

# **CERTAIN ASPECTS OF TERRITORIAL COMMUNITIES LAND MANAGEMENT ON THE DECENTRALIZATION CONDITIONS**

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*It is established that the decentralization reform in Ukraine along with the administrative reform provided the formation of a new administrative-territorial system. This led to changes in land management, which primarily affected the improvement of land relations, setting the new administrative structures, and planning sustainable management of land protection on a local level. It is determined that certain provisions of land management in decentralization terms require proper institutionalization, in particular: establishing new boundaries for administrative units on the ground, consolidation of land management systems for united territorial communities, improving the management of agricultural lands outside the localities that are transferred to territorial communities' ownership. It is emphasized on the need to adapt the cadastral numbers system to the new codifier of administrative-territorial units, and on the urgency of developing new comprehensive plans for the spatial development of the community, which would ensure rational organization of UTC territory in accordance with the mutual interests of all localities. It is determined that the study results may serve as a basis for justification of further institutionalization of changes in the land management.*

**Key words:** *decentralization, land management, land reform, administrative-territorial system, urban planning, territorial community.*

**Formulation of the problem.** Any structural and organizational changes in the systems at the initial stages of their implementation are characterized by an imbalance of internal relationships among the elements of the system, violation of interaction algorithms with the external environment, and so on. In these conditions, the administrative-territorial reform in Ukraine, which proceeds simultaneously with the decentralization reform, violates the usual orderliness and procedures, introduces new parameters and relations, transforms the understanding of the spatial organization, delegation of power, and management in new conditions. In this context, land management, as an important tool of spatial planning, is deeply integrated into the decentralization process and, accordingly, exposed to its influences.

The legible interpretation of transformational processes becomes especially relevant in terms of institutional changes and their coordination with the actual state of the land management system. Accordingly, the identification and structuring of the new features of land management cause significant scientific interest, which is formed on the basis of decentralization processes and require detailed coverage and discussion in the scientific and expert environment.

**Analysis of recent research and publications.** In the context of decentralization research, issues of land relations and land management are an important area, characterized by a significant variety of approaches and interpretations, along with high-level research of existing problems. The most thorough researches on this topic are the scientific works of D. Dobryak and A. Martin; O. Dorosh, D. Melnyk and L. Sviridova; O. Lasareva; T. Matsievych, I. Martynova and V. Yatsenko; A. Pleshkovska, A. Sava and B. Sydoruk, A. Tretyak and V. Tretyak and others. The works of these scientists fully and comprehensively reveal the issues and features of land management caused by the implementation process of decentralization reform. Special attention is paid to the impact of decentralization on rural areas, the transformation of land management, and rational land use in new conditions. However, some provisions of decentralization implemented during the second stage of the reform need to be discussed in more

detail and clarified way from the side of their full application in the land management system.

**The aim of the study** is to identify and structure the most important features of land management that arise in the process of decentralization and to substantiate the institutionalization of these changes.

**Materials and methods of research.** The theoretical and methodological basis of the article are the key provisions of land management, land law, spatial economy and public administration, scientific research on the problems of land relations decentralization. The scientific works of D. Dobryak and A. Martin are among the most thorough studies on this topic. These authors focus on the feasibility of the principles of sustainable land use in terms of decentralization, investigating the land resources management. O. Dorosh, D. Melnyk, and L. Svyridova substantiate the reorganization of the land management system in conditions of power decentralization, however, they emphasize the organization of management at the state level without taking into account processes inherent in the local land management. T. Matsievykh, I. Martynova, and V. Yatsenko emphasize the importance of spatial planning of the UTC territory for its socio-economic development, but do not fully reveal the principles of this planning. A. Pleshkovska arranges the key controversial aspects of the implementation of the Comprehensive UTC Spatial Development Plans, substantiates their positive impact on the land management of territorial communities, however, ignores the process of implementing these changes in the land management system of territorial communities. A. Sava and B. Sydoruk emphasize the problems of land management in rural areas, but almost do not pay attention to land management processes. A. Tretyak and V. Tretyak justify the principles and conditions of land management zoning of UTC, including the organization of the territory outside the localities. The problems and features of land management, which arise in the process of decentralization reform, are revealed quite broadly in the mentioned scientists' works. They take into account aspects of sustainable development, zoning, and redistribution of management functions, however, the thorough analysis of key

decentralization processes requires more detailed justification considering the impact on land management at the level of territorial communities.

**Results of research and discussion.** Decentralization reform is often described as one of the most successful in modern Ukraine. It is noted that its main result is the provision of greater autonomy to local governments, including the redistribution of power, financial and land resources. Abstracting from subjective assessments, it can be noted that during 2014-2020, decentralization did ensure the implementation of some important tasks, including:

- creation of a new administrative-territorial organization system on the basic level, which included 1470 territorial communities, including the city of Kyiv, but without taking into account the Autonomous Republic of Crimea;
- formation of a new subregional level of administrative-territorial organization, which transformed 490 districts into 136;
- partial transfer of executive powers to local governments;
- part-transmission of the state-owned resources to the ownership of territorial communities [1].

In general, decentralization for the outlined period covered 1438 territorial communities, that included 10976 localities, which together occupy an area of 55.4 million hectares (91.9% of the territory of Ukraine).

During the implementation of the mentioned measures the focus was on the spatial planning of the areas and redistribution of the rights and responsibilities related to land management. In this context, there were important constitutional provisions which give the right to manage the land resources to local authorities on behalf of the people (Art. 13 of the Constitution of Ukraine), as the land, along with property and natural resources owned by territorial communities are the material and financial basis of local self-government (Art. 142).

Among the key land management functions affected by decentralization, the focus was on the following:

1. improvement of land relations, the formation of a rational system of tenure and land use;

2. providing information for legal, economic, environmental and urban planning mechanisms for regulating land relations at the local level;
3. establishment and consolidation of the administrative-territorial units boundaries on the ground;
4. forecasting, planning and organization of rational use and protection of lands at the local level.

The basis for the implementation of these functions was set by the administrative-territorial reform, which resulted in the formation of new land management objects - territorial communities. Together, the new boundaries of the formed administrative-territorial units were established, all village and city councils were eliminated, except for the central councils of the UTC. Consequently, central local governments accumulated powers in the field of land management for all lands of the territorial community. Such actions necessitated the adaptation of the land management system to the new conditions by making appropriate changes to the current regulations. However, as of the end of February 2021, none of the submitted bills aimed at regulating and institutionalizing these changes has acquired official status.

As a consequence, today some land management provisions related to the decentralization of power are characterized by a number of caveats and features. To the greatest extent this applies to the following:

- new administrative boundaries were established not on the ground, but by in-house methods. This circumstance allows the potential emergence of risks associated with the reliability of land accounting data, as well as the possible conflicts between land users of different administrative-territorial entities during the coordination of boundaries [2, p. 17];
- consolidation of basic administrative-territorial formations requires the consolidation of the land management system of localities that are part of the territorial community and actualizes the development of a mutual project on the spatial organization of the community in accordance with new needs and challenges;
- the transmission of agricultural land of state ownership, located outside the localities to communal ownership provides for the need of proper registration of such

areas and their inventory. At the same time, increasing the size of the land management object simultaneously requires adjustment of land management and project documentation, zoning parameters and organization of the territory.

In addition, the process of transferring certain functions of land management to the local level is accompanied by a number of other problems, including:

- absence of the right to dispose the lands outside the localities, except for agricultural lands, which are gradually transferred to the ownership of communities;
- limited and unreliable information on the amount and condition of land resources in the UTC;
- lack of proper land accounting in terms of landowners and land users, activities, purpose, etc .;
- outdated normative monetary valuation;
- lack of control over the implementation of land lease agreements;
- the need to verify the terms of land lease agreements received for use, etc. [3, p. 30-31].

In the context of administrative-territorial reform, land management faces another problem related to the identification of land plots by assigning cadastral numbers. The fact is that the classifier of objects of administrative-territorial organization (COATO), which is the base for assignment of land cadastral numbers, has lost relevance after the adoption of the Resolution of the Parliament of Ukraine from 17.07.2020 № 807-IX "On the formation and liquidation of districts". The Codifier of administrative-territorial units and territories of territorial communities (CATUTTC), approved by the order of the Ministry of Development of Communities and Territories dated 26.11.2020 № 290, is introduced to replace COATO. These changes need to be reflected in the system of assigning cadastral numbers of land plots and their territorial structuring.

Simultaneously, consolidation of land of local communities by combining several localities' lands or by obtaining state-owned agricultural lands to municipal ownership also requires appropriate land management measures to ensure rational management of land resources of the community. Especially, it concerns the development of special urban planning documentation designed for the rational

organization of the communal territory, taking into account the common interests of all localities included in its composition. In the context of UTC spatial planning, T. Matsievych, I. Martynov and V. Yatsenko point out that the main powers of local self-government bodies of basic level in land relations management are to ensure planning of community development, local economic development, as well as territorial accessibility of services in the community where the person lives, etc. [4]. Therefore, the development of urban planning documentation of the UTC should provide the most rational zoning and disposal of lands that are available to the community.

A. Tretyak and V. Tretyak [5] emphasize that according to the current legislation there are no effective rules that would regulate the development of urban planning documentation OTG, which prevents communities from setting guidelines for planning and development of their own territory. However, the Law of Ukraine "On amendments to some legislative acts of Ukraine regarding land use planning" on June 17, 2020 № 711-IX enters into force 24.07.2021, amending the Land Code of Ukraine, the Law of Ukraine "On Regulation urban planning activities" and some other legislative acts. This law introduces a new type of urban planning documentation - a comprehensive plan of spatial development of the community (CPSD), which aims to determine the planning organization, functional purpose of the territory, boundaries of functional zones, road network, engineering and transport infrastructure, etc. within the community.

In this context, A. Pleshkanovska emphasizes on the advantages of the CPSD, which is designed to provide a new administrative element of documentation on spatial planning. It should determine the prospects for UTC development, establishing modes of use and development, creating the necessary social and engineering infrastructure, etc. [ 6, p. 10].

The process of transferring state-owned agricultural lands which are outside the localities to the communal ownership deserves special attention. These actions are also carried out in the term of decentralization and are aimed to increase the level of resource capacity of communities. Therefore, during 2018-2020, 1263 territorial communities (87.8% from the total) received an additional 2046.49 thousand hectares

of agricultural land in communal ownership. According to the State Geocadastre, almost 2 million hectares of agricultural land are being prepared for transfer to communal ownership.

The outlined processes allowed to increase the resources data of territorial communities and to engage much more funds to local budgets in the form of land fees. In 2020, this article in the structure of total revenues of UTC budgets amounted to 12.6%. Generally, in the country, its share was 10.8%, which is UAH 51.5 billion.

Increasing land use also helps to improve the investment potential of communities. Simultaneously, it is emphasized that the transfer to communal ownership of agricultural land merely, forms restrictions on their use, as this category of land can not be used for the most urgent needs of local communities such as industrial facilities and social infrastructure, without changing the land's purpose. Therefore, an important task of decentralization is the transfer to communal ownership of the state-owned lands of other categories, including industrial, historical, cultural, sanitary, and recreational lands, etc.

In addition, the combined land use of several local councils with the acquisition of state-owned land requires appropriate changes to the town-planning documentation. The main task of such changes is to develop plans for the spatial development of communities considering mutual interests, including the allocation of fields for the construction of all facilities needed for community life (fire and police stations, medical institutions, health, recreational and tourist facilities, engineering networks, etc.). In this context, territorial communities are very limited in solving such issues, which inhibits their development.

A similar opinion is also expressed by O. Lazareva, who emphasizes on the need of applying additional actions that are necessary to ensure the rational management of land resources [7, p. 54].

In general, in the conditions of decentralization, the system of local governments land management is in a state of transformation, so their own powers of local communities (art. 12 of the Land Code of Ukraine, art. 19 of the Law of Ukraine "On Land Management") are supplemented by new powers related to the reform of the administrative-territorial system and decentralization (including the acquisition of



powers to dispose of unallocated land and unclaimed shares (units), the right to approve technical documentation for grading and economic evaluation of soils, etc.). In this terms, part of the legal norms are institutionalized in the form of amendments to regulations. However, in the context of large-scale changes and transformations, it is expedient to consolidate all changes in the land management system and related areas within one law. This applies both, rules already implemented and those planned for implementation. Among the norms that need the most institutionalization: management of non-agricultural lands outside localities; adapting the cadastral numbers system to the new codifier of administrative-territorial unit; preparation for the implementation a new type of urban planning documentation; assistance in information, personnel and resource content of the land resources management system of territorial communities.

Summarizing mentioned provisions of decentralization and administrative-territorial reform in Ukraine, we select the state problems of land management of territorial communities that need to be addressed as a matter of priority (Table 1).

### **1. Assessment of the impact of certain provisions of decentralization on land management in territorial communities**

Action	Transfer of agricultural lands outside the localities to communal ownership	Prospects for the implementation of the CPSD	Changes in the administrative-territorial structure (ATS)	Expanding the powers of local municipalities in the field of land resources management
Influence	Increasing the resources data of territorial communities	Possibility of development mutual town-planning documentation for all settlements of the community	Changes in the boundaries of administrative-territorial units (ATU), consolidation of land use	Gaining autonomy in decisions on land management
Caveat	Limited use of the received lands for the needs of the industry, improvement, construction of infrastructure facilities, engineering communications, etc.	Instability of land use at the present stage, lack of strategy and vision of development in many LCs	Risk of inaccuracy of ATU borders, necessary change of land plots cadastral numbers appropriation system according to CATUTC	Problems with the information filling of the local self-government land management system, the need to improve the technical, personnel and scientific condition of the land management service in UTC

Solution	Inventory and transfer of LC ownership of all categories of lands according to Art. 117 of the LCU	Inventory of all lands within localities and lands of communal property outside them, improvement of development strategy of LC	Development of the order of assignment of the land cadastral numbers according to CATUTTC, specification of borders of ATU on the ground	Training of local land managers, improvement of their technical support, creation of LC land resources management system
	Adoption of a single normative act to amend appropriate changes to the current land, tax, civil and economic legislation.			

Source: independent authors' creation.

**Conclusions.** Therefore, the decentralization reform taking place in Ukraine, are obtaining appropriate reflection in land management of local governments. This is reflected in the development of land management documentation related to the change of the boundaries of administrative units, inventory of land transferred to the ownership, acquisition of new powers in the disposal of certain types of land and control over their use. However, some of the changes implemented under the reform need clarification and institutionalization. This particularly concern such as coordination of cadastral numbers of land with CATUTTC, ensuring the development of Comprehensive Spatial Development Plans of the territorial community, coordination of the new administrative-territorial division boundaries on the ground. Equally important are other aspects related to informational support of land management in municipalities, staff training, technical equipment, etc. Collectively, some decentralization regulations unregulated and inconsistent with the existing land management system, requires justification and institutionalization through the adoption of a consolidated legal act and making the necessary institutional changes. Accordingly, the prospects for further research are to substantiate the directions and tools for institutionalization of the mentioned processes.

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### **ОКРЕМІ АСПЕКТИ ЗЕМЛЕУСТРОЮ ТЕРИТОРІАЛЬНИХ ГРОМАД В УМОВАХ ДЕЦЕНТРАЛІЗАЦІЇ**

*Встановлено, що реформа децентралізації в Україні сукупно із адміністративною реформою забезпечили формування нової системи адміністративно територіального устрою. Це обумовило зміни в системі землеустрою, які в першу чергу торкнулися вдосконалення земельних відносин, встановлення меж нових адміністративних утворень, планування раціонального управління та охорони земель на локальному рівні. Визначено, що окремі положення землеустрою в умовах децентралізації потребують належної інституціалізації, зокрема: встановлення меж нових адміністративно-територіальних одиниць в натурі, консолідацію системи землеустрою об'єднаних територіальних громад, удосконалення управління землями сільськогосподарського призначення, що перебувають за межами населених пунктів і передаються у власність територіальних громад. Наголошено на необхідності приведення системи присвоєння кадастрових номерів у відповідність до нового кодифікатора адміністративно-територіальних одиниць, а також на актуальності освоєння розробки нових комплексних планів просторового розвитку території громади, які б забезпечували раціональну організацію території ОТГ відповідно до спільних інтересів усіх населених пунктів, що увійшли до неї. Визначено, що отримані результати дослідження можуть служити основою для обґрунтування подальших дій з інституціалізації змін в системі землеустрою.*

**Ключові слова:** децентралізація, землеустрій, земельна реформа, адміністративно-територіальний устрій, містобудівне проектування, територіальна громада.

**Волошин Р.В., Ветровой А.О., Розум Р.И., Буряк М.В.**

## **ОТДЕЛЬНЫЕ АСПЕКТЫ ЗЕМЛЕУСТРОЙСТВА ТЕРРИТОРИАЛЬНЫХ ОБЩИН В УСЛОВИЯХ ДЕЦЕНТРАЛИЗАЦИИ**

*Установлено, что реформа децентрализации в Украине в совокупности с административной реформой обеспечили формирование новой системы административно-территориального устройства. Это обусловило изменения в системе землеустройства, и в первую очередь коснулось совершенствования земельных отношений, установления границ новых административных образований на местности, планирования рационального управления и охраны земель на локальном уровне. Определено, что отдельные положения землеустройства в условиях децентрализации требуют надлежащей институционализации, в частности: установление границ новых административно-территориальных единиц не месте, консолидацию системы землеустройства объединенных территориальных общин, совершенствования управления землями сельскохозяйственного назначения, находящихся за пределами населенных пунктов, которые передаются в собственность территориальных общин. Отмечена необходимость приведения системы присвоения кадастровых номеров в соответствие с новым кодификатору административно-территориальных единиц, а также актуальность освоения технологии разработки новых комплексных планов пространственного развития территории общины, обеспечивающих рациональную организацию территории ОТГ согласно общих интересов всех населенных пунктов, вошедших в нее. Определено, что полученные результаты исследования могут служить основой для обоснования дальнейших действий по институционализации изменений в системе землеустройства.*

**Ключевые слова:** децентрализация, землеустройство, земельная реформа, административно-территориальное устройство, градостроительное проектирование, территориальная община.