

FORMING A MODERN SYSTEM OF MANAGING LAND RESOURCES OF TERRITORIAL COMMUNITIES IN THE CONDITIONS OF DECENTRALIZATION OF UKRAINE

Vitaliy Malookyy

Postgraduate Student at the Department of Parliamentary and Political Management,
National Academy for Public Administration under the President of Ukraine, Ukraine
e-mail: vitaliyamal@icloud.com, orcid.org/0000-0002-9525-2790

Summary

The article considers peculiarities of formatting modern system of land resources management for territorial communities under the conditions of decentralization in Ukraine. The author reasons that managing land resources of territorial communities today is an important scientific and applied problem at various levels of management. It is noted that today development of Ukraine is closely linked with the reform of its administrative-territorial structure, aimed at ensuring economic, social and financial capacity of each administrative unit – primarily the territorial community.

The author emphasizes that in the context of ongoing decentralization reforms, mechanisms and processes that accompany functions and development of territorial communities are also being transformed. At the same time, certain extra powers are given to the united territorial communities, they become responsible for more effective management, including land and resource potential, which is the basis for the territory development. This is the reason to suggest development and implementation of interconnected system of legal, administrative and economic measures, at the level of local government, being united by the same goal of regulating land and property relations, to ensure stable, balanced and effective development of the territorial community.

Keywords: state management, land resources management, land use, territory, territorial resources, territorial amalgams.

DOI <https://doi.org/10.23856/4114>

1. Introduction

Today, development of Ukraine is linked with reform of its administrative-territorial structure, aimed at ensuring economic, social and financial capacity of each administrative unit – especially the territorial community. Since 2015, in the context of ongoing decentralization reforms, mechanisms and processes that accompany functioning and development of territorial communities have been transformed. At the same time, consolidation of territorial units at the basic level takes place, and now districts as well, certain additional powers are given to the amalgamed territorial communities.

Theoretical and methodological aspects of state land management were considered by such foreign and domestic scientists as D. Babmindra, V. Vyun, V. Gorlachuk, D. Hnatkovych, D. Dobryak, M. Laveykin, L. Novakovskyy, who analyzed conceptual apparatus of the system of state land resources management and meaningful characteristics of the processes taking place in this field.

Significant contribution to the development of certain aspects of state management of land resources is made by V. Bokolag, O. Botezat, V. Druhak, M. Kovalsky, R. Kuriltsev,

Y. Lytvyn, O. Mordvinov, A. Merzlyak, O. Okhriy, V. Peresolyak, O. Pronina, G. Shary, O. Chebotaryova, V. Chuvpylo, V. Tsyplukhina, A. Yurchenko and others. Contribution to the development of theoretical and applied foundations of land management was made by land economists: I. Bystryakov, V. Budziak, Y. Dekhtyarenko, J. Dorosh, O. Dorosh, V. Gorlachuk, L. Novakovsky, A. Sokhnych, A. Tretyak, M. Fedorov and others.

Despite the significant number of publications, Ukrainian science has not sufficiently studied formation of the modern system of land management of territorial communities in the context of decentralization of Ukraine. The purpose of the article is to generalize scientific achievements on the issue in the scientific literature.

2. Characteristics and the structure of territorial communities in Ukraine

Currently, process of unification for territorial communities is underway, and of course boundaries of new entities are being actively formed, having large plots of land at their disposal, that requires some control, careful analysis and further planning for use. As of January 1st 2019, 3.793 out of 11.215 territorial communities (34% of the total number at the basic level) became part of new administrative entities (Table 1). In total, the territory of ATC is about 209.6 thousand square kilometers (37.6% of the total country area, excluding temporarily occupied territories) (*Sukharska*).

Table 1

Amount and structure of territorial communities in Ukraine, as 01.01.2019

Oblast	Amount of TC before the reform	Amount of UTC	From them:								Amount of non-amalgamate TC	
			Created in 2015-2017				Created in 2018				total	% from the amount before the reform
			total	city	hamlet	village	total	city	hamlet	village		
1	2	3	4	5	6	7	8	9	10	11	12	13
Vynnytska	707	38	34	6	9	19	4		2	2	590	83,5
Volynska	412	50	40	1	9	30	10	1	2	7	205	49,8
Dnipropetrovska	348	60	56	3	21	32	5	1	1	3	166	47,7
Donetska	386	11	9	4	1	4	2		1	1	283	73,3
Zhytomyrska	631	52	45	5	17	23	7	1	2	4	232	36,8
Zakarpatska	337	6	6	3	0	3					317	94,1
Zaporizka	299	51	36	4	7	25	15	1	4	10	115	38,5
Ivano-Frankivska	516	29	23	1	13	9	6		2	4	388	75,2
Kyivska	659	13	9	2	3	4	4	1	2	1	587	89,1
Kirovohradska	415	20	13	4	2	7	7		3	4	357	86,0
Luhanska	332	17	8	0	6	2	9		2	7	241	72,6
Lvivska	711	40	35	7	8	20	5	2	1	1	566	79,6
Mykolaivska	313	40	28	1	8	19	12	2	1	9	173	55,3
Odeska	490	31	25	4	6	15	6	1	2	3	355	72,4
Poltavska	503	44	38	5	6	28	5		2	3	338	67,2

Continuation table 1

1	2	3	4	5	6	7	8	9	10	11	12	13
Rivnenska	365	31	25	1	5	19	6			6	260	71,2
Sumska	419	33	28	4	10	14	5	2		3	263	62,8
Ternopil'ska	615	47	40	8	12	20	7	2	2	3	349	56,7
Kharkiv'ska	458	16	12	1	9	2	4		2	2	391	85,4
Kherson'ska	298	29	26	0	8	18	3			3	195	65,4
Khmelnytska	605	44	39	5	16	18	5		2	3	264	43,6
Cherkaska	556	53	36	4	3	19	27	1	2	24	378	68,0
Chernivetska	271	32	26	6	3	17	6	3	1	2	158	58,3
Chernihiv'ska	569	42	37	10	17	10	5	1		4	251	44,1
Total	11215	830	665	89	199	377	165	19	37	109	7422	66,2

Thus, the largest number of ATCs was created in Dnipropetrovsk and Cherkasy oblasts – 60 and 53 ATCs, respectively. The smallest number – in the Zakarpatska (6) and Donetsk (11) regions. The composition of communities is very diverse and includes from 2 to 569 settlements. Among the formed ATCs, rural communities predominate – 486 units, settlements are 236, urban – 108 (*Sukharska*). It should be noted that today only six oblasts have more than 50% of their TCs amalgamed from all the territorial communities that existed before the reform – Volyn, Dnipropetrovsk, Zhytomyr, Zaporizhzhia, Khmelnytsky and Chernihiv. Less than 10% of communities are united only in Zakarpattia region.

3. Organizational and economic mechanism of land resources management for territorial communities under the conditions of decentralization

At the present stage of reforming the economy, area of land relations also needs radical changes, namely in the management of land resources. Increase in the number of economic entities on the land has initiated expansion of the circle of participants in land relations, and the decentralization reform is actually related to the activities of another important entity at the local level – the amalgamed territorial community. Therefore, problems of reforming land relations are extremely important. At the same time, these processes occur with virtually uncontrolled formation of market relations in the land sector, inconsistent current legislation, which to some extent poses a threat to national security in the field of land relations and is associated with the danger of losing land resources in various aspects (political, environmental, etc.) (*Monitorynh protsesu detsentralizatsiyi vldy ta reformuvannya mistsevoho samovryaduvannya stanom na 10.01.2019 r.*).

Management of land resources of territorial communities is the use of local governments' organizational and economic mechanism of direct action, including changes in legislation, taxation system, target standards, social standards, efficiency criteria, etc., on the activities of economic entities in the field of land ownership, disposition and use of resources by those, who are, without exception, individuals and legal entities within the community. To do this, it is necessary to develop and implement at the local government level an interconnected system of legal, administrative and economic measures, united by a single goal of regulating land and property relations, which should ensure stable, balanced and effective development of the territorial community.

One of the shortcomings of state land management in modern conditions is lack of real division into territory of state and communal ownership, which makes it impossible to

clearly perform the functions and powers of land management of local authorities and local governments. As a result, there is an overlap of management functions.

It is obvious that state activity in the field of land relations' regulation is carried out more widely than land management. That is, the regulation of land relations also extends on the sphere of public relations, adjacent to the field of land relations, if it is necessary to ensure rational use and protection of land.

Land management of village and settlement councils is an advantage of the relevant local government body, which carries it out with the direct will of the population. The main function of local governments is to ensure the independent solution of issues of local importance: ownership, use and disposal of communal property, and above all – the formation of communal land ownership within the Land Code of Ukraine. Provided such functions are properly performed it is possible to raise the issue of local significance on the possession, use and disposition of land ownership.

Necessity to expand the range of disposition powers of the lands of village councils for the benefit of the local community is obvious. However, it is known that on the territory of such administrative-territorial units there are objects with different types of land rights. The Land Code of Ukraine defines lands of different categories, which, according to the current legislation, cannot belong to communal property. Their boundaries are determined during the distribution of state and communal lands. That is, a clear division of land into state and communal ownership is a necessary condition for the local governments' implementation of the authority of disposition of the land that needs to be transferred to communal ownership.

4. Perspectives of the amalgamed territorial communities' development

With a significant reserve for redistribution of land, local authorities have the opportunity to provide prospects for the development of amalgamed territorial communities, solving problems related to the construction of industrial enterprises, recreation areas, parks, housing, etc. If a city or rural district does not have a land fund for its development, local governments have to buy land, if necessary.

By involving the owned lands to the market turnover, preconditions are created for the formation of the land market and its further development, thus providing optimal conditions for attracting investments, as any investor wants to own a land plot. Therefore, state ownership on the territory of village, settlement councils significantly slows down the development of land market (*Druhak, 2013*).

It is important to note that territorial formations, the state, enterprises or organizations cannot independently determine the development prospects of lands of territorial communities, ensuring the fulfillment of the set goals and tasks. Only cooperation of all participants provides well-thought-out and coordinated development of the territory.

Local government bodies independently manage communal property, form and fill the local budget at the expense of land payments, establish local taxes and fees, and protect lands. At the same time, possibility of endowing them with certain state functions with the establishment of appropriate administrative and legal relations with the highest bodies of public administration is not excluded. Moreover, the implementation of the transferred functions and powers is under the control of the state.

The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Delimitation of State and Communal Lands" of September 6, 2012 № 5245 – VI establishes a somewhat limited list of lands in communal ownership:

a) all lands within settlements, except for private and state-owned land plots;
 б) land plots where buildings, structures, other immovable objects of communal property are located, regardless of their location. State-owned land plots to be used to accommodate facilities intended to serve the needs of the local community (utilities, institutions, organizations, public pastures, cemeteries, waste disposal and recycling sites, recreational facilities, etc.), as well as land plots, which in accordance with the approved urban planning documentation is expected to be included in the settlements, by decisions of the executive authorities are transferred to communal ownership (*Pro vnesennya zmin do deyakykh zakonodavchykh aktiv Ukrainy shchodo rozmezhuvannya zemel derzhavnoyi ta komunalnoyi vlasnosti, 2013*).

The transfer of land plots of state ownership to communal ownership or vice versa is carried out by the decision of the relevant executive authorities or local governments, which dispose of state or communal lands in accordance with the powers defined by the Land Code. Therefore, according to the above-mentioned Law, starting from January 1, 2013, all lands in Ukraine are considered delimited by virtue of the Law. As a result of the delimitation, more than 40% of Ukraine's land fund remained in state ownership and slightly more than 4% became communal. Lack of opportunity for local councils to dispose of land outside settlements creates obstacles to the development of rural and urban areas.

At the moment, along with the process of unification of territorial communities, the transfer of land from state to communal ownership continues. According to the LCU (Article 125) the right of ownership of the land plot, as well as the right of permanent use and the right to lease the land plot arise from the moment of the state registration of these rights.

The fact of confirmation of state registration of a legal land plot is its inclusion in the database of the State Land Cadaster. As of January 1, 2019, more than 5% of the total number of registered land plots is in communal ownership.

Table 2

**Amount of land plots registered in the y SLC,
in cities and regions, by the type of ownership**

	Private	State	Communal
Regions	89,3 %	6,5%	4,2%
Cities	75,5%	8,0%	16,5%
Ukraine	87,8%	6,7%	5,5%

So, a clearly defined and reflected in the project documentation boundary of the amalgamed territorial community will allow to identify the actual available land, set restrictions on land use, determine the categories of land use, functional areas, recreational areas within the territory, as well as reserve territories for further development and preservation of areas with special terms of use. Accordingly, one of the documents that requires immediate development and approval of each territorial community (rural, township, city) is the Land Management Project to establish the boundaries of the united territorial communities.

Legislative unregulated issues of establishing boundaries, development of schemes and land management projects of a single land resource space of united territorial communities, village, settlement, city councils, land management projects for the formation of agricultural land, which would introduce the landscape stage of the territory, one of the serious shortcomings of the introduction of the ubiquity of local self-government, the formation of a rational system of land use, the creation of ecologically balanced landscapes. At the same time, only land

management measures provided for in the land management documentation allow to carry out works on rational use and protection of lands, formation and organization of the territory of the land management object taking into account their purpose, restrictions on use and restrictions (encumbrances) of other persons. land easements), preservation and increase of soil fertility, etc., namely to carry out land improvements that increase the value of land plots, and, accordingly, revenues to the budget of ATC (*Dorosh, Novakovskyy, Tretyak, 2018*).

One of the most important stages of the decentralization is transferring agricultural land plots of state ownership into communal ownership of ATC. The process of transferring state-owned agricultural land is regulated by the Land Code (Art. 117, “Transfer of state-owned land plots to communal ownership or communal land plots to state ownership”); Resolution of the Cabinet of Ministers, which obliges the State Geocadastré to carry out such transfer in some ATC lands; Law of Ukraine on «the Local self-government» (Art. 26), regulating the obligatory coordination of actions of the State Geocadastré with the local self-government body in the transitional period of land transfer (*Zemelnyy kodeks Ukrayiny, 2001*).

5. The essence of transferring agricultural lands of state ownership into disposition of ATC

For the purpose of such transfer, the Government has developed and proposed a simplified procedure for the transfer of state-owned agricultural land to the ATC. The whole process can be divided into stages:

1. Conclusion by the heads of the ATC with the territorial body of the State Geocadastré (main departments in the regions) of the Memorandum of Cooperation in the implementation of measures for the transfer of state-owned agricultural land to the communal ownership of the ATC.

2. ATC appeal to the territorial body of the State Geocadastré in the region with a request to transfer state-owned agricultural land to communal ownership.

3. Issuance by the territorial body of the State Geocadastré of an order on conducting inventory of agricultural lands on the territory of the relevant ATC. Carrying out an inventory of land in this case is the need to form land plots, that is the definition of land as an object of civil rights, determining its area, boundaries and entering information about it in the State Land Cadastre.

4. Development and approval of technical land management documentation for land inventory, mandatory state examination of land management documentation (in cases established by law), registration of land plots in the State Land Cadastre, approval of relevant land management documentation.

5. Registration of the property right of the state represented by the territorial body of the State Geocadastré in the State register of real rights to immovable property and their encumbrances.

6. Issuance by the territorial body of the State Geocadastré of the order “On the transfer of land from state ownership to communal ownership ATC”, drawing up and signing an act of acceptance-transfer of land by cadastral numbers

7. State registration of communal property rights to land plots under ATC. The decision of the executive authorities or local self-government bodies on the transfer of land to state or communal ownership together with the act of acceptance-transfer of such land is the basis for state registration of ownership of the state, territorial community on it (par. 4 part. 1 Art. 117 LC) (*Zemelnyy kodeks Ukrayiny, 2001*).

Fulfillment of all the land transfer stages of from state to communal ownership makes it possible to dispose of agricultural land, which were classified as state ownership, on the right of communal ownership of real estate ATC, which in turn provides an opportunity to expand sources of local budget revenues.

Thus, such transfer will be carried out formally and end up with signing the act of acceptance-transfer for land plots according to cadastral numbers, but the question arises as to the definition of the boundaries of the transferred plots to communal ownership in the area. Land management requirements stipulate the boundaries of administrative-territorial units are established and changed according to land management projects, which are developed in accordance with the feasibility study of their development.

If we follow the “letter of the law”, then Art. 20 of the current Law “On Land Management”, cases of mandatory land management, namely, “... establishment and change of boundaries of land management objects ...” (*Pro zemleustriy, 2003*).

At present, the settlement of disputes related to land use in the territory of village, settlement and city councils remains problematic, but as a result of decentralization of power in the field of land relations regulation, such disputes will be resolved by local governments, namely, land disputes over the boundaries of land plots owned and used by citizens, the location of restrictions on the use of land and land easements and citizens' compliance with the rules of good neighborliness, as well as disputes over the delimitation of district boundaries in cities. Thus, with the transfer of large areas to the management of local governments, they are expected to consolidate a wider range of powers to manage these lands.

6. Conclusion

Thus, the process of decentralization of power in the field of land relations regulation and amendments to some legislative acts of Ukraine on delegation of powers to local governments to dispose of state property and strengthen state control over land use and protection will have positive socio-economic consequences, namely: strengthening the influence of the territorial community on land and economic relations in the countryside; determination of the legal regime of lands of collective ownership, dead heritage and unclaimed land shares (share); simplification of the procedure for legal and natural persons to own and use land plots on which buildings, structures, other real estate objects are located, the ownership of which is registered to the purchaser of the land plot; strengthening state control over land use and protection.

Thus, the reform of land relations and the implementation of modern land policy to expand the powers of local governments in Ukraine is associated primarily with the practical definition of land ownership, development of land market and its infrastructure, quality control of land use and organization measures to improve and restore land resources at the level of territorial communities.

References

Butenko YE.V. (2015). Dynamika rozvytku normatyvno-pravovoyi bazy upravlinnya zemelnymy resursamy v Ukrayini [The dynamics of the development of the regulatory framework for land management in Ukraine]. [Land management, cadastre and land monitoring]. (electronic journal), vol. № 1, no.120, pp. 20-27. Retrieved from: <http://journals.nubip.edu.ua/index.php/Zemleustriy/article/download/6657/651.pdf> (accessed 25 september).

Dorosh Y., Novakovskyy L., Tretyak A. (2018). *Stan ta problemy zemleustroyu obyednanykh terytorialnykh hromadu konteksti pidvyshchennya yikh finansovoyi stiykosti [State and problems of land management of united territorial societies in the context of increasing their financial stability]*. *Land management bulletin*. vol. 12, no. 136, pp. 14-20. Retrieved from: <https://www.inter-nauka.com/uploads/public/15731992649960.pdf> (accessed 21 september).

Druhak V. (2013) *Zemelna polityka shchodo stvorenniya systemy ekoloho-ekonomichnoho administruvannya zemlekorystuvannya v Ukrayini [Land policy on the creation of a system of ecological and economic administration of land use in Ukraine Zemlevporyadnyy visnyk]*. *Land management bulletin*. vol. 6, no. 60, pp. 29–32. Retrieved from: http://www.irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe (accessed 10 september).

Pro zemleustriy (2003): Zakon Ukrayiny. (Vidomosti Verkhovnoyi Rady Ukrayiny (VVR). [On Land Management: Law of Ukraine], vol. 36, 232 p. Retrieved from: <http://zakon2.rada.gov.ua/laws/show/858-15> (accessed 05 september).

Pro vidchuzhennya zemelnykh dilyanok, inshykh obyektiv nerukhomoho mayna, shcho na nykh rozmishcheni, yaki perebuyayut u pryvatniy vlasnosti, dlya suspilnykh potreb chy z motyviv suspil'noyi neobkhdnosti (2010): Zakon Ukrayiny (Vidomosti Verkhovnoyi Rady Ukrayiny (VVR) [On the alienation of land plots, other real estate objects located on them, which are in private ownership, for public needs or for reasons of public need: The Law of Ukraine], vol. 1, 1 p. Retrieved from: <http://zakon2.rada.gov.ua/laws/show/1559-17> (accessed 02 september).

Pro osobyste selyanske hospodarstvo (2003): Zakon Ukrayiny (Vidomosti Verkhovnoyi Rady Ukrayiny (VVR). [On personal peasant farm: The Law of Ukraine] vol. 29, 232 p. Retrieved from: <http://zakon2.rada.gov.ua/laws/show/742-15> (accessed 02 september).

Pro vnesennya zmin do deyakykh zakonodavchykh aktiv Ukrayiny shchodo rozmezhuvannya zemel derzhavnoyi ta komunalnoyi vlasnosti (2013): Zakon [Ukrayiny (Vidomosti Verkhovnoyi Rady (VVR) [About modification of some legislative acts of Ukraine concerning delimitation of the lands of the state and municipal property: The Law of Ukraine], vol. 36, 472 p. Retrieved from: [Rezhym dostupu: https://zakon.rada.gov.ua/laws/show/5245-17#Text](https://zakon.rada.gov.ua/laws/show/5245-17#Text) (accessed 02 september).

Zemelnyy kodeks Ukrayiny (2001) : Zakon [Ukrayiny (Vidomosti Verkhovnoyi Rady (VVR). Land Code of Ukraine: The Law of Ukraine], vol. 3-4, 27 p. Retrieved from: <http://zakon2.rada.gov.ua/laws/show/2768-14> (accessed 01 september).

Malookyy V.A. (2016). *Terytorialni aspekty doslidzhennya upravlinnya zemelnymy resursamy terytorialnykh hromad [Territorial aspects of the study of land resources management of territorial communities]* (electronic journal), vol. 1, 17 p. Retrieved from: <http://www.kbuapa.kharkov.ua/e,book/db/2016,1/doc/2/10.pdf> (accessed 01 september).

Monitorynh protsesu detsentralizatsiyi vlady ta reformuvannya mistsevoho samovryaduvannya stanom na 10.01.2019 r. [Monitoring the process of decentralization of power and reform of local self-government]. Vol. 1 Retrieved from: <https://decentralization.gov.ua/mainmonitoring> (accessed 01 september).

Sukharska_L.V. *Orhanizatsiya finansovoho zabezpechennya rozvytku terytorial'nykh hromad : avtoreferat na zdobuttya kand.n.z derzh.upr. [Organization of financial support for the development of territorial communities: abstract for a candidate of sciences from public administration]* Retrieved from: <http://academy.gov.ua/pages/dop/138/files/7f9f29ed-01f3-49ec-afeb-bca-30f8e24a4.pdf> (accessed 01 september).