

Ukrainian Reform of Decentralization Processes Consolidating the Sustainable Development: Environmental and Legal Aspects

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Abstract

The strategic vision of sustainable development for Ukraine is based on ensuring national interests and accomplishing international commitments proceeding to sustainable development. Sustainable development involves decentralization and implementation of regional policy, which is based on a harmonious combination of national and regional interests regarding ecology. This article aims to identify and analyze environmental and legal components of the decentralization of power in Ukraine as a means to sustainable development provisions. The main focus of ecological decentralization is placed on land resources. This is due to the peculiarities of the national system of environmental law (natural resource and environmental regulations) of Ukraine. The article highlights the main and additional areas of environmental decentralization. It analyzes the legislation and the practice of its implementation in the sphere of natural resources reallocation, territorial communities' demarcation, and their planning process. The roles of cadasters, registers, and electronic databases in maintaining natural resources for the successful decentralization of power are analyzed. The legal perspectives for the decentralization of environmental control are also outlined. The status of financial and ecological resources redistribution in the process of decentralization is highlighted along with the ways of its subsequent improvement. The conclusion suggests the ways for the improvement of legislation and the practice of its implementation to accomplish successful decentralization reform.

Keywords

Environmental decentralization; Sustainable development; Land reform; Territorial community

Introduction

The strategic vision of sustainable development for Ukraine is based on ensuring national interests and accomplishing international commitments proceeding to sustainable development. Such development involves overcoming imbalances in economic, social, and environmental areas culminating transformation of economic activity through adopting the principles of a "green economy", embracing the principle of intersectoral partnership and involving adequately the concerned parties. Maintaining the environment in a proper state will ensure good living and welfare of current and future generations. Sustainable development also involves decentralization and implementation of regional policy, which is based on a harmonious combination of national and regional interests in the sphere of ecology. Decentralization of public power is the mechanism that ensures sustainable development of the State's regions based on legislatively regulated processes of transferring specific functions, powers, and budgets of central executive bodies to the local self-government bodies (Hordiyenko, Onishchenko and Malionkina, 2019). With this backdrop, purpose of this article is to identify and analyze the environmental and legal components of the decentralization of power in Ukraine as one of the means for sustainable development.

Policy of Sustainable Development and the Decentralization of Power

By Part 1 of Art. 3 of the European Charter of Local Self-Government¹ (Strasbourg, October 10, 1985), local self-governance is specified as a legal capacity of local self-governments to exercise regulation and administration of a considerable share of public affairs within their responsibility and for the benefit of local communities. The decentralization of power is the component of the reform of local self-governance, the task of which has been a redistribution of authority, ownership, and service powers with the transfer of their indispensable part from the governmental authorities to the local self-government bodies. It is necessary to implement more effective administration and the use of available resources, including natural resources, for the benefit of the members of territorial communities. A new stage of this reform of power in Ukraine started from the concept of the Local Self-Government Reform, and Territorial Organization of Power in Ukraine adopted in April 2014 (Resolution of the Cabinet of Ministers of Ukraine, 2014²) and is implemented while considering the principles and provisions of the European Charter of Local Self-Government.

The above-mentioned concept should be implemented in compliance with the following principles: 1) the availability of the resources for exercising the statutory powers of local self-governments; 2) specifying taxes and dues related to the territory of a relevant administrative-territorial unit as a financial basis for exercising powers by local self-governments; 3) delegation of the right to regulate local taxes and dues rates; 4) specifying them as a substantial basis of property, in particular, the land in communal ownership of territorial communities, objects of communal property linked to appropriate tax basis; 5) delegation of the right to dispose of land resources within their territory, integrate their property and resources while ensuring territorial communities cooperation, etc.

Along with the positive trends in the process of decentralization of public power in Ukraine, which has been in progress for several decades, the following problems can be identified: 1) inconsistency of local policy on socio-economic development with the fundamental interests of territorial communities; 2) lack of joint responsibility for the development of the territory; and 3) inconsistency of sectoral decentralization with the fundamental interests of territorial communities, etc. (Hordiyenko, Onishchenko and Malionkina, 2019).

One of the ways to solve the problems related to reforming the process of decentralization of public power is a systematic study of foreign experiences that can be adapted to the Ukrainian realities. The Polish

¹ <https://rm.coe.int/168007a088>

² <https://zakon.rada.gov.ua/laws/show/333-2014-%D1%80#Text>

experience has been exemplary for Ukraine, proving that the important conditions for the implementation of the reform of decentralization are as follows: a) consolidation of political forces in the process of reform implementation; b) drafting the programs of socio-economic development to be executed by administrative-territorial units; and c) public support to the reform and control over its implementation (Faizul and Ntim, 2017; Hordiyenko, Onishchenko and Malionkina, 2019; Kaiser and Vogel, 2019; Dacko *et al.*, 2021).

Achieving integrity in setting the goals, tasks, and priorities for the development at the local, regional, and national levels requires alignment with the "Sustainable Development Goals (SDGs)" promulgated by the UN Summit "Transforming Our World: the 2030 Agenda for Sustainable Development" (Sustainable Development Goals, 2016). The world's countries respect it as a fundamental document while shaping their domestic policies. In particular, 169 tasks under 17 SDGs aimed at preserving the resources of the planet and ensuring the welfare of nations along with creating a favorable and safe environment for a human existence. An inclusive administration has been earmarked in numerous strategic and program development documents of various countries, territorial communities, and businesses (Sakalasooriya, 2021).

The global sustainable development goals (SDGs) specify the conceptual framework for territorial development by identifying the quality approaches to ecosystem protection, territorial integration, urban and community development, and their role in community unifying. The participants in the large-scale consultation organized by the UN on the Agenda Drafting concluded that achieving the said SDGs requires actions at the local level (Shevchenko, Romanova and Zhalilo, 2020). Based on the results of these consultations³ and proposals, the decision was made to add a separate Goal 11, "Make cities and residential areas inclusive, safe, resilient and sustainable", to the list of SDGs. However, the role of local authorities in the implementation of the 2030 Agenda goes beyond the limits of Goal 11. They are empowered to develop the policy, and they have been the catalyst for changes, as far as they represent the level of power with the best opportunities to integrate global goals into local communities (Sustainable Development Goals, 2021).

The formation of the legal framework for SDG achievement in Ukraine was initiated by the Decree of the President of Ukraine on January 12, 2015, which approved the Strategy of Sustainable Development of Ukraine 2020 (Decree of the President of Ukraine, 2015⁴). It provides for 62 sectoral reforms, including decentralization, public administration reform, agricultural reform, and land reform. The tasks of SDGs as well as the indicators of its achievement by 2030 are set out in the country's National Report "Sustainable Development Goals: Ukraine" (Sustainable Development Goals Ukraine, 2017). However, this document has no statutory or regulatory status. Moreover, currently, there is no system for the realization of commitments on SDG achievements at regional and community levels in Ukraine. The delay in adopting an official document that would specify the place and the role of SDG in the national policy, as well as specific means and mechanisms providing wide-scale implementation of SDG at all levels, has led to the loss of opportunities for rationalization of budget expenses, facilitating the investments, and receiving official assistance from developed countries for the purpose of SDG realization (Shevchenko, Romanova and Zhalilo, 2020). Currently, the Decree of the President of Ukraine of September 30, 2019 "On Sustainable Development Goals of Ukraine for the Period till 2030" (Decree of the President of Ukraine, 2019) includes the mandatory SDG compliance, but, unfortunately, the said Decree, in its implementation context, provides for only the involvement of State authorities and scientific societies, and does not include regional authorities, communities, and enterprises in the process. Therefore, effective implementation of SDG realization requires devolution of State level mechanisms of sustainable development goals to enhance the abilities of territorial communities implementing the SDG.

³ The Proposals were made by the Coordinator of Global Work Group of Local and Regional Authorities – "United Cities and Local governments (UCLG).

⁴ <https://zakon.rada.gov.ua/laws/show/5/2015#Text>

The Government of Ukraine is currently working on provisioning in the Constitution of Ukraine a new model of territorial governance, built on the principles of decentralization and subsidiarity. Due attention is also paid to their strategic planning process (Shmyhal, 2021). However, today the situation of public governance of sustainable development in Ukraine is characterized by the lack of coordination of public policy to implement sustainable development at all levels, coupled with an inconsistency of regional and local development strategies in line with national SDGs. It is hard to evaluate the current situation, to assess the problems hindering strategic planning for sustainable development of regions and communities, and to monitor progress in achieving SDG at regional and local levels.

Environmental and Legal Aspects of the Decentralization of Power

As noted above, Ukraine's reform of decentralization of power is aimed at redistribution of the powers and the resources to the local self-governments and is heavily focused on the environmental and legal aspects of such redistribution. In other words, it concentrates on the environmental sector (Malysheva, Kulynych and Oleshchenko, 2019). Natural resources and financial resources derived from their use constitute a significant material basis for territorial communities. From the ecological point of view, the residents of each territorial community are primarily interested in sustainable use and conservation of natural resources. Scientific literature specifies such a reform as "environmental decentralization" (Krasnova, 2017).

The main focus of the reform of the decentralization of power is placed on land resources. This is due to the peculiarities of the national system of environmental law (natural resource and environmental regulations) of Ukraine. Land and other natural resources are relatively independent objects of statutory regulation and have separate legislation, ownership regime, and other peculiarities of the legal regime. At the same time, the legislature knows natural resources, although they are independent objects of statutory regulation, have been interconnected in their natural state. On the one hand, the owners of the land plots are entitled to use the available minerals, peat, forest, water bodies as well as other useful properties existing within the plots as per the principles of right to use (i.e., without any prior permission and a charge), although they do not have the ownership right on other natural resources outside the plots owned by them. On the other hand, the environmental legislation of Ukraine comprehensively (as a single natural object) regulates the objects lying in the boundaries of a natural reserve fund, exclusive maritime economic zone, continental shelf, etc., which are viewed as integral objects under the collective ownership principles. The same thing applies to forests and waters being predominantly the objects of State and communal ownership. Hence, even though the legislature has considered it appropriate to involve mainly land in the decentralization reform process, the reform measures directly or indirectly affect other natural resources too.

Land resources have recently come under the scrutiny of the public and political circles of Ukrainian's society and the legislature. Land reform in Ukraine is now gaining momentum. The Decree of the President of Ukraine of December 12, 2015 approved the Strategy of Sustainable Development Ukraine 2020". It is one of the four factors ensuring sustainable economic growth in an environmentally friendly manner (sustainable use) and it provides for the agricultural and land reforms. To date, a new Decree of the President of Ukraine of September 30, 2019 "On Sustainable Development Goals of Ukraine for the Period till 2030" was adopted, which supports the idea of ensuring the achievement of global sustainable development goals (SDGs) and the results of their adaptation to the specifics of the development of Ukraine outlined in the country's National Report (Zaiets *et al.*, 2021). Hence, land reform in Ukraine is carried out within the framework of sustainable development goals, and, after the accomplishment of its purpose, that is, the restoration of sustainable use of land resources, the reform will help realize those global development guidelines.

The reform is a category of the social development (Zaiets, 2006), which entails obligatory participation of the State. Therefore, the reform in land relations is carried out on an initiative and comprehensive support of the State apparatus. Moreover, with regard to land reform as a component of the decentralization process,

the State apparatus is both a subject and an object of the reform. The current stage of Ukrainian land reform concerns all major areas such as economic, environmental, institutional, functional, and law-making. With this approach, environmental and land measures of decentralization reform should be attributed to the institutional and functional direction of land reform in Ukraine, along with deregulation measures and other areas of governance improvement regarding use and conservation of land and other natural resources. The given part of land reform closely intersects with the reform of the environmental management system (Malysheva, Kulynych and Oleshchenko, 2019).

Thus, the main measures of decentralization reform that have environmental and legal nature (environmental decentralization) and are regulated by the current legislation of Ukraine are as follows (set out in chronological order of their implementation):

- 1) provision of administrative services in the sphere of ecology and nature management through administrative service centers established under the executive bodies of local councils (which issue numerous permits of natural resources use, and licenses of certain environmentally significant activities)⁵ (The Law of Ukraine "On Local Self-Government"⁶; The Law of Ukraine of September 6, 2012 "On Administrative Services"⁷; Resolution No. 523 of the Cabinet of Ministers of Ukraine of May 16, 2014 "Some Issues of Providing Administrative Services through Administrative Centers"⁸);
- 2) attribution of land fees to local taxes and dues, in particular, property tax (Law of Ukraine of December 28, 2014 "On Amendments to Tax Code of Ukraine and Certain Legislative Acts of Ukraine on Tax Reform"⁹);
- 3) introduction of the process of voluntary association among territorial communities and formation of local communities' territories (Law of Ukraine of February 5, 2015 "On Voluntary Association of Territorial Communities"¹⁰);
- 4) transferring to local self-governments of a significant array of powers addressing the sectors like drinking water supply, water discharge, and water use and protection based on the principle of subsidiarity (Malysheva, Kulynych and Oleshchenko, 2019) (Law of Ukraine of January 10, 2002 "On Drinking Water, Drinking Water Supply and Water Discharge"¹¹ with amendments of May 18, 2017);
- 5) approval to the new administrative-territorial structure at local level (Law of Ukraine of April 16, 2020 "On Amendments to Certain Laws of Ukraine on Defining Territories and Administrative Centers of Territorial Communities"¹²; Law of Ukraine of November 17, 2020 "On Amendments to Certain Laws of Ukraine on Harmonization of Certain Issues of Organization and Activity of Local Self-Government Bodies and District State Administrations"¹³; Resolution of the Verkhovna Rada of Ukraine of July 17, 2020 "On the Formation and Liquidation of Districts"¹⁴; Resolution No.707-r-709-r of the Cabinet of Ministers of Ukraine of June 12, 2020 "On Determination of Administrative

⁵ For example, services related to environment and nature resources use are provided by Administrative Service Center of Kyiv.

Available online at: <https://kyivcnap.gov.ua/AdminServices/List?categoryId=ff61eb98-201b-43bf-a27e-5494753c378e>

⁶ <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text>

⁷ <https://zakon.rada.gov.ua/laws/show/5203-17#Text>

⁸ <https://zakon.rada.gov.ua/laws/show/523-2014-%D1%80#Text>

⁹ <https://zakon.rada.gov.ua/laws/show/71-19#Text>

¹⁰ <https://zakon.rada.gov.ua/laws/show/157-19#Text>

¹¹ <https://zakon.rada.gov.ua/laws/show/2918-14#Text>

¹² <https://zakon.rada.gov.ua/laws/show/562-20>

¹³ <https://zakon.rada.gov.ua/laws/show/1009-20#Text>

¹⁴ <https://zakon.rada.gov.ua/laws/show/807-20#Text>

Centers and Approval of Territories of Local Communities"¹⁵), and a plan to introduce a new administrative-territorial structure for the above levels of administration (Draft Law of Ukraine "On the Procedure for Resolving the Issues of Administrative-Territorial Structure of Ukraine"¹⁶);

6) transfer of ownership of State-owned land outside the territory of communities (except for land which is required for performing the functions by the State) to the territorial communities (Law of Ukraine of April 28, 2021 "On Amendments to Certain Legislative Acts of Ukraine to Improve the Management and Deregulation in the Sphere of Land Relations"¹⁷, hereinafter known as the 'Law of Ukraine on Deregulation');

7) earmarking of the boundaries of community territories through bilateral agreement of neighboring communities or through court decisions (Law of Ukraine on Deregulation);

8) approval of new urban planning documentation at the local level, including the complex plans of the spatial development of territorial communities, general layouts of settlements, and detailed plans of territories that represent land management documentation (Law of Ukraine of June 17, 2020 "On Amendments to Certain Legislative Acts of Ukraine on Land Use Planning"¹⁸);

9) ensuring the ability of local self-governments to use information from the State Land Cadaster (SLC) and provide information contained in it for the purpose of making managerial decisions on land management, in particular, facilitating the use of information from the State Land Cadaster by local self-governments; involvement of local self-governments in maintaining and obtaining information from other cadasters, registers and electronic databases related to natural resources (Law of Ukraine of December 10, 2015 "On Amendments to Certain Legislative Acts of Ukraine on Expanding the Powers of Local Self-Governments and Optimization of Administrative Services Provision"¹⁹; Law of Ukraine of April 13, 2020 "On National Structure of Geospatial Data"²⁰; and the Law of Ukraine On Deregulation);

10) increasing the role of territorial communities in exercising the State control over land use (Law of Ukraine on Deregulation); and

11) resolving land disputes within territorial communities by local self-governments (Law of Ukraine on Deregulation).

An additional role is played by those measures of the land reform of Ukraine that are indirectly related to the redistribution of functions of State power and local self-government but contribute to the goal of decentralization reform. They include: 1) reforming the procedure for establishing and changing the purpose of land; 2) establishing the farmland market; 3) introducing electronic land auctions; 4) introducing the lease of water fund and water reservoirs; 5) providing the documentation on land management with the status of public, open and publicly available data; 6) establishing independent control of land management documentation through public expertise or reviewing; 7) introducing professional liability insurance for contractors of land management as an alternative to State control; 8) canceling State expertise of land management documentation; 9) simplifying the procedure for allotment (including privatization) of land plots from State and communal land; 10) fixing the boundaries of land plots with the consent of its owners.

¹⁵ <https://zakon.rada.gov.ua/laws/show/707-2020-%D1%80#Text>

¹⁶ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70936

¹⁷ <https://zakon.rada.gov.ua/laws/show/1423-20#Text>

¹⁸ <https://zakon.rada.gov.ua/laws/show/711-20#Text>

¹⁹ <https://zakon.rada.gov.ua/laws/show/888-19#Text>

²⁰ <https://zakon.rada.gov.ua/laws/show/554-20#Text>

Most of these measures are aimed at deregulation of land relations i.e., a significant reduction of State power gripping the land relations, at abolition of excessive control, or at simplification of existing bureaucratic procedures. Deregulation affected both public authorities and local self-governments in context of ecology. Other measures, in particular environmental management reforms, are currently being planned: reforming of State environmental control and monitoring; creating nationwide automated system "Open Environment"; and introducing an ecosystem planning (Malysheva, Kulynych and Oleshchenko, 2019).

The practical implementation of the planned measures has been urgent depending on many factors, including proper legal awareness of State authorities, local self-governments, and residents of the respective territorial communities.

Development of Environmental and Legal Functions of Local Self-Governments

1. Redistribution of natural resources, demarcation, and planning

During decentralization reform, it is envisaged to unite the territorial communities of different settlements into a functional territorial community becoming the basic level of the territorial administrative structure of the State. For this purpose, the Law "On Local Self-Government" guides the procedures. To implement the local self-governance with devolved State power in Ukraine in the context of land relations, it was necessary to introduce amendments in the current legislation aiming at expanding the powers of local self-governments in urban and rural areas. It pertains to four avenues: 1) inclusion of land within and outside the territory into territorial jurisdiction; 2) transferring a significant part of State-owned land into the ownership of territorial communities (known as united territorial communities - UTCs); 3) integration of UTC with UTC council; 4) transferring a significant part of the powers of public authorities concerning land management to UTC local self-government (Kulynych, 2019). The said amendments to the legislation were introduced and are currently implemented.

One of the key functions of local self-government is the effective redistribution of natural resources. However, in practice, the local self-governments in majority of cases provide certain natural resources together with land plots because such resources (e.g., water, forest, vegetation) exist within the land plot. As a consequence, amid the course of decentralization, land redistribution is exercised. According to Miroshnychenko (2013), the land redistribution includes the provision of State owned and community-owned land plots to the local territorial governments. As it is pointed out by Kulynych (2017), decentralization of power concerning land relations in Ukraine should be considered in two streams: decentralization of powers exercised on the right of public ownership on land; and decentralization of State powers exercised on public management of the use and protection of land plots (Kulynych, 2017). Local self-governments exercise the right of communal ownership on land and other natural resources. However, in order to implement the principle of universality of local self-government concerning land redistribution, territorial communities should receive the maximum share of land, including the State-owned land, especially outside the residential area. Local self-government requires resources, and the most important of them is land.

With land on their disposal, local communities will be able to mobilize additional funds to local budgets, and those additional funds will help to do a lot of good for the members of those communities (Miroshnychenko, 2021). The means of transferring land to communal ownership are legal succession from ordinary territorial communities (OTGs) to united territorial communities (UTCs) (Part 3, Art. 8 of the Law of Ukraine "On Voluntary Association of Territorial Communities" of November 17, 2020). The traditional ways of land ownership acquisition are specified in Para 5, Art. 83 of the Land Code of Ukraine 2001²¹

²¹ <http://www.unece.org/fileadmin/DAM/hlm/prgm/cph/experts/ukraine/laws/land.code.pdf>

(hereinafter – LCU). The transition of collectively owned land (formerly Collective Farms) to communal ownership is realized according to the Law of Ukraine²² of July 10, 2018. Currently, the land audit differs significantly from the land inventory and is carried out by non-governmental organizations (NGOs) on a commercial or grant basis (UKAID and UCAB Project, 2020). At the same time, the main reason for the transfer of land ownership to the territorial communities is a large-scale one-time demarcation of State-owned land to be converted into communal property (Kulynych, 2019).

While the legislature is considering how to implement the land demarcation process, the executive branch has been trying to speed up the process for several years. In particular, the Resolution No. 60-r of the Cabinet of Ministers of Ukraine²³ dated January 31, 2018 instructed the State Service for Geodesy, Cartography and Cadaster of Ukraine (hereinafter - the State Geocadaster) to create maps and demarcate State-owned agricultural lands so as to transfer it to communal ownership of UTCs under Article 117 of the Land Code of Ukraine 2001. At the same time, Kulynych (2019) raises objections that the Resolution No. 60-r contradicts the current Land Code of Ukraine 2001 in terms of the obligation to transfer the land by the State Geocadaster to private ownership or use. However, that obligation was received by the State Geocadaster much earlier as per the instructions given by the Deputy Prime Minister of Regional Development, Construction and Housing and Communal Services of Ukraine on October 8, 2014 vide No. 37732/0/1-14. The decision of the Board of the State Agency of Land Resources of Ukraine (hereinafter – the State Land Agency), No. 2/1 of October 14, 2014 "On Mandatory Referral to Local Councils of Issues Related to the Disposal of State-Owned Agricultural Land" was enacted by the Resolution No.328 of the State Land Agency on October 15, 2014²⁴. The conscientious execution of these instructions and Resolutions by the State Geocadastre (formerly the State Land Agency) created an opportunity for relevant judicial practice. Notably, courts appropriately evaluated the above-mentioned instruction as well as the decisions of the panel as contradicting the current Land Code of Ukraine (see Resolutions of KAC/SC of July 3, 2019, referring case 823/1103/16²⁵; Resolution of Supreme Court of Ukraine No. 823/1103/16, 2019 of December 24, 2019, referring case 823/59/17²⁶; Resolution of Supreme Court of Ukraine No. 823/59/17, 2019 of June 25, 2020, referring case 815/6057/16²⁷).

Thus, the adoption of the stated laws and the State Geocadaster was progressive initiative. An attempt was made to take into account the interests of territorial communities in the process of redistribution of State-owned agricultural land before introducing amendments to the land legislation. Because some of the government's decisions were to cause burden of appeals on the judiciary, the Law of Ukraine on Deregulation has resolved the issue of transferring a significant part of State-owned land to community ownership.

According to Paragraph 24 of the Transitional Provisions of the LCU (as amended by the Law of Ukraine on Deregulation), from the date of entry into force of the given Paragraph, land of communal ownership of territorial communities is considered to be State-owned land located outside residential areas within such territorial communities, except the following: a) land used by public authorities, State enterprises, institutions, organizations; b) land of defense agencies; c) land under nature reserve areas and areas of other nature protection purposes; d) land in exclusion zones and zones of unconditional (compulsory) resettlement that has suffered radioactive contamination as a result of the Chornobyl catastrophe; e) land under buildings, structures, other State-owned real estates.

²² <https://zakon.rada.gov.ua/laws/show/2498-19#Text>

²³ <https://zakon.rada.gov.ua/laws/show/60-2018-%D1%80#Text>

²⁴ <https://zakon.rada.gov.ua/rada/show/vr2-1821-14#Text>

²⁵ <https://opendatobot.ua/court/82819906-ace1decc9f9412125d357054693c0636>

²⁶ <https://opendatobot.ua/court/86635618-4d6469786a6a4c77689faeecd63a9400>

²⁷ <https://opendatobot.ua/court/90029841-18c8d2582a6d0ced9c46cf41ad1c3e08>

The rule of demarcation and transition suggests two reformative ways: (1) when State-owned land is transformed into land plots with the registered State ownership, and (2) when such registration has not taken place. In the first case, land plots become communal property from the moment of State registration of communal ownership. In the second case, land plots and the land that has not been transformed into land plots shall become communal property from the date of entry into force of the given law. From the date of coming into force of the mentioned rules, public authorities have no right to dispose of such lands. The law ensures a number of guarantees to private entities based on the consequences of such a demarcation. Hence, a clear mechanism is elaborated for demarcation and transition of State-owned land to communal ownership.

But then, the next task that logically follows such a devolution is to determine the boundaries of the area of territorial communities outside residential areas. According to the Law of Ukraine "On Local Self-Government"²⁸, the territory of a territorial community is an inseparable area within which the territorial community exercises its powers related to the issues of local importance within the ambit of Constitution and the laws of Ukraine. According to the Paragraph 7-1 of the Transitional Provisions of the Law of Ukraine of April 16, 2020, the determination of administrative centers of territorial communities and approval of the territory of territorial communities are carried out based on long-term plans previously approved by the Cabinet of Ministers of Ukraine. Under the Resolutions No. 707-r – 709-r of the Cabinet of Ministers of Ukraine dated June 12, 2020 "On Determination of Administrative Centers and Approval the Territory of Territorial Communities"²⁹, given prescriptions are complied with. Although they contain a graphic part establishing the approximate boundaries of each territorial community, the legislation foresees the need for land survey of territorial communities followed by approval and authorization of land survey projects.

According to Art. 1 of the Law of Ukraine "On Land Management"³⁰, the boundary of the territory of the territorial community is a conditional line on the surface of the land (including water space), which separates one territorial community from another. Information about the boundaries of the territorial community is entered into the State Land Cadaster. According to Art. 46-1 of the Law of Ukraine "On Land Management", land survey projects to establish the boundaries of territorial communities are developed to: a) specify the actual boundaries of the territorial community; b) resolve the disputes among several local self-governments concerning the boundaries of the territorial communities; c) introduce the information about the boundaries of the territorial community into the State Land Cadaster. The land survey project for establishing the boundaries of the territorial community includes a description of the boundaries of the territorial community, a drawing of the boundaries of the territorial community in an appropriate scale, a catalog of the coordinates of the turning points within the territory of the territorial community. Land survey projects of establishing the boundaries of territorial communities are developed based on the decision of the corresponding village, town, city council (and is completed from the local budget, although other sources are not prohibited by the law). According to Art. 186 of the Land Code of Ukraine 2001, land survey projects for establishing the boundaries of territorial communities are agreed upon by village, town, and city councils of adjacent territorial communities and approved by village, town, city council representing the interests of the territorial communities. In case of refusal by the village, town, or city council to approve the land survey project, the dispute shall be resolved in court.

The statutory regulation guiding the territorial communities' demarcation still leaves several practical issues unresolved. Adjudgment of disputes between territorial communities over their boundaries raises the question: what legal criteria will be used by courts in satisfying the claims of one territorial community and rejecting the claims of the others? The question is worth resolving, for example, for rapid and undisputable

²⁸ <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text>

²⁹ <https://decentralization.gov.ua/gromadas/legislation>

³⁰ <https://zakon.rada.gov.ua/laws/show/858-15#Text>

demarcation of territorial community land; it is necessary to codify by law the hierarchy of criteria, such as historical land ownership by the territorial communities, overlap with the boundaries of the district or region, fixing the land plots outside the boundary, special need or interest of the territorial community concerning such boundaries, and so on.

In practice, disputes over boundaries between territorial communities have already arisen. A striking example of long-standing uncertainty is the dispute over setting the boundaries of the capital of Ukraine, Kyiv. On the one hand, the Kyiv City Council has made several attempts to approve the new boundaries of the capital (that is the competence of the Verkhovna Rada of Ukraine under Art. 172 of the Land Code of Ukraine), but on the other hand, the Verkhovna Rada of Ukraine returned draft decisions on this issue for follow-up revision, because a number of adjacent territorial communities represented by their local self-governments did not agree upon the projected boundaries by Kyiv City Council, believing that they included the parts of territories of adjacent territorial communities (e.g., Kotsiubynske, Irpin, Vyshhorod, Brovary, Chabany, Hnidyń, Kniazhychi, Lisnyky, Bilohorodka and others). The lack of clearly defined city boundaries and updated master plans along with modern planning approaches lead to confusing and unsustainable spatial development, ignoring environmental issues, public space construction, and blocking the development of public transport, subway, parking lots, etc. (Bohatyr, 2021).

The Law of Ukraine "On State Land Cadaster"³¹ stipulates in Section 7 of Paragraph 8 that information about the boundaries of administrative-territorial units, established before the entry into force of the Law of Ukraine "On Land Management", is introduced into the Land Code of Ukraine 2001, including the basis of archival materials. This conforms the criterion of historical use. Such a type of administrative-territorial unit as the "village, town or city council" was the lower level of the territorial organization of the Soviet times. It included (and so is the current situation) the territory both within and outside the residential area (for village councils - the territory of several villages), as well as the adjacent territory (Miroshnychenko, 2017). Therefore, it would be fair to restore the boundaries of such territorial communities in accordance with their historical configuration. The Kyiv City authorities also used this norm. In relation to the said conflicts over the approval of new borders, the capital city's borders were included in the State Cadaster basing the graphic materials compiled and laid down during 1989-1990s in pursuance of numerous Decrees of the Presidium of the Verkhovna Rada of the Ukrainian SSR (Kyiv City Council, 2021). For all other cases of formation of boundaries of territorial communities, it is better if an alternative demarcation criterion is established.

In this connection, it is worth mentioning the experience of German Bavaria (Dudek, 2021; Miosga, 2022). Given the structural changes after World War II, the Free Land of Bavaria underwent administrative and territorial reform in the 1970s, which, despite popular protests, reduced the number of districts, cities and communities. The task of administrative-territorial reform was to ensure the possibility of more efficient performance of functions, especially in terms of livelihood, by consolidating administrative units. While in the first stage the focus was on the voluntary introduction of changes in the composition and territorial division of communities under the influence of financial incentives, the subsequent changes were made officially through the adoption of official regulations having the force of law (Wollenschleger and Stapf, 2018). Although the reform is already considered complete, Bavarian law provides for the possibility of changes in the composition and territorial division and corresponding requirements, which differ depending on the relevant level of local self-government (districts, regions, communities).

The communities are protected by Constitutional land legislation providing for procedural and material requirements for changes in the territorial division of communities. According to that legislation, it is necessary to adopt a formal law or a resolution having the force of law based on specific and sufficient powers. At the same time, the point of view from the local self-government of the community should also

³¹ <https://zakon.rada.gov.ua/laws/show/3613-17#Text>

be taken into account. In addition, there are also material norms of changing the composition or territorial division of the community being "carried out for the verified reasons of objective expediency". It should be focused on the purpose of public welfare as well as be aimed at "establishing capable self-governing bodies and institutions that would comply with the designation and the essence of local self-government". Those changes should be coherent and fulfill the interests of those concerned (Wollenschleger and Stapf, 2018).

Taking into consideration such practice of demarcation in Germany, the following can be suggested: 1) entrusting the approval of land survey projects on establishing the boundaries of territorial communities to higher State authorities or local self-governments (consideration of the interests of adjacent communities should be mandatory, but in case of disagreement, the higher body should act at its own discretion); 2) conceiving the Ukraine's situations similar to those of German case explained above, contextually changing the established boundaries of the territorial community if needed.

An adequate and rapid demarcation process as part of territorial planning is urgent for the full-scale implementation of the functions of local self-governance. In the process of decentralization reform, and in accordance with the Law of Ukraine of June 17, 2020 "On Amendments to Certain Legislative Acts of Ukraine Regarding Land Use Planning"³², a new system of urban planning documentation at the local level was introduced inculcating a complex plan of spatial development of territorial communities (those plans are being drafted for the whole area of the territorial community within or outside its residential area), master plans of residential areas and detailed plans of territories (which existed before the reform, and are to be updated). The Resolution No. 926 of the Cabinet of Ministers of Ukraine of September 1, 2021 "On Adoption the Procedure for Drafting, Upgrading, Amending and Approval of Urban Documentation"³³ provides the procedural implementation. Unfortunately, only two complex plans have been drawn up in Ukraine till now as pilot projects with the support of foreign organizations (Chernobay, 2021).

Drafting, upgrading, amending and approval of urban planning documentation at the basic level is the responsibility of local self-governments of territorial communities. That task must be completed by January 1, 2025. However, the grave implications of imposed war on Ukraine may postpone this date. The tasks of territorial planning or urban planning with documentation at the basic level are prerequisites for redistributing the land of communal ownership. Thus, under Art. 24 of the Law of Ukraine "On Regulation of Urban Planning Activities"³⁴, the transfer of land plots from State-owned land or communal ownership land to natural persons or legal persons is only allowed once at least one of the urban planning documentations is approved at the local level. The law enshrines urban planning documentation at the local level at par with the status of land management documentation. This is an attempt to combine two competing systems, which have been in existence since Soviet times, of rational organization of the territory. Hence, rapid demarcation of the land of territorial communities will open the way for the delivery of many functions by the territorial communities.

2. Maintaining Cadasters, Registers and Electronic Databases of Natural Resources

The Law of Ukraine "On Environmental Protection" of June 25, 1991³⁵ specifies that State cadasters of natural resources are maintained for the accounting purposes of quantitative, qualitative and other characteristics of natural resources. The procedure for maintaining cadaster and register of natural resources depends on the type of the natural resource and is regulated by the Land Code of Ukraine 2011, the Water

³² <https://zakon.rada.gov.ua/laws/show/711-20#Text>

³³ <https://zakon.rada.gov.ua/laws/show/926-2021-%D0%BF#Text>

³⁴ <https://zakon.rada.gov.ua/laws/show/3038-17#Text>

³⁵ <https://zakon.rada.gov.ua/laws/show/1264-12#Text>

Code of Ukraine³⁶, the Forest Code of Ukraine³⁷, the Code of Subsoil Laws³⁸, the Law of Ukraine of July 7, 2011 "On State Land Cadaster", and the Resolution No. 559 of the Cabinet of Ministers of Ukraine of May 25, 2011 "On Urban Planning Cadaster"³⁹.

The creation and maintenance of centralized State cadasters, registers, and electronic databases of natural resources in Ukraine is conducted on European standards. The economic and political changes in European countries, globalization processes leading to the activation of real estate markets, and increased requirements for efficiency, accuracy and volume of real estate information result in changes of registration systems in European countries, including the transition from decentralized to centralized maintenance (Slavova, 2015). A separate cadaster authority exists in most of the countries practicing the Napoleonic Code⁴⁰ and the German legal family codes (e.g., in Austria, Belgium, Denmark, France, Germany, Luxemburg, Poland, Slovenia and Spain). Greece has started to build up a separate cadaster (up to now, there has been no general land survey) (Christoph *at al.*, 2005).

In Ukraine, cadasters of natural resources, in particular State Land Cadaster, are maintained alongside State registers of property rights on natural resources, especially land plots. Thus, according to the Law of Ukraine of July 1, 2004 "On State Registration of Real Property Rights and Encumbrances"⁴¹, State registration of property rights is the official recognition and confirmation by the State of the acquisition, change or termination of real property rights, encumbrances of those rights by introducing appropriate information to the State Register of Real Property Rights. At the same time, economic and legal sciences put forth convincing arguments as for the need to integrate the State Land Cadaster and the State Register of Real Property Rights (Martyn, 2018). The given approach is fully consistent with global trends, as long as "there are two important elements of land registration systems that require close coordination and monitoring: (a) the register, which records the rights to land, and (b) the cadaster, which provides information on the location, boundaries, use, and values of land parcels (plots)" (Kasimbazi, 2017).

In 2020, in the context of the decentralization reform, a new concept was introduced into the legislation of Ukraine – "territory of the territorial community". According to the Law of Ukraine on Deregulation, starting from 2021 the territory of the territorial community is recognized as a separate object of the State Land Cadaster. Under the new version of Art. 13 of the Law of Ukraine "On State Land Cadaster", the following information on land within the territory of the territorial community is included to the Cadaster: a) the name of the territorial community; b) description of the boundaries of the territory of the territorial community; c) the land area within the territory of the territorial community; d) the names of adjacent territorial communities; e) information on the basis of which the boundaries of the territory of the territorial community were established (or changed).

The important aspect of decentralization reform is to ensure the publicity of data on natural resources, especially, by providing access to information stored in cadasters and registers of natural resources. At the same time, currently in Ukraine, cadasters and registers of natural resources do not have a single system; these are many, they are maintained by different authorities being operated mostly based on data available in paper form and not reflecting the current state of affairs (Busuyok, 2021).

³⁶ <https://zakon.rada.gov.ua/laws/show/213/95-%D0%B2%D1%80#Text>

³⁷ <https://zakon.rada.gov.ua/laws/show/3852-12#Text>

³⁸ <https://zakon.rada.gov.ua/laws/show/132/94-%D0%B2%D1%80#Text>

³⁹ <https://zakon.rada.gov.ua/laws/show/559-2011-%D0%BF#Text>

⁴⁰ <https://www.britannica.com/topic/Napoleonic-Code>

⁴¹ <https://zakon.rada.gov.ua/laws/show/1952-15#Text>

Back in 2018, the Resolution No. 825-r of the Cabinet of Ministers of Ukraine of November 7, 2018⁴² approved the concept of creating a national automated system called "Open Environment", which is aimed at improving the management of environmental information concerning environmental protection, including rational use, reproduction, and protection of natural resources. It needs to be based on European standards while ensuring environmental rights of citizens and free access to environmental information about environmental state, risks, threats and perspectives pertaining to the use of telecommunication technologies and global information networks. Publication and visualization of open data and other geospatial environmental information in accessible and user-friendly formats was recognized as one of the activities aimed at creating the national automated system "Open Environment." The implementation of this concept was to be carried out during 2018-2020 but has not been fully implemented as yet.

In Ukraine, State cadasters of natural resources include geospatial data, metadata and services, disclosures, and other activities access to which is carried out using the Internet in accordance with the relatively new Law of Ukraine of April 13, 2020 "On National Geospatial Data Infrastructure"⁴³. The law is aimed to determine the legal and organizational basis for the creation, operation and development of national geospatial data infrastructure, aimed at ensuring effective decision-making by public authorities and local self-governments, meeting the needs of society in all types of geographical information, integration into global and European infrastructure geospatial data. *Inter alia*, basic geographical data provide information about territorial communities, including the boundaries of their territories, land cover and soils, land plots, and digital terrain model. The National Geospatial Data Infrastructure website⁴⁴ is currently being tested. The law stipulates that the local self-governments are obliged to publish metadata in their possession on the official websites and/or portals and display it through national geoportal access services. Local self-government officials bear administrative liability for non-disclosure of geospatial data and metadata, which are required to be disclosed by the law.

According to the provisions of the Law of Ukraine "On State Land Cadaster", information interaction of State land cadaster, urban planning cadaster, cadasters of other natural resources, and other information systems must be provided under the Resolution No. 483 of the Cabinet of Ministers of Ukraine of June 3, 2013⁴⁵ starting from 2021. Under the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Expanding the Powers of Local Self-Government Bodies and Optimizing the Provision of Administrative Services"⁴⁶ of December 10, 2015 and the Art. 12 of the Land Code of Ukraine 2001⁴⁷, enshrined are the powers of the executive bodies of the village, town and city councils concerning land relations on the territory of villages, towns and cities, in particular, to provide information from State Land Cadaster in accordance with the law. The Law of Ukraine on Deregulation amended Art.12 of the Land Code of Ukraine⁴⁸ enshrines the authority of the executive bodies of local councils to provide information from the State Land Cadaster in accordance with the law. Village, town or city councils determine the possibility of exercising their authority on providing information from the State Land Cadaster, taking into account the abilities of organizational and technical support for their implementation. The specified changes are intended to expand the powers of local self-governments in terms of the use and protection of natural resources; they are considered as a significant step toward decentralization. At the same time, the

⁴² <https://zakon.rada.gov.ua/laws/show/825-2018-%D1%80#Text>

⁴³ <https://zakon.rada.gov.ua/laws/show/554-20#Text>

⁴⁴ <https://gki.com.ua/nacionalna-infrastruktura-geoprosstorovih-danih-ukraiini>

⁴⁵ <https://zakon.rada.gov.ua/laws/show/483-2013-%D0%BF#Text>

⁴⁶ <https://zakon.rada.gov.ua/laws/show/888-19#Text>

⁴⁷ Art.12 of the Land Code of Ukraine reads, "The powers of the executive bodies of village, settlement, city councils in the field of land relations in the territory of villages, settlements, cities include: 1) provision of information from the State Land Cadaster in accordance with the law;..."

⁴⁸ Art.12 (amended) of the Land Code of Ukraine reads, "The powers of the executive bodies of village, settlement, city councils in the field of land relations include: a) providing information from the State Land Cadaster in accordance with the law;..."

implementation of those powers by local self-governments is not possible without close cooperation with public authorities exercising the maintenance of cadasters, registers, and electronic databases of natural resources under the law.

It should be emphasized that the Land Code of Ukraine and the Law of Ukraine "On the State Land Cadaster" determine only the procedure for creating and maintaining the State Land Cadaster. Simultaneously, local self-governments create and maintain urban land cadasters at the local level. For example, the Decision No. 736 of the executive committee of Khmelnytsky City Council of September 24, 2020 approved the procedure for the formation and maintenance of the urban land cadaster (Khmelnysky City Council, 2020). A similar urban land cadaster operates in the capital of Ukraine, Kyiv. Back in 2018, the Department of Land Resources of the Kyiv City State Administration published information on the opening of an electronic system of Kyiv urban land cadaster for Kyivites, access to which was limited for 23 years (Ukrinform, 2018), but full access to the system has not been provided yet. The legal assessment of the creation and maintenance of the above-mentioned urban land cadasters is ambiguous both in terms of science and in practice.

Consequently, Zaiets (2020) raises several issues. In particular, the legality of the said actions because the legislation of Ukraine does not explicitly state such function as maintaining the urban land cadaster for local self-governments. It does not provide the regulatory procedure for the exchange of information between the urban land cadaster and the State land cadaster, the State Register of Real Property Rights and Encumbrances. It is also not clear in respect to the legal force of official information from the urban land cadaster, and the procedure for resolving discrepancies between data obtained from the urban land cadaster and other cadasters and registers (Zaiets, 2020). However, according to Art. 26 of the Law of Ukraine "On Local Self-Government", the issues concerning land relations are resolved exclusively at plenary sessions of the village, town or city councils. Decision-making at the plenary session of the local council in context of creating and maintaining the urban land cadaster and the procedure for exercising the powers by local self-governments can be interpreted as the regulation of land relations in the territorial community. Upon that, the land legislation of Ukraine does not prohibit the maintenance of urban land cadasters, as far as it regulates only the matters of creating and maintaining the State land cadaster. Considering that the land legislation regulates the procedure of the State Land Cadaster maintenance and providing information from the Cadaster in accordance with the Land Code of Ukraine and the Law of Ukraine "On State Land Cadaster", these laws have greater legal force than the decisions of local self-governments in case of discrepancies of information existing in the State Land Cadaster.

To unify information contained in various cadasters, registers and electronic databases of natural resources, the Law of Ukraine "On Public Electronic Registers" of November 18, 2021⁴⁹ was adopted and came into force on January 1, 2022. The draft of the Law was developed in cooperation with the Italy's International Development Law Organization (IDLO) based on a memorandum signed with the USAID and UKAID-funded project "Transparency and Accountability in Public Administration and Services (TAPAS)". Under Art. 5 of the Law of Ukraine "On Public Electronic Registers", natural resources, land and land plots with a real estate construction on them have been recognized as the objects of public electronic registers. The potential positive effect of the adoption of the Law should be noted, provided for the development of effective mechanisms for its implementation. There is no need for creating and maintaining the separate cadasters, registers and electronic databases of natural resources.

Thus, in the context of decentralization reform, there have been several positive changes in Ukrainian legislation and practice aimed at developing such environmental and legal functions of local governments as maintaining cadasters, registers, and electronic databases of natural resources.

⁴⁹ <https://zakon.rada.gov.ua/laws/show/1907-20#Text>

Decentralization of the Control over the Use and Protection of Natural Resources

Control over the use and protection of natural resources is an extremely important function of management (environmental control), which has been a part of decentralization reform. It is usually viewed as an activity of the State, self-governing bodies, public associations, and industrial control systems aimed at monitoring and verifying compliance by legal entities and natural persons with environmental legislation, and as measures to prevent environmental offenses and bringing offenders to justice (Krasnova and Krasnova, 2021). Thus, environmental control in Ukraine is divided into State, self-governing, public, and industrial types depending on its implementation. Depending on the object and the subject of implementation, different forms of control can be specified, namely, control concerning land use and protection, forest control, water control, and control of other natural resources and complexes.

"The Medium-Term Priority Action Plan of the Government until 2020⁵⁰ sets out that the system of State control over the compliance with environmental legislation is not comprehensive. It needs to address high level of corruption, obsolete material and technical base, a non-transparent system of decision-making on environmental violations, an inadequate system of liability for environmental offenses, and, therefore, complete incapacity of the State Eco-inspection to exercise its powers (Malysheva, Kulynych and Oleshchenko, 2019). Diffusion and duplication of State control functions among the executive bodies are also apparent. State control concerning environmental protection is exercised by seven different executive bodies having scarce coordination. The lack of public environmental control is visible (Malysheva, Kulynych and Oleshchenko, 2019). Improving the efficiency of the system of State environmental control and prevention of environmental offenses are tasks of the State's environmental policy. Not a single integrated body of State supervision and monitoring has been established so far. Indeed, some legislative changes have been made regarding State control over land use and protection in the context of decentralization reform. The controlling powers of the councils of the united territorial communities concerning land use and protection should become an important legal lever to ensure the implementation of all other land powers of the local self-government bodies (Kulynych, 2021).

According to Art. 188 of the Land Code of Ukraine 2011, State control over land use and protection is currently carried out by the State Geocadaster, and the State Environmental Inspectorate of Ukraine controls the compliance with the requirements of the legislation on land protection. The Law of Ukraine on Deregulation provides for the State control by the executive bodies of village, town and city councils over the use and protection of land to the extent specified by the law. Executive bodies of village, town, and city councils acquire the statutory powers to exercise State control over the use and protection of land in a case where the relevant council decides to exercise such control. This legislative novella came into force on May 26, 2022. The procedure for acquiring State control powers by the executive bodies of councils is determined by the Law of Ukraine of June 19, 2003 (as amended on May 26, 2022) "On State Control over Land Use and Protection"⁵¹. The same Law defines specific powers of executive committees of village, town, and city councils. Likewise, self-governing control of local self-governments is abolished (Paragraph 54 of the Law of Ukraine on Deregulation). However, due to the imposition of martial law in Ukraine during current Russian aggression, these provisions do not actually apply.

In general, the expected changes in decentralization of State control over land use and protection can be positively assessed as ubiquity of local self-governance. Moreover, the process is taking place within the framework of the Constitution of Ukraine (Art. 143), which says, "local self-governance can be delegated with powers of executive authorities under the law". However, the same Article of the Constitution stipulates that the State provides finance for exercising the given powers at the expense of the State Budget of Ukraine

⁵⁰ <https://zakon.rada.gov.ua/laws/show/275-2017-%D1%80#Text>

⁵¹ <https://zakon.rada.gov.ua/laws/show/963-15#Text>

or by allocating certain national taxes to the local budget in the manner prescribed by the Law. Local self-government bodies are under the control of the relevant executive bodies while exercising their powers. This Constitutional rule has led to suggest that it undermines the independence of territorial communities from the State and makes them completely dependent on the public authorities (Kulynych, 2021). Thus, the abolition of self-governing control over the use and protection of land to establish a different type of public control in the area is viewed as a wrong decision that should be abandoned (Kulynych, 2021).

Redistribution of Financial and Ecological Resources

The reform of decentralization process affects the basic functions of environmental management. According to Art. 9 of the European Charter of Local Self-Government⁵², the financial resources of local self-government bodies must correspond to their powers provided by the Constitution and the Law. Currently, in the 7th year of decentralization of power, the income of local communities in Ukraine increased by virtue of the expansion of their powers. Due to the changes in the Tax and the Budget Codes of Ukraine, revenues to local budgets for the period from 2014 to 2021 increased fivefold (Government of Ukraine, 2022; Tymoshenko, 2021).

However, insufficient funding for executing environmental measures is still one of the root causes of regional environmental problems. For example, insufficient funding for the development of mineral deposits is the main factor in the non-reclamation of developed areas in Polissia region. The lack of a system of financing the forestry activities is the reason for the cessation of work on the creation of protective forest plantations in the eastern and southern regions (Law of Ukraine, 2019). In addition, given the limited financial resources of local governments, man-made disasters require an effective and rapid solution throughout Ukraine. In this regard, one of the most urgent issues to be addressed in the decentralization process remains the capacity of local communities to finance the environmental measures.

Ukraine, as a unitary State, has a two-level budget system that consists of State budgets and local budgets. Local budgets include district and region budgets and the budgets of territorial communities. The budgets of territorial communities include the budgets of the village, town, and city territorial communities and the budgets of the district. Each of those budgets usually consists of two parts: the general fund and the special fund. The general fund is intended to support financially the execution of general functions by the State and local self-government bodies. The special fund is intended to meet the expenditures from the specific revenues. Revenues of local budgets, redistributed between general and special funds, are environmental tax⁵³, rent⁵⁴, the land fee⁵⁵ provided by the Tax Code of Ukraine, the monetary compensation obtained from violations of environmental legislation, voluntary contributions by private individuals and legal entities, and subventions received from others.

Under certain conditions, funds received from both general and special budget funds may be used to finance the regional (local) targeted environmental programs and other environmental events (Resolution of the

⁵² https://zakon.rada.gov.ua/laws/show/994_036#Text

⁵³ Environmental tax is levied on actual emissions into the atmosphere, discharges of pollutant into water, actual volumes of radioactive waste temporarily stored by their producers, generated radioactive waste, and accumulated radioactive waste until April 1, 2009.

⁵⁴ Rent is paid for the use of subsoil for the extraction of minerals; for the use of subsoil for purposes not related to the extraction of minerals; for the use of radio frequency resources of Ukraine; for special use of water; for special use of forest resources; for transportation of oil and oil products by main oil pipelines and oil product pipelines, transit transportation by ammonia pipelines through the territory of Ukraine.

⁵⁵ Payment for land is a part of the local property tax and is levied in the form of land tax, payers of which are owners of land and land shares (units) and permanent land users, as well as rent for land of state and communal ownership.

Ministry of Ecology and Natural Resources of Ukraine, 2015⁵⁶; Resolution of the Cabinet of Ministers of Ukraine, 1996⁵⁷). However, the special fund of local budgets characterized by the targeted nature of its revenues and expenditures is of paramount importance for ensuring the financial capacity of territorial communities concerning environmental protection. With the purpose of financing environmental events from the special fund based on the provisions of the Budget Code of Ukraine and the Law of Ukraine "On Environmental Protection", the part of the environmental tax is accumulated from the sources like voluntary contributions, monetary penalties, etc.

While analyzing the provisions of the various laws emphasizing financial capacity of territorial communities concerning environment, it is important to note that the Law of Ukraine "On Environmental Protection" does not specify the environmental tax allocated to funds meant for environmental events. The Budget Code of Ukraine has repeatedly and unreasonably changed affecting the redistribution of environmental tax between general fund and special funds during this period of decentralization process. Thus, in 2014, the environmental tax was allocated mainly to the general fund of local budgets. After the introduction of amendments to the Budget Code of Ukraine of December 28, 2014, an unprecedented situation arose in early 2015 when only the monetary compensation received because of violations of environmental legislation and as voluntary contributions from private individuals and legal entities constituted the revenue of special funds of local budgets. The environmental tax was fully allocated to the general fund of State and local budgets. Such statutory provisions caused the abolition of the main source of State and local funds meant for environmental protection. As a result, it contradicted the Law of Ukraine "On Environmental Protection". Moreover, in 2015, revenues from penalties on damages caused by violations of environmental legislation and from voluntary contributions were calculated in millions (about 57 million UAH, equivalent to 1.92 million USD) against billions in revenues from environmental tax (almost 2.7 billion UAH, equivalent to 92 million USD), according to the State Treasury Service of Ukraine (Veklych, 2016).

With the adoption of the Law of Ukraine "On Amendments to the Budget Code of Ukraine on the Targeted Environmental Tax" of December 24, 2015⁵⁸, the situation has significantly improved. The law stipulated that 80% of the environmental tax is included in the special funds of local budgets (except for the environmental tax levied on the generation of radioactive waste and/or temporary storage of radioactive waste). However, in 2017, the total percentage of environmental tax, which was allocated to special funds of local budgets, decreased to 55%.

Currently, in accordance with Art. 64, 64-1 and 66 of the Budget Code of Ukraine, revenues from environmental tax and local budget fees have been redistributed as follows. The general fund of local budgets includes:

- 1) rent from special use of subsoil: extraction of minerals of national importance (village, town, urban territorial communities - 25%; district - 5%; regional - 25%); amber mining (village, town, urban territorial communities - 30%; district - 0%; regional - 0%); extraction of minerals of local importance (village, town, urban territorial communities - 100%; district - 0%; regional - 0%); oil, natural gas and gas condensate production (village, town, urban territorial communities - 3%; district - 5%; regional - 2%);
- 2) rent from special water use (village, town, urban territorial communities - 45%; district - 0%; regional - 45%);

⁵⁶ <https://zakon.rada.gov.ua/laws/show/z0994-15#Text>

⁵⁷ <https://zakon.rada.gov.ua/laws/card/1147-96-%D0%BF>

⁵⁸ <https://zakon.rada.gov.ua/laws/show/918-19#Text>

3) rent from special use of forest resources in form of timber harvesting (village, town, urban territorial communities - 37%; district - 0%; regional - 0%); and

4) property tax (including land tax), rent from water reservoirs given on lease by the relevant local governments.

According to Art. 69-1 and 71 of the Budget Code of Ukraine, the special fund of local budgets includes 55% of environmental tax (including local self-government budgets [except for the budgets of Kyiv and Sevastopol] - 25%, regional budgets and the budget of the Autonomous Republic of Crimea - 30%, budgets of Kyiv and Sevastopol - 55%) and 70% of penalties from damages caused by violations of environmental legislation. Therefore, the amount of local budget revenues intended to finance environmental events is gradually increasing (The Price of the State, 2021). In addition to targeted funding for environmental events, State and regional (local) environmental programs are also funded by Regional Environmental Programs (2020). Subventions from the State Budget of Ukraine are also essential for strengthening the financial capacity of territorial communities concerning environmental protection (Law of Ukraine, 2018; Resolution of the Cabinet of Ministers of Ukraine, 2019⁵⁹). Therefore, the changes made to the budget legislation during the period of decentralization of power in Ukraine can be assessed as ensuring the financial capacity of territorial communities in relation to environmental protection. An example: additional financial resources received by local budgets enabled thousands of successful projects been implemented, namely, landscaping of parks, sorting stations for household waste, construction of biofuel boilers, and so on (Malysheva, Kulynych and Oleshchenko, 2019). Parallely, a systematic, complex and consistent solution of regional environmental problems is possible only if certain conditions are met i.e., adequate environmental tax distribution between general and special funds of local budgets, and imposing 100% environmental tax (Chechel and Moroz, 2021).

Conclusion

This analysis of ecological decentralization leads to the following conclusions:

(1) Decentralization of power contributes to the implementation of the principles of sustainable development. Currently, public management of sustainable development in Ukraine is characterized by the lack of coordination of public policies on sustainable development at all levels, in particular, inconsistency in the regional and local development strategies with national SDGs and inability to handle strategic planning of sustainable development of regions and communities, and scanty progress in achieving SDGs at the regional and local levels.

(2) Considering the environmental and land decentralization reform in Ukraine, the following conclusions can be drawn: a) demarcation and transfer of State-owned land to communal ownership is an important step to create material and resource base and future capacity of territorial communities; b) successful completion of the process of demarcation and transfer of State-owned land to the communal ownership depends on the speedy and indisputable completion of the demarcation of land of territorial communities; c) the process of boundary survey of territories of territorial communities, which should be performed based on new legislation, depends on the completion of land survey of territorial communities; d) for quick and unquestionable demarcation of land, it is necessary to legislatively set up criteria, namely, historical inheritance of land by territorial communities, overlap of district or regional boundaries, inclusion of outer land plots, special interest of a community in such plots, and so on. Based on German experience, it is suggested firstly to delegate powers of approving land management projects establishing the boundaries of territorial communities to higher authorities or local self-governments (coordinating and considering the

⁵⁹ <https://zakon.rada.gov.ua/laws/show/228-2019-%D0%BF#Text>

interests of adjacent communities, but in case of disproval, the higher body should act at its own discretion); secondly, considering the situations similar to German experience in Ukraine, the established boundaries of the territorial communities should be altered desirably.

(3) In the context of decentralization reform, a number of positive changes in Ukrainian legislation and practice should be noted. These are aimed at developing environmental and legal functions of the State and local self-governance bodies to create and maintain cadasters, registers and electronic databases of natural resources. This is a) legislative recognition of the territory of the territorial community as a separate object of the State Land Cadaster; b) ensuring publicity of data on natural resources, in particular by providing access to information contained in cadasters and registers of natural resources, based on informational interface of the State Land Cadaster, urban cadaster, cadasters of other natural resources and other information systems; c) ensuring the local self-government bodies using information from the State Land Cadaster for the purpose of administrative decision making about land management. Ukrainian legislation promotes local governments for creating and maintaining local cadasters, registers and electronic databases of natural resources. Thus, in case of information discrepancies between local and State cadasters, registers and electronic databases of natural resources, priority should be given to information on natural resources obtained from State information systems.

(4) The volume of local budget revenues intended to support financing the environmental measures is gradually growing. The changes made to the budget legislation in Ukraine can be considered generally ensuring the financial capacity of territorial communities concerning environmental protection. Side by side, a systematic, comprehensive and consistent solution to the regional environmental problems is possible only if certain conditions are met, i.e., adequate environmental tax redistribution between general and special funds of local budgets, in light of a policy priority in local budget planning.

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Authors' Declarations and Essential Ethical Compliances

Authors' Contributions (in accordance with ICMJE criteria for authorship)

Contribution	Author 1	Author 2	Author 3	Author 4	Author 5
Conceived and designed the research or analysis	Yes	Yes	Yes	Yes	No
Collected the data	Yes	Yes	Yes	Yes	Yes
Contributed to data analysis & interpretation	Yes	Yes	Yes	Yes	Yes
Wrote the article/paper	Yes	Yes	Yes	Yes	Yes
Critical revision of the article/paper	Yes	Yes	Yes	Yes	Yes
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