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## **Comparative legal analysis of the legal status of the head of the territorial community in Ukraine and Poland**

**Summary:** The purpose of the publication is a comparative legal analysis of the legal status of the head of the territorial community in Ukraine and Poland. The methodology involves a comprehensive study of theoretical and practical material on this issue, as well as the formulation of relevant conclusions and recommendations. The following methods of scientific cognition were used during the research: terminological, formal-logical, normative-dogmatic, system-functional and comparative-legal. Regarding the comparative analysis of the legal status of the elder under Polish and Ukrainian legislation, it should be noted that it is different. After all, in the system of Polish local self-government, the notion of old age is characteristic of the head (administration) of the county as the middle link of the territorial organization. In accordance with Part 1 of Art. 35 of the Law of Poland «On Commune Self-Government» (March 8, 1990) the executive body of the auxiliary unit of the commune is the village headman (soltis), which is an alternative to the head of the territorial community under Ukrainian law.

Thus, if we draw a parallel with the model of local self-government in the Republic of Poland, the position of headman, which is provided by Ukrainian legislation, is analogous to the position of soltys, where solestvo (village) is only a territorial formation of the commune and is not a legal entity. However, the experience of local self-government, especially in terms of the legal status of the village elder (soltys) is quite positive and desirable for application in the national legislation of Ukraine. The results of the study can be used to further improve the legal status and functional efficiency of the institution of elders in Ukraine, taking into account the positive experience of Poland in this sphere.

**Анотація:** Метою публікації є порівняльно-правовий аналіз правового статусу голови територіальної громади в Україні та Польщі. Методологія передбачає всебічне вивчення теоретичного та практичного матеріалу з цього питання, а також формулювання відповідних висновків та рекомендацій. Під час дослідження використовувались наступні методи наукового пізнання: термінологічний, формально-логічний, нормативно-догматичний, системно-функціональний та порівняльно-правовий.

Щодо порівняльного аналізу правового статусу старости за польським та українським законодавством, слід зазначити, що він відрізняється. Зрештою, в системі польського місцевого самоврядування поняття старости характерне для голови (адміністрації) повіту як середньої ланки територіальної організації. Відповідно до ч. 1 ст. 35 Закону Польщі «Про гмінне самоврядування» (8 березня 1990 р.), виконавчим органом допоміжного підрозділу гміни є сільський голова (солтис), що є альтернативою голові територіальної громади за українським законодавством.

Отже, якщо провести паралель із моделлю місцевого самоврядування в Республіці Польща, посада старости, яка передбачена українським законодавством, є аналогічною позиції солтисів, де солекство (село) є лише територіальним утворенням гміни і не є юридичною особою. Однак досвід місцевого самоврядування, особливо з точки зору правового статусу старости села (солтиса), є досить позитивним та бажаним для застосування у національному законодавстві України. Результати дослідження можуть бути використані для подальшого поліпшення правового статусу та функціональної ефективності інституту старости в Україні, беручи до уваги позитивний досвід Польщі у цій сфері.

**Streszczenie:** Celem publikacji jest porównawcza analiza prawna statusu prawnego przewodniczącego wspólnoty terytorialnej na Ukrainie i w Polsce. Metodologia obejmuje kompleksowe studiovanie właściwego materiału teoretycznego i praktycznego, a także sformułowanie odpowiednich wniosków i rekomendacji. W toku badań wykorzystano następujące metody poznania naukowego: terminologiczną, formalno-logiczną, normatywno-dogmatyczną, systemowo-funkcjonalną i prawnoporównawczą.

Odnosząc się do analizy porównawczej statusu prawnego starosty w ustawodawstwie polskim i ukraińskim, należy zauważyć różnice. W systemie polskiego samorządu terytorialnego pojęcie starosty jest charakterystyczne dla przewodniczącego (administracji) powiatu jako średniego szczebla organizacji terytorialnej. Zgodnie z częścią 1 art. 35 polskiej ustawy O samorządzie gminnym z dnia 8 marca 1990 r. organem wykonawczym jednostki pomocniczej gminy jest sołtys, będący alternatywą przewodniczącego wspólnoty terytorialnej według ukraińskiego ustawodawstwa.

Jeśli zatem nawiązać do modelu samorządu terytorialnego w RP, przewidziane w ukraińskim ustawodawstwie stanowisko starosty jest odpowiednikiem stanowiska sołtysa, gdzie sołectwo (wieś) jest tylko terytorium i nie posiada osobowości prawnej. Jednak polskie doświadczenie samorządu terytorialnego, zwłaszcza w kwestii statusu prawnego sołtysa, jest dość pozytywne i pożądane do stosowania w ustawodawstwie Ukrainy. Wyniki niniejszego badania naukowego mogą posłużyć do dalszej poprawy statusu prawnego i efektywności funkcjonowania instytucji starosty na Ukrainie, biorąc pod uwagę pozytywne doświadczenie Polski w tym zakresie.

**Keywords:** local self-government, system of local self-government, local self-government bodies, territorial community, head of territorial community, head of united territorial community, headman, viit, local self-government in Ukraine, local self-government in Poland

**Ключові слова:** місцеве самоврядування, система місцевого самоврядування, органи місцевого самоврядування, територіальна громада, голова територіальної громади, голова об'єднаної територіальної громади, староста, віит, місцеве самоврядування в Україні, місцеве самоврядування в Польщі

**Słowa kluczowe:** samorząd terytorialny, system samorządu terytorialnego, organy samorządu terytorialnego, wspólnota terytorialna, przewodniczący wspólnoty terytorialnej, przewodniczący połączonej wspólnoty terytorialnej, starosta, wójt, samorząd lokalny na Ukrainie, samorząd terytorialny w Polsce

## I. History of formation and development of the institute of headman (starosta)

The peculiarities of the history of formation and development of the institution of territorial community is not only because it has its own deep roots and ancient historical traditions. After all, constantly losing and fighting for their own statehood, the Ukrainian people have always supported local self-government, improved

the territorial community, its governing bodies, and affirmed democracy in their daily activities.

As noted by A.V. Andrushko, the concept of “elder” has deep historical roots, but is new in domestic law. The term “elder” comes from the Proto-Slavic word “old; ancient” and means an older person, endowed with life experience and with an influential reputation. In this sense, it is indicated that the word “elder” comes from the word “viit”, which is interpreted as “called to help” and also means “head of local government”<sup>1</sup>.

According to M.I. Bayuk, the new, basic official of local self-government “elder” has different, depending on the historical period, territory, interpretation:

1. In Ukraine, Poland and the Lithuanian principality (15<sup>th</sup> century – 18<sup>th</sup> century) the headman is the head of the local city or village administration or self-government; white.

2. In Western Ukraine (until 1939) the headman is the chief, the head of the county.

3. In tsarist Russia, the headman is the head of the village community<sup>2</sup>.

In his works, K. R. Koroshchenko notes that even in Kievan Rus there were institutions of self-government, chambers and assemblies of various strata. An important stage of historical development at the end of the 14<sup>th</sup> century in Kievan Rus was the liquidation of separate principalities and the formation of voivodships. Accordingly, it was too difficult for one person to manage huge territories. And it is this factor that led to the emergence of new positions that helped manage the inhabitants of certain areas. Among such positions were elders, voivodes and voyts, who were actually representatives of the governor on the ground, but they did not have all the full power<sup>3</sup>.

Based on the literature review, a special stage in the long and difficult path of local self-government in the Ukrainian lands was the period that began in the 20s of the twentieth century. A characteristic feature of this period is the attempt to introduce the democratic foundations of local self-government in the Ukrainian People’s Republic. Accordingly, a significant part of the provisions of the acts of the Ukrainian People’s Republic have not been implemented. Thus, important decisions regarding local self-government were made only during the time of P. Skoropadsky (May 14, 1918). Thus, the decree of the hetman introduced the positions of elders

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<sup>1</sup> А.В. Андрушко, *Окремі аспекти правового регулювання праці старост об’єднаних територіальних громад*, “Університетські наукові записки” 2018, № 3-4, р. 179.

<sup>2</sup> М.І. Баюк, *Становлення інституту старости: перші кроки: науково-практичний посібник*, Хмельницький 2017, р. 14.

<sup>3</sup> К.Р. Корощенко, *Становлення інституту старости в Україні. Реформування правової системи в контексті євроінтеграційних процесів*, 2019, part 1, р. 34.

instead of provincial commissioners, and county commissioners were dismissed, and county elders were appointed in their place.

It is interesting that different parts of Ukraine perceived the position of “elder” differently. Due to historical and geographical background, in Eastern Ukraine the headman was recognized as the head of the village community, in Western Ukraine as the head or head of the county, and in Central Ukraine the headman headed the village communities. Unfortunately, in Soviet times, local self-government suspended its development. At that time, the position of elder did not exist, because the representation of rural communities was carried out by councils and their heads<sup>4</sup>.

In 2014, the Government of Ukraine introduced the reform of local self-government and approved the Concept of reforming local self-government and territorial organization of power in Ukraine<sup>5</sup>, which defined an action plan for decentralization of power in Ukraine. One of its expected results was the formation of united territorial communities capable of resolving issues of local significance on their own or through local self-government bodies. Namely, such associations in Ukraine began to be formed mainly with administrative centres. Accordingly, in the administrative centres there are village, settlement, city councils and village, settlement, city mayors of the united territorial communities. Those villages, settlements, cities that joined the union and are not their administrative centres were not left without a leader. To implement the above Concept, a number of regulations were adopted<sup>6</sup>. In these circumstances, all this provided the basis for the introduction of the institution of old age in Ukraine.

According to M.M. Voronov, among the factors that determine the feasibility of introducing the position of elder, we can highlight the following:

1. *Demographic*. The number of inhabitants of the united territorial community and inhabitants who are registered in the corresponding village, settlement is taken into account.

2. *Territorial*. The distance between the settlements within the united territorial community must be taken into account. This is very important for providing quality administrative and social services to residents.

3. *Material and financial*. The financial maintenance of the headman and his staff is financed from the budget of the united territorial community, in addition, the appropriate material base must be created for them to perform their duties.

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<sup>4</sup> К.Р. Корощенко, *Становлення інституту старости в Україні. Реформування правової системи в контексті євроінтеграційних процесів*, 2019, part 1, p. 35.

<sup>5</sup> Концепція реформування місцевого самоврядування та територіальної організації влади в Україні: розпорядженням Кабінету Міністрів України від 01.04.2014 року № 333-р, <https://zakon.rada.gov.ua/laws/show/333-2014-r#Text> (access: 5.05.2021).

<sup>6</sup> І.Ю. Попова, *Правовий статус старости як виборчої посадової особи місцевого самоврядування*, “Часопис Київського університету права” 2018, № 2, p. 101.

4. *Functional.* The introduction of the position of headman at the village or settlement level should be decided from the point of view of expediency and necessity of representation of their interests by the headman and not by other local self-government bodies (for example, self-organization bodies).

5. *Political.* The distribution of political forces in the council of the united territorial community can influence the configuration of the eldership districts, taking into account the peculiarities of the electoral preferences of the inhabitants.

6. *Organizational.* It is a question of expedient, substantiated and optimum representation of elders in structure of executive committee of the united territorial community<sup>7</sup>.

According to O. Kolesnikov, according to the plan of the reform, the positions of elders should be introduced first of all at the level of former territorial communities, which before the association had their own local governments (village, settlement council) and the corresponding head, except for the administrative centre of the new united community. In this sense, the elders are called to compensate for the loss of these communities of their own bodies and officials of local self-government and to become a kind of safeguard against abuse of the administrative centre of the united territorial community by its “central” position<sup>8</sup>.

In their research, O. Kolesnikov, O. Kalashnikov and M. Dzyupin present the following facts. As of August 1, 2016, the elections of elders were held in 84 united communities of Ukraine out of 177 united territorial communities formed during this period. As a result, 409 elders were elected. In almost all constituencies, elections were recognized as having taken place<sup>9</sup>.

However, due to the problems of suffrage, the re-election of elders as of October 25, 2020 took place only in the newly created united territorial communities. Thus, those elders who were elected on August 1, 2016 did not participate in the elections on October 25, 2020, which created a certain legislative conflict.

According to statistics, the majority of elected elders (388 or 95%) are non-partisan and nominated for elections by self-nomination. Instead, only 20 elders have a formal connection with political parties<sup>10</sup>.

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<sup>7</sup> М.М. Воронов, *Інститут старости у системі муніципального права України*, “Вісник Харківського національного університету імені В. Н. Каразіна” 2017, № 23, р. 51.

<sup>8</sup> О. Колесников, *Старости в об'єднаних громадах: потреба в модернізації законодавства*, <http://buk-visnyk.cv.ua/naukova-dumka/729/> (access: 5.05.2021).

<sup>9</sup> О. Колесников, О. Калашнікова, М. Дзюпин, *Інститут старост в об'єднаних громадах: обрання та місце у системі управління. Асоціація сприяння самоорганізації населення*, <https://samoorg.com.ua/wp-content/uploads/2016/09/Institut-starost-obrannya-ta-mistse-u-sistemi-upravlinnya-1.pdf> (access: 5.05.2021).

<sup>10</sup> В.В. Ладиченко, Ю.П. Максименко, *Старости як посадові особи системи органів місцевого самоврядування в Україні: історико-правовий аспект*. “Наукові записки Інституту законодавства Верховної Ради України” 2019, № 2, р. 8-17.

In the end, we can agree with the study of V.V. Ladychenko and Yu.P. Maksymenko on this problem. Scholars note that the institution of elders as officials in the system of local self-government is not new to Ukraine. The evolution of the development of elders united in this link a representative of the community (including local interests before the state authorities) and an administrative official – a representative of the state on the ground. This is confirmed by the way in which in different periods of Ukraine's legal development the state power approached the formation of these positions: by electing the population as a representative of local self-government, or by appointing or approving the state as the head of the lower administration. The combination of self-governing and state functions in one link has become a feature of the formation and development of the institution of elders<sup>11</sup>.

From the literature review it can be concluded that the history of formation and development of the institution of eldership is quite deep and suggests that in historical terms the elders were such persons as: head of local urban or rural government or self-government; white; it is the head or the head of the county; head of the village community.

## **II. The essence of the institution of elders and its legal regulation**

Before considering the essence of the institution of old age, it is necessary to determine the legal basis for the functioning of such an official. Thus, the election and activities of the mayor are regulated by such regulations as:

1) The Constitution of Ukraine<sup>12</sup>. In Art. 140 of the Basic Law of Ukraine stipulates that local self-government is the right of a territorial community – villagers or voluntary association in a rural community of residents of several villages, towns and cities – to independently resolve issues of local importance within the Constitution and laws of Ukraine. Local self-government is carried out by the territorial community in the manner prescribed by law, both directly and through local governments: village, town, city councils and their executive bodies. District self-government bodies representing the common interests of territorial communities of villages, settlements and cities are district and regional councils;

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<sup>11</sup> В.В. Ладиченко, Ю.П. Максименко, *Старости як посадові особи системи органів місцевого самоврядування в Україні: історико-правовий аспект*, "Наукові записки Інституту законодавства Верховної Ради України" 2019, № 2, р. 14.

<sup>12</sup> Конституція України від 28.06.1996 року № 254к/96-ВР, <https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text> (access: 5.05.2021).

2) The Electoral Code of Ukraine<sup>13</sup>. This Code, in accordance with the Constitution of Ukraine, guarantees the right of citizens to participate in elections, regulates the preparation and conduct of elections of the President of Ukraine, people's deputies of Ukraine, deputies of the Supreme Council of the Autonomous Republic of Crimea, oblast, rayon, village, settlement, city, rayon village, settlement, city mayors, as well as elders;

3) Law of Ukraine "On local self-government in Ukraine"<sup>14</sup>. Mentioned, the Law in accordance with the Constitution of Ukraine defines the system and guarantees of local self-government in Ukraine, the principles of organization and activity, legal status and responsibilities of bodies and officials of local self-government, including the mayor;

4) Law of Ukraine "On Local Elections"<sup>15</sup>. The law defines the basic principles, organization and procedure for holding elections of deputies to the Supreme Council of the Autonomous Republic of Crimea, oblast, rayon, city, rayon in cities, village, settlement councils, village, settlement, city mayors and elders;

5) Law of Ukraine "On Voluntary Association of Territorial Communities"<sup>16</sup>. This Law regulates the relations arising in the process of voluntary association of territorial communities of villages, settlements, cities, as well as voluntary joining of united territorial communities;

6) Law of Ukraine "On Amendments to Certain Laws of Ukraine Concerning the Status of the Elder of a Village, Settlement"<sup>17</sup>. Organic Law for the first time introduces the concept of old age into Ukrainian legislation;

7) The Law of Ukraine "On Service in Local Self-Government Bodies"<sup>18</sup> regulates the legal, organizational, material and social conditions for citizens of Ukraine to exercise the right to serve in local self-government bodies, determines the general principles of local government officials, their legal status, procedure and legal guarantees of service in local self-government bodies;

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<sup>13</sup> Виборчий кодекс України від 19.12.2019 року № 396-IX, <https://zakon.rada.gov.ua/laws/show/396-20#Text> (access: 5.05.2021).

<sup>14</sup> Про місцеве самоврядування в Україні: Закон України від 21.05.1997 року № 280/97-ВР, <https://zakon.rada.gov.ua/laws/show/280/97-вр#Text> (access: 5.05.2021).

<sup>15</sup> Про місцеві вибори: Закон України від 14.07.2015 року № 595-VIII, <https://zakon.rada.gov.ua/laws/show/595-19#Text> (access: 5.05.2021).

<sup>16</sup> Про добровільне об'єднання територіальних громад: Закон України від 05.02.2015 року № 157-VIII, <https://zakon.rada.gov.ua/laws/show/157-19#Text> (access: 5.05.2021).

<sup>17</sup> Про внесення змін до деяких законів України щодо статусу старости села, селища: Закон України від 09.02.2017 року № 1848-VIII, <https://zakon.rada.gov.ua/laws/show/1848-19#Text> (access: 5.05.2021).

<sup>18</sup> Про службу в органах місцевого самоврядування: Закон України від 07.06.2001 року № 2493-III, <https://zakon.rada.gov.ua/laws/show/2493-14#Text> (access: 5.05.2021).

8) The Law of Ukraine “On the legal regime of martial law” determines the content of the legal regime of martial law, the procedure for its introduction and abolition, the legal basis of public authorities, military command, military administrations, local governments, enterprises, institutions and organizations in martial law, guarantees of human and civil rights and freedoms and the rights and legitimate interests of legal entities<sup>19</sup>.

In our opinion, the main role in the legal regulation of the institution of eldership among these legislative acts is played by the Law of Ukraine “On Local Self-Government in Ukraine” (as amended on 05.06.2021) [12]. In Part 1 of Art. 5 of this Law states that the system of local self-government includes:

- 1) territorial community;
- 2) village, settlement, city council;
- 3) village, settlement, city mayor;
- 4) executive bodies of village, settlement, city council;
- 5) mayor;
- 6) bodies of self-organization of the population.

Thus, the mayor is an element of the system of local self-government.

Also in Part 3 of Art. 26 of the Law of Ukraine “On Local Self-Government in Ukraine” stipulates that only at the plenary sessions of the village, settlement, city council of the united territorial community, formed in accordance with the Law of Ukraine “On Voluntary Association of Territorial Communities”, the following issues are resolved:

- 1) the formation of eldership districts;
- 2) approval of the Regulations on the headman;
- 3) making a decision on early termination of the powers of the head in the cases provided by the Law of Ukraine “On Local Self-Government in Ukraine”.

Speaking directly about the legal status of the elder, it is worth referring to Art. 541 of the Law of Ukraine “On local self-government in Ukraine”, which enshrines the following:

- a) the headman is approved by the village, settlement, city council for the term of his powers on the proposal of the relevant village, settlement, city mayor;
- b) the headman is a member of the executive committee of the village, settlement, city council ex officio and works in it on a permanent basis;
- c) the procedure for organizing the work of the headman is determined by this and other laws, as well as the Regulations on the headman, approved by the village, settlement, city council<sup>20</sup>.

<sup>19</sup> Про правовий режим воєнного стану: Закон України від 12.05.2015 року № 389-VIII, <https://zakon.rada.gov.ua/laws/show/389-19#Text> (access: 5.05.2021).

<sup>20</sup> Про місцеве самоврядування в Україні: Закон України від 21.05.1997 року № 280/97-ВР, <https://zakon.rada.gov.ua/laws/show/280/97-вр#Text> (access: 5.05.2021).



According to O.V. Rogovenko, according to his status, the head should have some influence on the decisions of community bodies. There are three options for implementing this requirement:

1) the headman is a deputy of the community council. At the same time, half of the council is formed of elders, the other – in proportion to the population. The disadvantage of this scheme is that in some communities, there may be too many settlements and the council will be too cumbersome. In addition, elders receive compensation from the community budget, so they are to some extent dependent on its executive bodies, including the chairperson. Combining their functions with a representative mandate is a conflict of interest, which contradicts the theory of organization of public power;

2) the headman is a member of the executive body of the community. The disadvantage is that the executive committee is mostly formed as a functional body and consists of representatives of various industries. Another disadvantage is similar to the previous version – the cumbersomeness of the executive committee in the presence of many settlements;

3) the elders of settlements form a separate body of the community – the council of elders. The disadvantage is that the elders represent different populations, which can cause friction and internal tension. In addition, there is a temptation to artificially divide the settlement to get a representation<sup>21</sup>.

In turn, M.M. Voronov notes that today, based on the decisions of the councils of united territorial communities on the formation of Starostyn districts and the first elections of elders, several models can be identified to address the issue of representation of residents by elders.

The first model is the introduction of positions of elders only at the level of communities that had local governments, on the principle of “one village / settlement council – one elder.” That is, according to this model, elders should be elected and exercise their powers within the former territorial communities as they existed before the unification.

For integrated communities, which include relatively large villages and settlements that previously had a subordinate status, the second model of the configuration of elders is often more acceptable. According to her, these positions are introduced not only at the level of former communities, but also at the level of individual subordinate settlements. However, this may equally apply to settlements subordinated to both the peripheral communities and the administrative centre of the united territorial community. In essence, according to this model, all or some former communities are divided into several units, each of which elects its mayor.

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<sup>21</sup> О.В. Роговенко, *До питання про посадові обов'язки старости*, “Науковий вісник публічного та приватного права” 2019, ed. 3, vol. 2, p. 54.

The third model for solving the problem of the number and configuration of elders can be called “one settlement – one elder”. It is characterized by the fact that the positions of elders are introduced at the level of each peripheral settlement that is part of the united community. It is this model that is potentially able to provide the widest representation of the interests of the periphery, but its application is justified only in those united communities where settlements are relatively large.

The fourth model boils down to the fact that the number of elders is less than the number of pre-existing territorial communities that have joined the united territorial community<sup>22</sup>.

Thus, the legal regulation of the status of the elder is carried out by such normative legal acts as the Constitution of Ukraine, the Electoral Code of Ukraine, the Law of Ukraine “On Local Self-Government in Ukraine”, the Law of Ukraine “On Local Elections”, the Law of Ukraine “On Voluntary Association of Territorial Communities”. Law of Ukraine “On Amendments to Certain Laws of Ukraine on the Status of the Elder of a Village, Settlement”, Law of Ukraine “On Service in Local Self-Government Bodies”, Law of Ukraine “On the Legal Regime of Martial Law”.

The essence of the institution of the elder is expressed through the prism of its features, which are: the elder is an element of the system of local self-government; the main issues related to the activities of the headman are resolved at the plenary sessions of the village, settlement, city council of the united territorial community; the headman is a member of the executive committee of the village, settlement, city council ex officio; the procedure for organizing the work of the headman is determined by the above laws, as well as the Regulations on the headman.

### **III. Catalogue of powers of the headman (starosta)**

From the available powers of the headman it is possible to define spatial limits of his activity. Thus, in Part 4 of Art. 541 of the Law of Ukraine “On local self-government in Ukraine” states that the mayor:

- 1) represents the interests of the inhabitants of the respective village, settlement in the executive bodies of the village, settlement, city council;
- 2) participates in plenary sessions of the village, settlement, city council and meetings of its standing commissions;

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<sup>22</sup> М.М. Воронов, *Інститут старости у системі муніципального права України*, “Вісник Харківського національного університету імені В. Н. Каразіна” 2017, ed. 23, p. 51.

3) has the right to a guaranteed speech at the plenary sessions of the village, settlement, city council, meetings of its standing committees on issues related to the interests of the inhabitants of the village, settlement;

4) assists the residents of the respective village, settlement in the preparation of documents submitted to local governments;

5) participates in the organization of execution of decisions of village, settlement, city council, its executive committee, orders of the village, settlement, city mayor in the territory of the corresponding starostinsky district and in implementation of control over their execution;

6) participates in the preparation of the draft local budget in terms of financing programs implemented in the relevant Starostinsky district;

7) make proposals to the executive committee of the village, settlement, city council on the activities in the relevant starostinsky district of the executive bodies of the village, settlement, city council, enterprises, institutions, communal property organizations and their officials;

8) participates in the preparation of draft decisions of the village, settlement, city council relating to the property of the territorial community located on the territory of the relevant Starostinsky district;

9) participates in the control over the use of objects of communal property located on the territory of the relevant Starostinsky district;

10) participates in the control over the state of improvement of the respective village, settlement and informs the village, settlement, city mayor, executive bodies of the village, settlement, city council about its results;

11) receives from the executive bodies of the village, settlement, city council, enterprises, institutions, organizations of communal property and their officials the information, documents and materials necessary for the exercise of the powers granted to him;

12) promotes the formation and activity of bodies of self-organization of the population, organization and holding of general meetings, public hearings and other forms of direct participation of citizens in resolving issues of local significance in the relevant village, settlement;

13) exercise other powers defined by this and other laws.

In exercising the powers granted, the headman is responsible and accountable to the council and under the control of the village, settlement, city mayor. The mayor reports to the council at least once a year, and at the request of at least one third of the deputies – within the period specified by the council<sup>23</sup>.

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<sup>23</sup> Про місцеве самоврядування в Україні: Закон України від 21.05.1997 року № 280/97-ВР, <https://zakon.rada.gov.ua/laws/show/280/97-вр#Text> (access: 5.05.2021).

In addition, it should be noted that due to the frequent mention of the concept of Starostinsky district, which he, in accordance with Art. 1 of the Law of Ukraine “On Local Self-Government in Ukraine” is a part of the territory of the united territorial community formed in accordance with the Law of Ukraine “On Voluntary Association of Territorial Communities”, which has one or more settlements (villages, settlements), except administrative centre of the united territorial community, determined by the village, settlement, city council in order to ensure the representation of the interests of the inhabitants of such a settlement (settlements) by the headman<sup>24</sup>.

Of course, one of the main powers of the elder is to draw up certain documents. T. Kravchenko notes that in the course of his current activity the mayor draws up the following documents:

- 1) in order to inform the council of the executive committee about the implementation of the work assigned to it, tasks – reports, explanatory notes, reports;
- 2) to submit proposals to the executive committee of the relevant council on the activities of the executive bodies of the council, enterprises, institutions, organizations and their officials in the territory of the Starostinsky district – reports;
- 3) to notify about some events, inform about their activities – information letters, invitation letters;
- 4) when sending outgoing correspondence – cover letters;
- 5) acts related to the direct activity or activity of employees of the structural unit of the headman;
- 6) in response to initiative letters of community residents – response letters, etc.<sup>25</sup>

Summarizing, DD Zayats argues that the content of the activities of the elder is determined by at least two types of powers:

- 1) powers defined in the Law of Ukraine “On Local Self-Government in Ukraine” and other laws;
- 2) powers that belong to the competence of the executive committee and for the exercise of which the mayor was authorized by the relevant administrative act of the council of the united territorial community or the executive committee (notarial acts, registration of civil status, drawing up protocols on administrative offenses, etc.)<sup>26</sup>.

<sup>24</sup> Про місцеве самоврядування в Україні: Закон України від 21.05.1997 року № 280/97-ВР, <https://zakon.rada.gov.ua/laws/show/280/97-вр#Text> (access: 5.05.2021); Про добровільне об'єднання територіальних громад: Закон України від 5.02.2015 року № 157-VIII, <https://zakon.rada.gov.ua/laws/show/157-19#Text> (access: 5.05.2021).

<sup>25</sup> Т. Кравченко, *Повноваження старости на складання документів*, [https://decentralization.gov.ua/uploads/library/file/390/radnik\\_starosti\\_1\\_2019\\_u.pdf](https://decentralization.gov.ua/uploads/library/file/390/radnik_starosti_1_2019_u.pdf) (access: 5.05.2021).

<sup>26</sup> Д.Д. Заяць, *Інститут старости в системі місцевого самоврядування України*, “Проблеми розвитку публічного управління в Україні” 2019, № 1, р. 190.

In his works, M.M. Voronov argues that most of these powers are advisory or consultative. This suggests that today the elderly do not have enough legal tools to effectively defend the rights, freedoms and legitimate interests of residents in the council of the united territorial community and its executive bodies<sup>27</sup>.

Based on the powers of the mayor, I.Yu. Panova defines the following functions that are assigned to this official:

a) representative function (represents the interests of the inhabitants of the respective village, settlement, etc.);

b) budget function (participates in the preparation of the draft local budget, etc.);

c) information function (receives from the executive bodies of the village, settlement, city council, enterprises, institutions, organizations of communal property and their officials the information necessary for the exercise of its powers, etc.);

d) control function (participates in control over the use of communal property, control over the state of improvement, etc.);

e) constituent function (promotes the formation and operation of self-organization of the population, etc.);

f) organizational function (participates in the organization of execution of decisions of the village, settlement, city council, its executive committee, orders of the village, settlement, city mayor in the territory of the relevant Starostyn district, etc.)<sup>28</sup>.

Thus, the literature review shows that the powers of the elder are quite broad. The catalogue of powers includes:

- representation of interests of inhabitants of the corresponding settlement in executive bodies of the corresponding council;
- participation in plenary sessions of the relevant council;
- the opportunity to speak at the plenary sessions of the relevant council on issues related to the interests of residents;
- assisting residents in preparing documents submitted to local governments;
- participation in the organization of execution of decisions of the corresponding council, orders of the corresponding chairman and in implementation of control over their execution;
- participation in the preparation of the draft local budget in terms of financing programs;
- making proposals to the executive committee of the relevant council on the activities of the executive bodies of the relevant council, enterprises, institutions, organizations of communal property and their officials;

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<sup>27</sup> М.М. Воронов, *Інститут старости у системі муніципального права України*, "Вісник Харківського національного університету імені В. Н. Каразіна" 2017, ed. 23, p. 52.

<sup>28</sup> І.Ю. Попова, *Правовий статус старости як виборчої посадової особи місцевого самоврядування*, "Часопис Київського університету права" 2018, № 2, p. 103.

- participation in the preparation of draft decisions of the relevant council concerning the property of the territorial community; participation in control over the use of communal property;
- participation in the control over the state of improvement of the respective settlement;
- receiving from the executive bodies of the relevant council, enterprises, institutions, organizations of communal property and their officials information, documents and materials necessary for the exercise of its powers;
- assistance in the formation and activity of bodies of self-organization of the population, organization and holding of general meetings, public hearings and other forms of direct participation of citizens in resolving issues of local significance; exercise of other powers.

#### **IV. Termination of the powers of the elder**

Despite the fact that the powers of the headman are terminated as a result of the expiration of the term for which he was elected, they may also be terminated early by the decision of the relevant council.

According to J. Brusentsova, the issue of early termination of the powers of the mayor was resolved at the legislative level. Such a previous gap in the past has led to the fact that each local council has independently determined the procedure for early termination of powers of elders, grounds and entities that can initiate and decide on early termination<sup>29</sup>.

According to Art. 791 of the Law of Ukraine “On Local Self-Government in Ukraine” states that the powers of the mayor are terminated early in the case of:

- 1) his appeal with a personal application to the village, settlement, city council on the resignation of the headman;
- 2) termination of Ukrainian citizenship or departure for permanent residence outside Ukraine;
- 3) acquisition of citizenship of another state;
- 4) entry into force of a court conviction against him;
- 5) entry into force of a court decision to prosecute him for an offense related to corruption, which was imposed in the form of deprivation of the right to hold office or engage in activities related to the performance of state or local government functions;

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<sup>29</sup> Я. Брусенцова, *Староста, його статус, повноваження: вивчаємо знову*, [https://decentralization.gov.ua/uploads/library/file/30/radnik\\_starosti\\_01\\_17\\_u.pdf](https://decentralization.gov.ua/uploads/library/file/30/radnik_starosti_01_17_u.pdf) (access: 5.05.2021).

6) entry into force of a court decision recognizing his assets or assets acquired on his behalf by other persons or in other provided by Art. 290 of the Civil Procedure Code of Ukraine<sup>30</sup> cases, unfounded and their recovery in state revenue;

7) entry into force of a court decision declaring him incompetent, missing or declared dead;

8) his death.

According to the national legislation, the powers of the headman may be prematurely terminated by the decision of the village, settlement, city council, if he violates the Constitution or laws of Ukraine, the rights and freedoms of citizens, does not ensure the exercise of his powers. The decision on early termination of the powers of the head of the council is made by secret or open ballot by a majority vote of the general membership of the council. In addition, the powers of the head may be terminated early in the case provided by the Law of Ukraine “On the legal regime of martial law”<sup>31</sup>.

## **V. The scope of powers of the village headman and subsidiary bodies in Poland**

As a result of the administrative reform of 1999, Poland established a three-tier structure of territorial division – voivodship, county and community (gmina). At the constitutional level, namely Part 1 of Art. 164 of the Basic Law of Poland, the community is the basic unit of local self-government<sup>32</sup>. The positive thing about this administrative division is that all three levels are financially independent, and their powers do not intersect but only complement each other.

According to N. L. Shportyuk, the Polish administrative-territorial reform was successful due to the use of important principles of its implementation, such as: building civil society through the introduction of new levels of government, which should stimulate the development of communities; subsidiarity, based on the de-concentrating of government powers, which transfers a number of its functions to the lower level for their implementation with the participation of citizens, the use of community capacity to successfully use their own opportunities for territorial development and accountability of local authorities<sup>33</sup>.

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<sup>30</sup> Цивільний процесуальний кодекс України від 18.03.2004 року № 1618-IV, <https://zakon.rada.gov.ua/laws/show/1618-15> (access: 5.05.2021).

<sup>31</sup> Про правовий режим воєнного стану: Закон України від 12.05.2015 року № 389-VIII, <https://zakon.rada.gov.ua/laws/show/389-19#Text> (access: 5.05.2021).

<sup>32</sup> Конституція Республіки Польща. Конституції зарубіжних країн: навчальний посібник, ed. В.О. Серьогін, ФІНН, Харків 2009, p. 57.

<sup>33</sup> Н.Л. Шпортюк, *Розбудова територіального устрою в постсоціалістичній Польщі: досвід для України*, “Держава та регіони” Сер. Держ. Упр. 2011, ed. 2, p. 16-17.

Regarding the comparative analysis of the legal status of the elder under Polish and Ukrainian legislation, it should be noted that it is different. After all, in the system of Polish local self-government, the notion of old age is characteristic of the head (administration) of the county as the middle link of the territorial organization. In accordance with Part 1 of Art. 35 of the Law of Poland “On Commune Self-Government” (March 8, 1990) the executive body of the auxiliary unit of the commune is the village headman (soltis), which is an alternative to the head of the territorial community under Ukrainian law<sup>34</sup>.

Thus, in the Polish system of self-government, the soltis is, in fact, the head of the village (in the system proposed in Ukraine, he is the headman). However, the solets (village council) in Poland is only a branch of the gmina council (territorial community), it is not a legal entity, and the soltis acts as a liaison between the peasants and the gmina.

Accordingly, the legal status of the institute of salinity in Poland is determined by the Law “On Commune Self-Government” of March 8, 1990. Based on this law, each commune council adopts the statute of the commune, which determines the status of the communities and the bodies created in them. In addition, the activities of soltys (starosts) and other bodies of solets, in accordance with the Law “On Commune Self-Government” may be regulated by the statutes of solets. According to the Law, the functions of soltis (starosts) are:

- represents the salinity to the outside;
- presides over the board of soles;
- convenes village meetings and chairs their meetings;
- implements orders and resolutions of the commune council, commune viyta, village assembly;
- participates in meetings of the commune council;
- prepares a report on its activities in the commune by the end of March each year;
- supervises the aesthetic appearance of saltiness;
- carries out control and supervision over communal property, namely: supervision over houses, communal roads, forests and other property which is in the territory of salt;
- monitors the condition of roads and reclamation facilities;
- within the limits of its powers carries out measures for environmental protection;
- cooperates with organizational units operating in the commune.

According to the national legislation, the powers of the headman may be prematurely terminated by the decision of the village, settlement, city council, if he

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<sup>34</sup> Закон Польщі «Про гмінне самоврядування» від 8.03.1990 р.



violates the Constitution or laws of Ukraine, the rights and freedoms of citizens, does not ensure the exercise of his powers. The decision on early termination of the powers of the head of the council is made by secret or open ballot by a majority vote of the general membership of the council. In addition, the powers of the head may be terminated early in the case provided by the Law of Ukraine "On the legal regime of martial law"<sup>35</sup>.

## VI. Conclusions

Thus, if we draw a parallel with the model of local self-government in the Republic of Poland, the position of headman, which is provided by Ukrainian legislation, is analogous to the position of *soltys*, where *solestvo* (village) is only a territorial formation of the commune and is not a legal entity. However, the experience of local self-government, especially in terms of the legal status of the village elder (*soltys*) is quite positive and desirable for application in the national legislation of Ukraine.

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<sup>35</sup> Про правовий режим воєнного стану: Закон України від 12.05.2015 року № 389-VIII, <https://zakon.rada.gov.ua/laws/show/389-19#Text> (access: 5.05.2021).

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