

UDC: 332.334:352.075

DOI: <https://doi.org/10.15407/ugz2019.02.023>**L. Ya. Novakovskiy<sup>1</sup>, I. O. Novakovska<sup>2</sup>, O. O. Bredikhin<sup>2</sup>, M. P. Stetsiuk<sup>2</sup>,  
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## MUNICIPALIZATION OF LAND MANAGEMENT UNDER CONDITIONS OF POWER DECENTRALIZATION IN UKRAINE

The purpose of the research is the detection peculiarities of the decentralization of power in Ukraine in modern conditions and justifying the directions and ways of land use municipalization in order to introduction widespread local self-government and eliminate the removal of its authorities from the management of land resources. Municipalization is associated with the delimitation of state and communal land in settlements and and the expansion of the powers of territorial communities for the management of land use outside settlements within the communities jurisdiction. The foreign experience of reforming local self-government and scientific substantiation of decentralization processes by domestic and foreign scientists has been generalized. The dynamics of the process of association of communities, the issue of territorial uncertainty of their powers, peculiarities of communal ownership of agricultural lands of state property outside the settlements have been investigated. The problems of formation of a rational system of land use, creation of ecologically balanced landscapes have been considered. The system of normative-legal, land-use and land-cadastral provision of land tenure reforming at the second stage of decentralization of power has been proposed.

**Keywords:** *community association; communal land ownership; local self-government; land management schemes; land cadastre.*

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### МУНІЦИПАЛІЗАЦІЯ ЗЕМЛЕКОРИСТУВАННЯ В УМОВАХ ДЕЦЕНТРАЛІЗАЦІЇ ВЛАДИ В УКРАЇНІ

Мета публікації – розкрити особливості здійснення децентралізації влади в Україні в сучасних умовах і обґрунтувати напрями та шляхи муніципалізації землекористування з метою запровадження повсюдності місцевого самоврядування та ліквідації відсторонення його органів від управління земельними ресурсами. Муніципалізація пов'язується з розмежуванням земель державної та комунальної власності в населених пунктах і наданням повноважень територіальним громадам по управлінню землекористуванням поза населеними пунктами у межах юрисдикції громад. Узагальнено зарубіжний досвід реформування місцевого самоврядування та наукового обґрунтування процесів децентралізації вітчизняними і зарубіжними вченими. Досліджено динаміку процесу об'єднання громад, питання територіальної невизначеності їх повноважень, особливості передачі у комунальну власність земель сільськогосподарського призначення державної власності за межами населених пунктів. Розглянуто проблеми формування раціональної системи землекористування, створення екологічно збалансованих ландшафтів. Запропоновано систему нормативно-правового, землевпорядного та земельно-кадастрового забезпечення реформування землекористування на другому етапі децентралізації влади.

**Ключові слова:** *об'єднання громад; комунальна власність на землю; місцеве самоврядування; схеми землеустрою; земельний кадастр.*

### Introduction

The essence of decentralization, which started in Ukraine in 2014, is revealed in delegation of authorities from the state power bodies to the bodies of local self-government with simultaneous

consolidation of communities, as well as supply of the united territorial communities with land and financial resources, along with approval of universal power of the local self-government. According to the Conception of reforming of local self-government and territorial organization of power (April 1, 2014) on the fundamentals of new-adopted legal acts, the state has implemented a complex of works of the first

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stage of decentralization (2014-2018). The European Union considers that the reform of decentralization is one of the most successful reforms in Ukraine. The main tasks of the second stage of decentralization (2019-2021) include establishment of a new territorial foundation at the level of communities and districts, distribution of powers among the bodies of local self-government according to the principle subsidiarity and creation of an appropriate resource base for exercising of the powers by communities. It requires amendments to the Constitution of Ukraine and improvement of the regulatory acts of land legislature, performance of a great number of land-surveying and land-cadastral works. The aim of the article is to present scientific support for performance of the mentioned tasks.

### Relevance of research theme

Until January 30, 1992, in Ukraine there was a unified monopoly form of ownership for land, i.e. the state one. Since introduction of private and collective forms of ownership and before passage of the new Land Code of Ukraine on January 1, 2002, the functions of land parcels delivery to ownership or use, termination of the right of ownership and right of land use, including withdrawal of land parcels, were performed by councils. Bodies of executive branch did not have such authorities. Except for construction of linear objects, delivery of land parcels was in the power of regional councils, withdrawal of arable lands and perennial vegetation, lands of environmental and recreational use, and forests of the first group was the authority of the Supreme Council of Ukraine, all other land issues were solved by the councils of a basic level, particularly village, settlement, city. Such structure met the requirements of the European Charter of local self-government [1]. Communal ownership of land was introduced by the Constitution in June 1996. However, it was expected that the majority of communal lands had to be within the boundaries of cities. Since January 1, 2002, the councils' power concerning disposal of land is applicable only to the land within the settlement. However, distribution of the lands in villages, settlements, and cities into state and communal ownership, was not completed, while the specific law about land distribution was adopted in 2004.

According to the new law, since January 1, 2013, the land of state and communal ownership were defined as distributed, but local councils are restricted in their powers, because boundaries of

the distributed land parcels are not determined and marked in the land cadaster because of a great volume of land-surveying works. Since that date, agricultural land beyond the boundaries of settlement have been submitted to the disposal of the central executive authorities in the field of land relations.

Impact of the bodies of local self-government on land redistribution has been sufficiently reduced, and delivery of land parcels is not coordinated by them any more. Thus, the bodies of local self-government are actually suspended from land resources management. Beyond the settlement, local councils are not usually authorized to dispose the land, i.e. local self-government has actually lost its universal power. Liquidation of non-universal power of local self-government and suspending of its bodies from land management are considered the fundamental tasks of decentralization.

### General characteristics of the object research, the state and methods of studying the issue

Ukraine is the largest country in Europe (its territory takes 60.4 million ha, population – 45.4 million people)<sup>1</sup>. It possesses 41.5 million ha of agricultural lands, including 27.5 million ha of black land fertile soils (the fourth position in the world after Russia, the USA and China). The territory of Ukraine is characterized by the highest exploitation of agricultural lands (68.8%) in Europe and the highest plowing in the world (53.9%). Among the 12 thousand councils, including 10.3 thousand of village councils and 0.8 thousand of settlement ones, above 6 thousand councils have under 3 thousand of residents, including 4.8 thousand councils – less than 1 thousand of residents, and 1.1 thousand councils – under 500 people [2].

Concentration of powers concerning management in hands of the bodies of executive power, excessive parceling of communities, suspending of the bodies of local self-government from solution of the problems in the field of land relations, and subsidiaries for almost half of the budgets of village and settlement councils have forced initiation of the reform of decentralization, which has started with consolidation of territorial communities and transfer of financial resources to their disposal.

The reform of decentralization, being fulfilled in 2014, combined reforming of local self-government

<sup>1</sup>Data as of January 1, 2014 (this year reform began), as of January 1, 2019 - 42.15 million people [2]

of administrative-territorial organization, state administration. Besides the mentioned reform, the land reform started in March 1991 and is still in progress. Thus, in the process of decentralization, it is necessary to establish communal ownership of land, to perform land organization of united territorial communities and consolidation of lands within the area of agricultural lands. Thus, municipalization of land management is the feature of the decentralization reform in Ukraine, which should solve the problem of liquidation of local self-government suspending from performance of tasks in the field of land relations. Municipalization requires compliance of the distribution of lands of state and communal ownership in settled area, delegation of powers concerning land relations regulation and management of land use within its jurisdiction to executive bodies of the territorial communities.

Introduction of a balanced system of administration requires developing of a complex criterion of sustainable development of administrative-territorial units.

The above-mentioned fact forces the necessity to create a mathematical model, which can maximum formalize the ways for optimal decision-making. Such model should be a multi-level one and depict not only territorial organization at its all levels, but also relationship of the factors of support for living abilities of a territorial organization unit [3].

While implementing decentralization in Ukraine, the authors applied the best foreign experience, particularly Polish and Nordic. Decentralization of public power is approved in the articles 15 and 16 of the Constitution of the Republic of Poland. In Poland, there is a three-level structure of self-government at a local and regional levels, particularly a *gmina*, a *powiat*, a *voivodeship*. Nowadays, Poland is divided into 16 *voivodeships*, 379 *powiats* and 2478 *gminas*. The constitutional principle that the "territorial organization of the state secures decentralization of public power, and self-governing community performs the public functions on their behalf and on their own responsibility" is a basis of Polish decentralization [4]. Similar fundamentals should be captured in the Constitution of Ukraine.

The nomenclature of territorial units for statistics (NUTS), which is adopted in the EU countries, includes five levels, including three regional (NUTS 1-3), and two local ones (NUTS 4-5). Experience of the countries of the European Union suggests the main conceptual approaches to reforming of the system of administrative-territorial organization.

Accession of Ukraine to the European Union stipulates performance of the territory division according to the NUTS requirements, as a priority of introduction of the principle of subsidiary for performance of local power bodies [5].

Experience of Poland concerning the necessity of supplementary financial and economic support for less developed regions, which initiate the process of reforming, is important for Polissia, pre-mountainous and mountainous area of our country. Competition of cities and regions concerning improvement of managerial processes, completing of the development strategies, as individualized documents, increase of the level of public participation of residents in solution of the problems of development, strengthening of institutional potential of local self-government, particularly competition concerning external resources (financial fund, human potential) should become the program fundamentals for Ukrainian decentralization [6]. For example, territorial communities of France are budgeted by grants, which are provided for local self-government and create the main source for pumping up of budgets and the grants increase annually [7]. However, in the scientific environment there is no a consensus concerning the decisive relation between decentralization and economic growth, particular impact of decentralization of taxation [8].

In Norway, the reform of decentralization is expected to be completed until January 1, 2020. In that country, the number of counties and regions has reduced from 19 to 10, and municipalities – from 428 to 356, while the main principle of reforming is a free will. However, it cannot be applied to very small municipalities. The governmental initiative concerning decentralization is approved by the Parliament of Norway on June 8, 2017, and on October 19, 2018, the Government presented so-called White Book with the specified powers for the bodies of national and regional levels. In the period from 2003 to 2015, Sweden reformed 25 regions into 10 [9]. Thus, the process of decentralization in that country will take two and a half years. The experience of the mentioned Nordic countries concerning organization of legal support and performance of decentralization measures, particularly their time limits, is the orientation point for Ukraine.

The problems of decentralization in Ukraine are studied in the scientific works of such domestic scientists, as V. Bordeniuk, O. Boryslavska, Z. Varnaliia, H. Odintsova. Analysis of the process of

local self-government reforming in Ukraine and ways of its completing is published in the monographs by A. Tkachuk and Yu. Hanushchak [10, 11]. Experience of the European Union countries concerning the problem of decentralization was studied by the foreign scientists, particularly Ye. Rehulskyi [12] and T. Virtenhberher [13]. Many scientific articles on the mentioned problems are in the scientific works of the scientists from higher educational establishments and Internet-publications of Ukraine. The most complete monthly information concerning the reform can be found at the portal “Decentralization” [14].

Analytical examination of scientific publications and factual material is performed with application of monographic, abstract-logical, mathematical-statistical, cartographic, and comparative methods. The research proposes directions and ways of implementation of decentralization and municipal land management.

### Presenting the main material

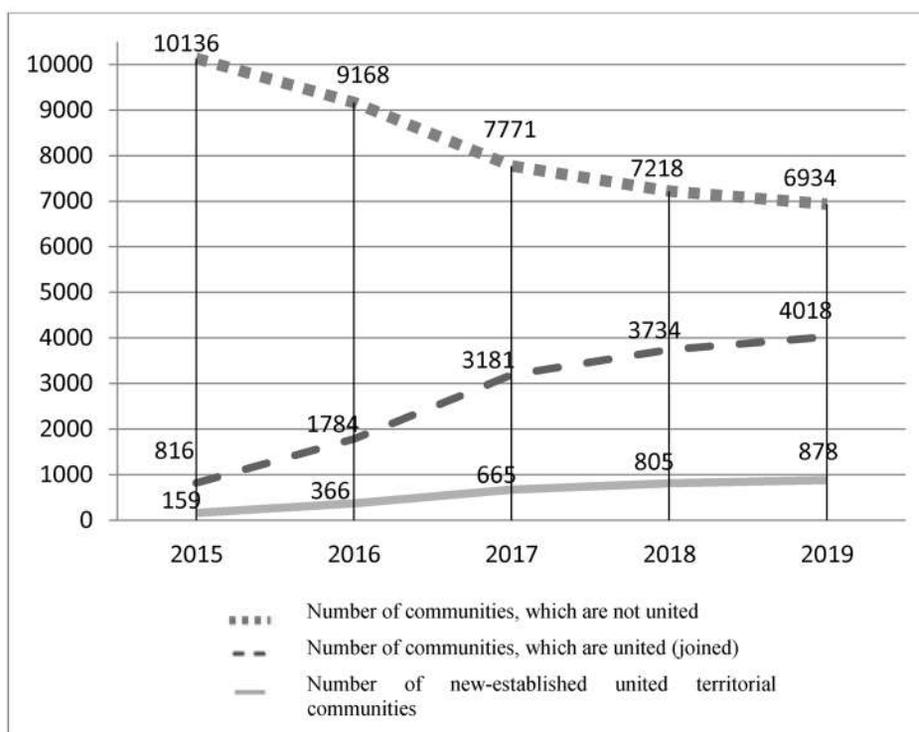
As of February 10, 2019, in Ukraine, 4018 territorial communities have been amalgamated (including 71 communities, which have joined the new-established ones, and 50 communities – joined 24 regional cities), and 6934 communities (63.3% of the total number) are not amalgamated (**Fig. 1**) [14].

The area of united territorial communities constituted 37.7 % of the country territory (without the area of occupied territory – the Crimean Autonomous Republic, parts of Donetsk and Luhansk regions), and the number of population reached 9 million people [14].

The process of united territorial communities establishment was rather dynamic, particularly in 2015-2019, their total number increased 5.5 times, and the number of united (joined) communities – 4.9 times (**Fig. 2**) [14].

Estimating the effects of the first stage of decentralization, one should note that the rates of local self-government reforming in Ukraine, comparing to other European countries (Poland, Sweden, Denmark), can be considered as satisfactory, particularly concerning extremely short preparation period for reforming and development of laws, preparation of required documents, approval of documents, performance of explanatory work.

However, the main drawback of decentralization is that it is not constitutionally approved. Other problems include undetermined boundaries of communities in kind and their absence in the state land cadaster, unperformed works concerning land organization of the territory of united territorial communities. The process of creation of communal



**Fig 1.** Dynamics of territorial communities amalgamation as of February 10, 2019 (as of May 10, 2019 - 899) [14]

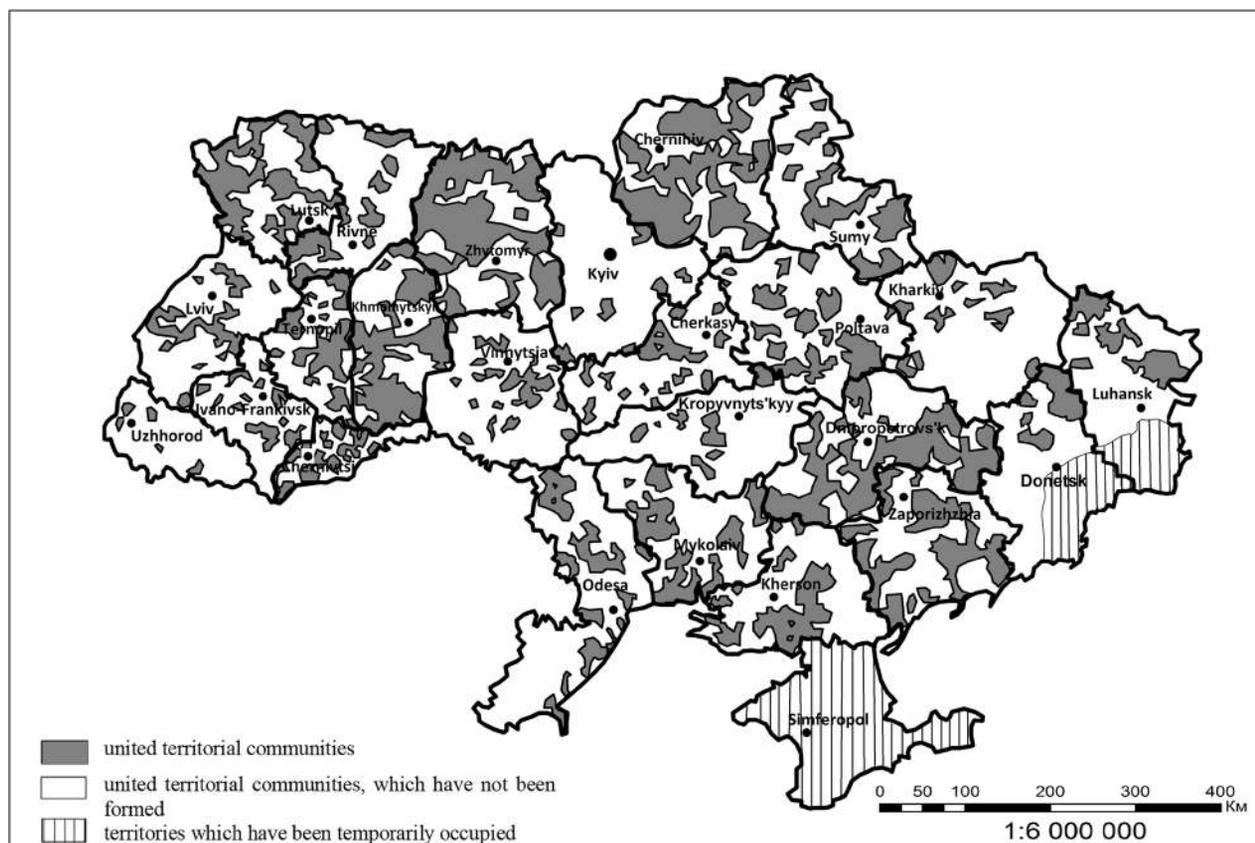


Fig 2. Scheme of united territorial communities location

ownership beyond the settlements and setting of the community boundaries is not regulated. Distribution of lands of state and communal ownership in settlements is at the initial stage. Thus, village, settlement and city councils possess insufficient area of land resource at their disposal. It is the evidence that local self-government in the country has no absolute and permanent powers.

As of January 1, 2018, the state land cadaster registered 87.8 % of the total number of land parcels of private ownership, 6.7 % - state one, and 5.5 % of communal (Table 1).

The total area of land parcels, which are registered in the land cadaster, constitutes 31.1 million ha (51.5% of the territory of Ukraine), including 24.3 million ha of private ownership, and 0.44% - of communal ownership. However, according to expert estimates, the total area of lands of communal ownership should actually constitute 5.2 million ha. Thus, one can assume that the field of land resources management by local authorities is considerably minimized. It confirms the fact of the further suspending of local councils from solution of the problems of land use. Implementation of the second stage of decentralization, initiated by the

Government of Ukraine, suggests a transformation of the territorial organization of the country. A new territorial basis should include 100 districts and 1600-1800 capable territorial communities. For the mentioned administrative-territorial units it is required to define exact boundaries and register them in the state land cadaster.

According to the cadastral service information, the set boundaries of only 813 settlements are introduced to the cadaster, or 2.8% of their total number. The boundaries are determined for almost  $\frac{3}{4}$  of all settlements, while the information about them is not included into the state land cadaster. There are some variants to mark the boundaries of the territory of village, settlement, city councils,

Table 1.  
Number of land parcels, registered in the state land cadaster [2]

Territorial units	Distribution by the forms of ownership, %		
	private	state	communal
Districts	89.3	6.5	4.2
Cities	75.5	8.0	16.5
Ukraine	87.8	6.7	5.5

particularly according to plan-cartographic materials of the boundaries setting, according to the general layout of settlements, according to land-cadastral documents, according to the projects of land organization concerning determinations (change) of the boundaries of administrative-territorial units.

Except for the boundaries, which are determined on the basis of the corresponding geodesic investigations, the boundaries, which are set in a different way, are approximate. The example of Bila Tserkva district of Kyiv region demonstrates impact of the approximate boundaries on the indicators of land use by communities (**Fig. 3**).

The land area of communities, which is determined according to the boundaries of neighboring village, or settlement councils, is by 88 ha smaller than the area according to land-cadastral materials (12767 ha).

According to the requirements concerning land inventory by standard documents, a threshold deviation respecting the geodesic symbols should not exceed 0.1 meter in the city of Kyiv and cities of regional significance, 0.2 – in other towns and settlements, 0.3 meter – in villages. For beyond

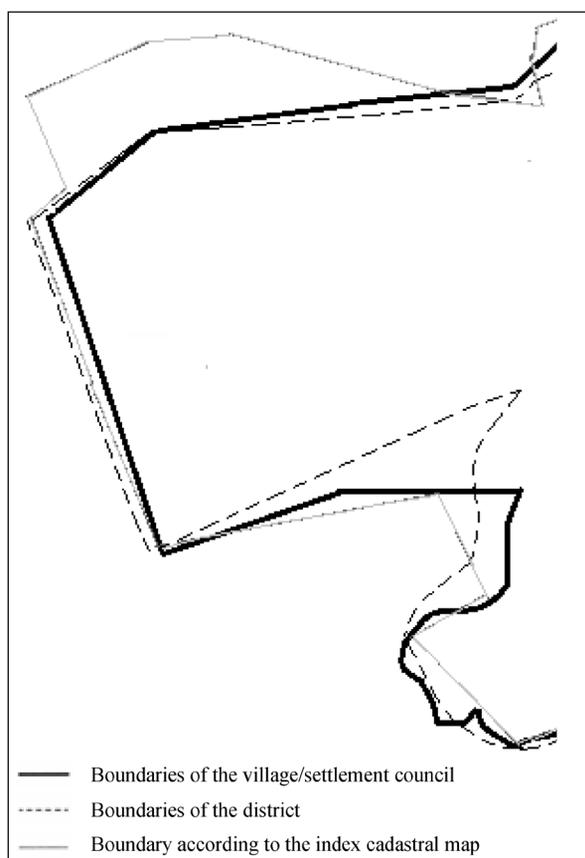
the settlement boundaries, the threshold value of the mentioned deviation should be under 0.5 meter. However, if the boundaries of territorial communities are set according to the topographic maps in the scale 1:50000, with the map accuracy 0.1 mm, the deviation can constitute 50 meters. In the prospective plans of capable communities establishment, their territory is measured in square kilometers according to the topographic maps in the scale 1:50000, while the area of lands in the cadaster is mentioned in hectares with four digits following the decimal point, i.e. within the accuracy of one square meter.

According to the standard documents, boundaries of the territory of united territorial communities are set by the external boundaries of the jurisdiction of the territorial communities councils being in its structure. However, there are no instrumentally set boundaries of the councils. The above-mentioned fact causes territorial ambiguity of the powers concerning disposal of land resources, errors in land recording, taxation, and triggers conflicts. Only the boundaries, determined on the materials of geodesic measuring, can be considered the only justified and technically argued ones by means of fixed boundaries of communities. That information about the boundaries should be included in the state land cadaster.

Communities will not become the units of administrative-territorial organization before constitutional changes are introduced. Amalgamation of communities lasts for five years. However, in the cadaster, there is no information about the land. It is of urgent importance to introduce changes concerning community boundaries in the current legislation.

Since 2014, it has been proposed to transfer a share of lands of state ownership to communal ownership of united territorial communities (UTC), as an effect of decentralization. However, legal acts on the mentioned issues have not been passed. According to the Governmental resolution, such transfer is performed concerning agricultural lands (*Table 2*).

A share of united territorial communities has got 1.45 million hectares of land to ownership. However, the territorial communities, which have not been amalgamated yet (6.9 thousand or 63.4 %), have not got such lands. Lack of the schemes of creation of communal lands beyond the settlements causes variation of the area of transferred lands from 1.7 to 10.3 % of the total area of communities in the regions. However, 26.3% of the united territorial communities, which have not got lands, are discriminated.



**Fig. 3.** Determination of boundaries according to the variants of documents

Table 2.

**Transfer of agricultural land parcels from the state ownership to communal ownership of UTC [14].**

№	Region	Number of UTC, which have got land parcels	Area of transferred land parcels	
			Thousands ha	% relating to the area of UTC
1	2	3	4	5
1	Vinnytsia	34	37.6	3.0
2	Volyn	30	49.4	4.3
3	Dnipropetrovsk	55	185.0	10.2
4	Donetsk	9	41.8	6.8
5	Zhytomyr	44	95.0	5.0
6	Transcarpathian	6	1.7	2.8
7	Zaporizhzhia	36	105.6	6.1
8	Ivano-Frankivsk	20	13.4	4.1
9	Kyiv	8	7.4	1.9
10	Kirovohrad	13	25.8	5.8
11	Luhansk	8	13.5	1.7
12	Lviv	35	41.5	8.7
13	Mykolaiiv	28	81.2	6.7
14	Odesa	23	97.5	9.7
15	Poltava	39	91.1	10.3
16	Rivne	25	27.8	4.8
17	Sumy	28	71.8	7.4
18	Ternopil	40	36.4	5.8
19	Kharkiv	12	28.1	4.9
20	Kherson	25	89.2	10.0
21	Khmelnyskyi	39	100.5	10.1
22	Cherkasy	26	40.4	5.0
23	Chernivtsi	26	7.3	2.1
24	Chernihiv	37	161.8	9.1
TOTAL in Ukraine		646	1450.8	6.9

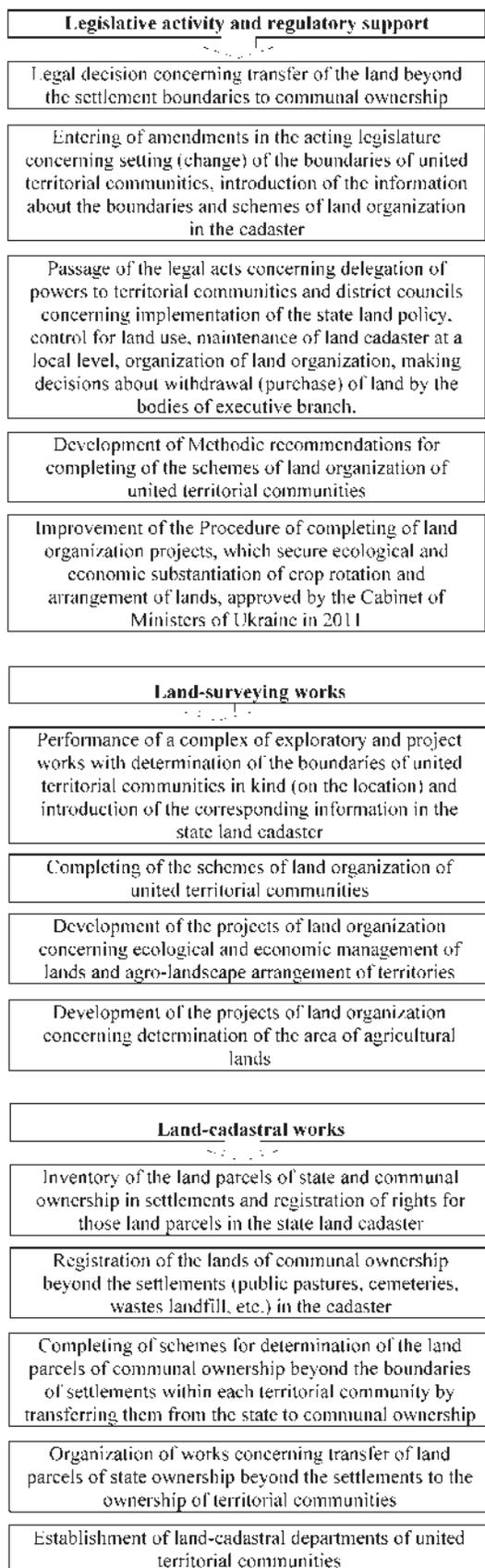
In the nearest future, it is necessary to make inventory of the lands of settlements in order to create land parcels of communal ownership and register them in the cadaster (the approximate area is up to 3.7 million hectare), as well as to continue transferring of the lands beyond settlements to ownership of territorial communities.

Establishment of a rational system of land use within the created territorial communities, formation of ecologically balanced landscapes, preparation of scientifically argued proposals in the field of land relations, particular concerning redistribution of lands, and greening of land management, are impossible without development of the schemes of land organization.

Solution of the problems of land use can not be limited only by the scheme of planning of united territorial communities, plans of territorial communities or other city-planning documents. It is particularly true for the specific problems, i.e. creation of ecologically balanced landscapes, greening of land use, organization of territorial agricultural and non-agricultural enterprises and organizations. Thus, besides the schemes of land organization of administrative districts, it is necessary to develop the schemes of land organization of united territorial communities.

Arrangement of the area of agricultural lands on the territory of communities should be performed according to the following principles:

- zoning of lands is done by the types (subtypes)



**Fig 4.** Regulatory and land-surveying support for reforming of land management at the second stage of decentralization

of land use with consideration of land availability for growing of agricultural crops, horticulture, viticulture, as well as values of other natural resources;

- projecting of the principal elements of a contour organization of land use should be introduced in the districts of a progressive water erosion, and systems of forest-belts – in the districts of wind erosion;

- size of the land area is determined differentially, depending on organizational forms of farming.

- To define legal and organizational measures of land use of united territorial communities it is reasonable to make the following steps.

- To complete the Land Code of Ukraine with a new article 173<sup>1</sup> concerning boundaries of communities and to point that the boundaries are set and can be changed in accordance with the corresponding projects of land organization. Information about those boundaries is introduced to the State land cadaster and is fixed in the extract from the cadaster, which is supplied to a united territorial community, a village, settlement, city council. Decisions about setting and changing of boundaries are made by a district council upon presentation of the corresponding communities, councils.

- To implement the developed scheme of land organization of a united territorial community, which is approved by the corresponding territorial community.

- The Law “About land organization” should be supplemented with a new article 45<sup>1</sup>, i.e. a scheme of land organization of united territorial communities, which sets the goal and tasks of the scheme and its content. Particularly, the goal of the scheme development should specify the directions of use and protection of lands, and other natural resources, depending on their availability, value and potential, market redistribution of lands with consideration of needs and interests of the state, territorial communities, citizens and legal bodies.

- To bring the land within the boundaries of united territorial communities, village, settlement, city councils to the list of the objects of the State land cadaster (article 10 of the Law “About the state land cadaster”). To complete the cadastral data with the names of communities, description of their boundaries, determined area, name of adjacent land uses, information about the land categories, etc. (article 13 of the Law). To plan completing of the index cadastral maps (plans) of united territorial communities, village, settlement, city councils.

In the progress of decentralization (the second stage), it is necessary to authorize the executive

bodies of united territorial communities and new administrative districts to perform the tasks of implementation of the state land policy at a local level, to organize land-surveying and land-cadastral works, to prepare new legislative acts of land laws and to introduce amendments to some acts in force (**Fig. 4**).

## Conclusions

Constitutional insecurity of the principal fundamentals of decentralization and legal non-regulation of the principles and procedure of transfer of the state land beyond the settlements to communal ownership, and setting of the boundaries of communities did not support the absolute power of local authorities on the territories, where the process of communities

amalgamation had been competed, made obstacles for implementation of land organization and introduction of the required information in the State land cadaster.

Completing of the process of decentralization, besides introduction of amendments to the Constitution of Ukraine, Land Code of Ukraine, laws of land organization and state land cadaster, requires fulfilment of a complex of land-surveying and land-cadastral works concerning greening of land use and consolidation of agricultural lands.

The decentralization's peculiarities and regional differences will be considered in the following publications which are based on the research materials that we are continuing.

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The article received on 22.05.2019