipal council executes his mandate in person and in accordance with his oath and he shall not be bound by any orders. The office of a member of a municipal council is a public office. Where circumstances dictate that the participation of a member of a municipal council in discussions and decision-making in a certain matter in the bodies of the municipality might constitute an advantage or injury for the member concerned or for a person close to him, for a natural or legal person represented by this member pursuant to the law or power of attorney (conflict of interests), the member concerned shall be obligated to communicate this fact before the start of the meeting of the municipal body, which is to discuss the matter. This municipal body shall decide whether there is good reason to exclude the member concerned from discussions and decision-making in this matter.

The rights of a member of a municipal council related to stemming from his employment or similar relationship may not be reduced due to the holding of his office. The members of a municipal council who are released on a long-term basis in order to perform their office and members of a municipal council who were not in an employment relationship before being elected members of the municipal council, but who perform the office to the same extent as members of the municipal council released on a long-term basis shall receive remuneration from the municipality

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<sup>13</sup> Закон за местното самоуправление и местната администрация. URL: <https://www.lex.bg/laws/ldoc/2132580865> (Last accessed: 18.02.2020).

for performing the office of a released member of the municipal council pursuant to this Act.

Remuneration shall be paid from the municipality budget. Remuneration shall mean a monetary contribution granted by the municipality to released members of the municipal council for the performance of their office; however, contributions provided in relation to the performance of their office pursuant to separate legal regulations, such as travel expenses, shall not be considered remuneration. (3) Remuneration under subsection (1) shall be: a) monthly remuneration; b) additional remuneration; c) remuneration granted at the end of the term of office. Non-released members of the municipal council may be granted monthly remuneration and additional remuneration for the performance of their office. The legal regulations effective for the salaries of municipality employees and the Labor Code shall apply to the maturity and payment of remuneration for members of a municipal council and to payment deductions. For these purposes, the remuneration of members of a municipal council shall be considered the salary of employees of the municipality in an employment relationship; the municipality shall be considered the employer and members of the municipal council shall be considered employees<sup>14</sup>.

Considering that the Law of the Kingdom of Spain “On the regulation of local authorities” has distinguished between categories of municipal councilors working on the professional basis in a municipality and councilors for whom work in a municipal council is not constant, the principle of incompatibility and guarantees of activity is different above others countries. Municipal councilors providing professional services are remunerated for their functions and are included in the general social security system. In this case, receiving remuneration means incompatibility with other remuneration accrued to the budgets of public administrations, organizations, agencies or companies. Municipal mandate means incompatibility with other activities. Part-time councilors are remunerated for their time spent working in the municipality. Municipal councilors have compensation for actual costs in the carry out of their functions, in according to similar norms adopted for employees of state administrations. Municipal councils decide on remuneration, compensation and benefits and published in the “Official Gazette” of the province.

Municipal councilors declare their revenue and their own assets and participation in companies of all kinds together with information about

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<sup>14</sup> Act “On Municipalities” of the Czech Republic. URL: <https://www.mvcr.cz>. (Last accessed: 20.02.2020).



companies in which they invest their assets and the assessment of taxes on revenue and equity. The declarations are approved at the plenary sessions of the municipal council before the inauguration of the deputy and at the end of his term. The declarations are entered in the public registers: 1) the declaration on the reasons of possible incompatibility and the revenue is published in the municipality register of activities; 2) the declaration of property rights is published in the municipality register of assets. Municipality council decides on financial compensation for former councilors who have not revenue. Councilors – members of executive bodies of a municipality do not carry out entrepreneurial activity for two years<sup>15</sup>.

## **2. Policy-making role of municipal councilors**

Policy-making is often undervalued and misunderstood, yet it is the central role of the city, town, and county legislative bodies. The policies created by our local governments affect everyone in the community in some way. Public policy determines what services will be provided to the residents and the level of those services, what kinds of development will occur in the community, and it determines what the community's future will be. Policies are created to guide decision-making. Elected councilors of cities, towns, and counties have public policy-making responsibilities. Local policy-making is complex. It demands the very best of local officials. The public policy-making process is highly decentralized. Policy initiation, formulation, adoption, and implementation involve many interests. The decisions could be the adoption of a vision for the community, a comprehensive plan, a budget, or a policy relating to a specific issue, such as allowing or prohibiting local gambling activities. Policy-making requires political wisdom, diplomacy, and prudence to bring diverse community interests together around a shared purpose<sup>16</sup>.

For the purpose of policy-making role municipal councilors in the EU member states have sufficiently standard powers: the right to receive information necessary for the effective carry out of their functions; the right to investigate and ask questions; the right to initiate consideration of issues at plenary meetings of a municipality, etc.

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<sup>15</sup> Ley 7/1985, de 2 de abril, Reguladora de las Bases del Régimen Local. URL: <https://www.boe.es/eli/es/l/1985/04/02/7/con> (Last accessed: 20.02.2020).

<sup>16</sup> Local Government Policy-Making Process. *Municipal Research & Services Center of Washington*. URL: <http://mrsc.org/getmedia/e46223b6-f3ac-4afb-b7d9-b2362edf6890/Local-Government-Policy-Making-Process.pdf.aspx?ext=.pdf> (Last accessed: 20.02.2020).

In the Italian Republic according to “The Consolidated Texts of the laws on the status of local self-government bodies” municipal councilors have the right: to initiate on any matter discussed in the council; require the convening of a council; to ask questions to the mayors and send them suggestions; to receive from the municipal body, enterprises, institutions information. In doing so, municipal councilors are obliged to keep of the secrecy regime in cases, defined by law<sup>17</sup>.

These legislative provisions are duplicated and specified at local acts. For example, in the Somali Municipal Council Regulation Chapter 3 “Rights of councilors” set out the following powers of municipal councilors:

1) the right of the initiative (Art. 13). Municipal councilors have the right to decide any matter in the municipal council. In particular, municipal councilors present proposals and amendments to the resolutions, included in the agenda of the Council. This initiative shall be in writing, accompanied by an illustrative report and sent to the mayor, who shall transmit it to the municipal secretary for preliminary review;

2) the right to make amendments (Art. 14). Municipal councilors have the right to make amendments to decisions, included in the agenda of the Council. This right includes: amendments to the form, addition, partial changes of the text of Council decisions. These amendments shall be sent in writing to the mayor two days before the Council meeting. The municipal councilor may make several amendments, modify and cancel them;

3) the right to ask questions (Art. 15). The question is formulated in the writing form and addressed to the mayor or to the Council to provide information on specific facts or actions of the municipality. After the answer to the question, the counselor has a three-minute speech with a brief explanation of reasons;

4) the right to the petition (Art. 16). The petition must be submitted in the writing form and included in the agenda of the Council meeting. The petition consists of a proposal to the decision of the municipal council within the powers specified in the charter of the municipality. The petition shall be formulated as a resolution and shall be approval to the Council;

5) the right to requests (Art. 17). The request shall be submitted in the writing form and it included need to clarify circumstances of the certain event. The request shall be signed by the councilor and included in the Council’s agenda. The mayor or alderman responds to a request

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<sup>17</sup> Testo unico delle leggi sull’ordinamento degli enti locali approvato con Decreto Legislativo 18 agosto 2000, N. 267. URL: [https://dait.interno.gov.it/documenti/testo\\_unico\\_febbraio\\_2019.pdf](https://dait.interno.gov.it/documenti/testo_unico_febbraio_2019.pdf) (Last accessed: 19.02.2020).

at a council meeting. After the answer to the question, the counselor has a three-minute speech with a brief explanation of reasons;

6) the right to represent the Council's agenda (Art. 18). The Council's agenda shall consist of a written proposal, which shall be submitted to the mayor at least 48 hours before the beginning of the meeting. Proposals for the Council's agenda shall be considered in an open council meeting in the form of a five-minute report and shall include a debate on the need to consider the issues;

7) the right to information and the right of the access to administrative documents (Art. 19). Municipal counselors have the right to receive from the municipal authorities all information for fulfilling effective carry out of the depute mandate. Municipal councilors have the right of access and familiarization with all acts of the municipal administration;

8) the right to receive copies of documents (Art. 20). In the carry out of powers municipal councilors have the right to receive copies of administrative documents. Copies shall be issued within fifteen days of the request, except where the documents are particularly complex. Copies are issued on the free paper, indicating to use only for carry out of the depute mandate;

9) the right to control the legality of the Council resolutions. This is the collective form of work for municipal councilors. The appropriate audits are carried out at the written request and the one-fifth of the councilors shall be approving written request on ten days of the publication of the council's resolutions in the municipality register. The requirement containing the names councilors, signatures, date, subject, matter of the decision and addressed to the municipal secretary. The mayor shall be obliged to inform in the writing form about of results of the control<sup>18</sup>.

According to Art. L. 2121-19 of the General Code of Territorial Collectives of the French Republic during plenary meetings municipal councilors on local matters ask spoken questions and put them to discussion. This right is exercised under the control of the mayor who directs the debate and does not have the right to limit of the freedom of the expression. In municipalities with a population of more than 3,500 residents, council regulations record the frequency and rules of speeches and discuss spoken counselors' questions. Municipal councilors have the right to be informed of municipal affairs for effective carry out of functions. The information

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<sup>18</sup> Regolamento per il funzionamento del Consiglio comunale. URL: <https://www.comune.somaglia.lo.it/il-comune/atti-e-regolamenti/regolamento-per-il-funzionamento-del-consiglio-comunale/> (Last accessed: 19.02.2020).

should be provided to the municipal councilors on clearly defined. The information may be provided in any form L. 2121-13, L. 2121-13-1)<sup>19</sup>.

In the Republic of Poland the basic powers of municipal councilors are fixed in the commune's charter. For example, the Charter of Zdunska Wola commune states that active participation in the work of the Council and its committees is the right and duty of the councilors. The duties of councilors include support communication with residents and their organizations by: 1) informing residents of the commune's issues and advising on important issues; 2) receiving applications, proposals, complaints from residents and submitting them to the commune authorities (§ 68.1.). In the carry out of their powers, municipal councilors have the right to access information and material not covered by the protection under this Charter<sup>20</sup>.

According to Art. 33 of the Law of the Republic of Bulgaria "On Local Government and Local Administration" municipal councilors have powers:

1) to be elected to the permanent and temporary committees of the Council;

2) to propose of the Council's agenda, initiate of the consideration of local issues and to present of the draft decisions;

3) to participate in the discussion and decision of all matters within the competence of the Council;

4) to submit a question to the mayor. Unless the council decides otherwise, at the next meeting the mayor must answer it orally or in writing.

Public authorities, enterprises and public organizations are obliged to assist the municipal councilor and provide him with the information and documents that he needs for carry out deputy's mandate. Except for cases, which include state and official secret<sup>21</sup>.

Similar provisions are fixed in Act "On Municipalities" of the Czech Republic. Members of a municipal council, in the performance of their office, have the right:

a) to submit proposals for discussion to the municipal council, municipal board, committees, and commissions;

b) to make enquiries, comments, suggestions, and incentives in relation to the municipal board and its members, the chairpersons of committees, statutory bodies of legal persons established by the municipality,

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<sup>19</sup> Code général des collectivités territoriales. URL: <https://www.legifrance.gouv.fr/affichCode.do;jsessionid> (Last accessed: 19.02.2020).

<sup>20</sup> Statut Gminy Zduńska Wola. URL: <http://bip.ugluban.nv.pl/m,286,ustawa-o-samorzadzie-gminnym.html> (Last accessed: 23.02.2020).

<sup>21</sup> Закон за местното самоуправление и местната администрация. URL: <https://www.lex.bg/laws/ldoc/2132580865> (Last accessed: 18.02.2020).

and the managers of institutions receiving contributions from the central government budget and of organizational units, which have been established or set up by the municipality; written replies shall be forthcoming within 30 days;

c) to request from municipality employees assigned to the municipal office, and from employees of legal persons established or set up by the municipality, information on matters related to the performance of the office of these members of the municipal council; this information shall be provided within 30 days.

A member of a municipal council shall be obligated to attend meetings of the municipal council, or meetings of other bodies of the municipality if he is a member thereof, to fulfil the tasks imposed on him by these bodies, to promote the interests of the citizens of the municipality, and to act and behave in such manner that the reputation of his office is not compromised<sup>22</sup>.

According to the Law the Kingdom of Spain “On the regulation of local authorities” municipal councilors have the right to receive from the mayor or from the municipal administration as much information or data as is necessary for the carry out of deputy functions (Art. 77)<sup>23</sup>. As in other EU member states, in the Kingdom of Spain the powers of municipal councilors are defined in more detail in local acts. For example, in the Malaga Municipal Council Regulation set out the following powers of municipal councilors:

- the right to participate and vote in plenary Council meetings and in the permanent and temporary committees to which they are members and the right to participate without voting rights in commissions meetings which councilors are not members (Art. 5);
- the right to submit to the municipal authorities requests for information, necessary for the carry out of deputy functions (Art. 6);
- the right to create and participate in the work of municipal advisers groups (Art. 24, 25);
- the right to submit of initiatives for consideration of the council. This right includes: amendments to the form, addition, changes of the text of the proposal (Art. 96)<sup>24</sup>.

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<sup>22</sup> Act “On Municipalities” of the Czech Republic. URL: <https://www.mvcr.cz>. (Last accessed: 20.02.2020).

<sup>23</sup> Ley 7/1985, de 2 de abril, Reguladora de las Bases del Régimen Local. URL: <https://www.boe.es/eli/es/l/1985/04/02/7/con> (Last accessed: 20.02.2020).

<sup>24</sup> Reglamento orgánico del ayuntamiento de Malaga. URL: <http://www.malaga.eu/visorcontenido/NRMDocumentDisplay/159/DocumentoNormativa159> (Last accessed: 23.02.2020).

## CONCLUSIONS

Summarizing the results of the study of some features of the legal status of municipal councilors in EU member states, the following should be noted.

Firstly, the Law of Ukraine “On the status of deputies of local councils” establishes the imperative mandate of deputies of local councils. In EU member states, national and local acts found a free mandate for municipal councilors.

Secondly, according to the Law of Ukraine “On the status of deputies of local councils” a deputy of a local council carries out its powers without interrupting its production or service activities. In EU member states, national and local acts fix several options for the realization of the representative mandate:

a) municipal councilors work on a professional basis, cannot combine deputy activity with the carry out of any other work and have salary that is directly proportional to the number of residents of the community;

b) municipal councilors participate in the work of the community bodies and receive monetary compensation, which depends on the number of tasks completed. At other times, deputies continue to engage in their professional activities. The legislation defines the principle of non-election for candidates for municipal councilors;

c) depending on the size of the community there are two categories of municipal councilors – councilors working on a professional basis in the municipality and councilors for whom work in the municipal council is not essential. Receiving remuneration for professional activity means incompatibility with other public payments;

d) municipal councilors work on a professional basis, cannot have any other representative mandate and engage in any profit-making activity in the community.

Thirdly, the Law of Ukraine “On the status of deputies of local councils” clearly distinguishes between forms of activity of a deputy of a local council in an election district and the rights of a councilor in a council and its bodies. In EU member states national and local acts do not adopt similar forms of deputy activity. In the EU member states municipal councilors have sufficiently standard powers: the right to receive information necessary for the effective carry out of their functions; the right to investigate and ask questions; the right to initiate consideration of issues at plenary meetings of a municipality.

Fourthly, in the context of national modernization of the legal status of local councilors, the following practices of the EU member states should

be implementing: the free mandate for municipal councilors; the principle of professional activity of the local deputy; the prohibition of the deputy and his family members engage in any profit-making activity in the community. These legislative amendments will provide the effective realization of the representative and political functions of local council's deputies in Ukraine.

## SUMMARY

This paper presents the analysis of some features of the legal status of municipal councilors in EU member states. The author argues the importance of modernize the status of local councils deputies in Ukraine. The paper is carried out the comparative institutional and functional analysis of main elements of the legal status of local council members in EU member states, which provide the implementation of the representative and political role of municipal councilors. Municipal councilors have main roles to play in municipality – a representative and policy-maker. These roles may often overlap councilors consider and make decisions on issues that will sometimes be complex and controversial. Many of those decisions will have long-term consequences for the municipality and should be made in the context of municipality's plans for the long-term health and welfare of the community. The paper is divided into two sections. The first section describes representative role municipal councilors. In the second section defined policy-making role municipal councilors. In the context of national modernization of the legal status of local councilors, the following practices of the EU member states should be implementing: the free mandate for municipal councilors; the principle of professional activity of the local deputy; the prohibition of the deputy and his family members engage in any profit-making activity in the community. These legislative amendments will provide the effective realization of the representative and political functions of local council's deputies in Ukraine.

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