

PROBLEMS OF FORMATION AND ESTABLISHMENT OF THE UNITED TERRITORIAL COMMUNITIES BOUNDARIES: LAND-LEGAL ASPECTS

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Abstract. *As a result of the research, it was found that the lack of formed and established boundaries in newly formed territorial communities significantly affects the implementation of land management within their territory, the reliability of land registration and statistical reporting, the flow of funds to local budgets, the efficiency and rationality of the use of natural resources, which complicates the activities of local self-government bodies. It was clarified that the implementation of projects for the formation and establishment of boundaries of village and settlement councils was not carried out, that is, the formation of their boundaries took place only on paper without verification on the ground, and as a result, inaccurate areas and limits were obtained. These measures may be introduced in case of implementation of the proposed changes to the Land Code of Ukraine and the Law of Ukraine "On Land Management". The expected results are presented in the event of implementation of these measures.*

Keywords: *united territorial community, formation of boundaries, establishment of boundaries, bodies of local self-government*

Formulation of the problem.

In each of the 874 newly created communities on December 10, 2018, communities in Ukraine [4] have a common natural desire – to acquire the status of a capable and self-sufficient, for implementation of which the territorial community must effectively manage all assets located within its territory.

The united territorial communities (hereinafter – UTCs) are not recognized

as subjects of the administrative-territorial structure in the Constitution of Ukraine, so the boundaries of these local self-government bodies can not be formed and established under the current legislation. With regard to the existing boundaries of the settlements that are part of the community, we note that they do not meet the legally established limits, because residential, and public construction in most cases went beyond the boundaries of settlements. In addition, the documentation

on the basis of which the boundaries of village councils that are part of the UTC are defined are the technical documentation for inventory made in 1991–1992 [6]. As a result, within four years the boundaries of any territorial community have not been established; they have not been included in the State Land Cadastre.

Clearly, the lack of existing and established boundaries of the newly formed territorial communities significantly complicates the local self-government, leading to numerous violations of land laws in the disposal of land and local budgets lack a significant amount of funds. On this basis, there are conflict situations, which complicates the rationalization of land use within the territories of the communities, which requires urgent resolution.

The purpose of the article is to reveal the essence of problem issues related to the formation and establishment of the boundaries of the united territorial communities and to propose ways of their solution.

Presentation of the main material.

At present in Ukraine there are several problems connected with the formation and establishment of boundaries of the united territorial communities because of unregulated legislative mechanism of their formation and establishment.

On the basis of the Law of Ukraine “On Voluntary Association of Territorial Communities”, rural, town and city councils are united in united territorial communities [1]. At the same time, Article 133 of the Basic Law does not recognize these communities as part of the administrative-territorial structure of the state, since they include: the Autonomous Republic of Crimea, oblast, rayon, city, rayon in the city, village and settlement [3]. Current Constitution of

Ukraine and the Law of Ukraine “On local government in Ukraine” defines the category of “territorial community”, which refers to the primary subject of local self-government as a group of people, united by permanent residence within the village or city that are independent administrative-territorial units, or voluntary association of residents of several villages having a single administrative center. Residents of communities have a common interest – rayon and oblast councils. Thus, there is a conflict of interests: on the one hand – the presence of administrative-territorial entities, and on the other – local self-government bodies with its specific functions. With this in mind, territorial communities can plan the development of the territory only within certain limits, which according to the rules of the current legislation may be formed only for administrative territorial units.

On the basis of the Law of Ukraine “On Voluntary Association of Territorial Communities” an association of adjacent village, settlement and city councils in the united territorial communities (UTCs) is organized. The territory of the UTC should be inseparable, the boundaries of the united territorial community are determined by the outside boundaries of the councils, which formed the united territorial communities. This process leads to a significant increase in the area and population of local self-government entities by transferring their powers to one village, town or city council of a newly formed united territorial community [1].

Formation of the boundaries of village and settlement councils, which in the early 1990s were not administrative units, was intended to determine the boundaries in which local communities could, through appropriate village and settlement councils of people’s deputies, implement local self-government. The appropriate formation of boundaries was

carried out on the basis of the instructions of the State Committee of Ukraine on Land Reform “On drafting the formation of territories and establishing boundaries of village, settlement councils of people’s deputies”.

The instruction formulates the purpose of forming the territories and establishing the boundaries of village and settlement councils of people’s deputies as follows: “the projects of forming the territories and establishing the boundaries of village and settlement councils of people’s deputies are formed in order to create territorial conditions for independent resolution by village, settlement councils of people’s deputies and their bodies of all local life issues, based on the interests of the population living on these territories, the legislation of Ukraine and full economic independence” [2].

It was also very important to establish boundaries for all village and settlement councils of people’s deputies within the administrative district (rayon) in order to check if they fit to each other. In the process of forming the boundaries of village and settlement councils, it included all land of all categories irrespective of their intended purpose.

Territory of the administrative district (rayon) were divided on the territory of village and settlement councils, as a rule, using the limits of land ownership of collective farms, state farms and their subdivisions, other agricultural enterprises, state forest enterprises and their subdivisions, the limits of land use of enterprises, and organizations and clearly defined nature objects, such as forests or water bodies [2].

The plans for forming the territories and establishing the boundaries of village councils were agreed by the village councils and approved by the district councils of people’s deputies.

Work on the formation of territories and the establishment of boundaries of village and settlement councils of people’s deputies was carried out in the following order:

- preparatory work;
- development of the scheme for the formation of the territories of village, town councils of people's deputies within the administrative district (rayon);
- development of projects for the formation of the territory and the establishment of the boundaries of each village, settlement council;
- projects approval for forming the territory and establish boundaries of village, town councils;
- production of project documentation;
- project implementation in terrain [2].

The most important part of the formation and establishment of boundaries between different village and settlement councils is precisely the implementation of projects in terrain and control measurements, which should approve the fit each other in order to avoid mistakes. Unfortunately, the implementation of projects in terrain was not carried out, so the formation and establishment of boundaries between village and settlement councils was done only on paper without control measurements, and as a result, inaccurate areas and boundaries were received, and some land which was not considered to be the land of the collective agricultural enterprises (CAE) could not be the part of councils territory. As an example, we present data on the Palanska united territorial community of the Umansky rayon in Cherkaska oblast (Table).

In the research process we found significant differences between the size of the village councils and settlements that are part of the Palanska UTC according to different sources. The area received on the basis of the formation of village councils (23482.0498 hectares) differs from the

area calculated by summarizing the data of state static reporting (form № 6-zem), which is compiled for the village councils that entered the territory of the UTC, which is 23466.1 hectares. Consequently, the discrepancy between them is 15.9498 hectares, or 0.07%. In terms of statistical science, this error is negligible, but this discrepancy is inadmissible in land management practice. Differences in the area of agricultural land may be caused by changes in the process of land reform, lack of documentation for land plots, as well as the inaccurate and obsolete projects of the territories of the CAE. These differences are also caused by the uncertainty of the boundaries of the Palanska UTC and errors that arose in the process of boundaries forming of the village councils that became part of the Palanska UTC, since they were formed on the basis of cartographic materials of the projects of the economic management system of the CEA but were not implementation in terrain. Also, the lack of monitoring of land use within the village councils that are part of the UTC is the reason for this problem.

So, the formation and establishment of boundaries of newly formed united territorial communities becomes of particular importance, because it will ensure:

- authenticity of land registration and statistical reporting;
- implementation of land management within the territory of UTC;
- efficient and rational use of natural resources;
- increase of number of land taxation objects on the territory of UTC;
- regulation of land relations and administration of land use within community boundaries.

Accordingly, taking into account the need for the formation of territories and the establishment of boundaries in which united territorial communities could carry out local self-government, we propose the following measures:

1. To introduce the development of the Land Management Project to form and establish boundaries of the community.
2. To regulate at the legislative level that the ground for the establishment (change) of the boundaries of the set-

Comparison of the areas of village councils and villages of Palanska united territorial community [5]

| Name of village council | Area of village council, ha | | | Area of village, ha | | |
|-------------------------|---|------------------------------------|------------|---|------------------------------------|------------|
| | According to the formation of territories | According to statistical reporting | Difference | According to the formation of territories | According to statistical reporting | Difference |
| Palanska | 4399.415 | 4395.000 | 4.415 | 501.990 | 520.528 | -18.537 |
| Berestivetska | 2705.193 | 2702.600 | 2.593 | 339.684 | 337.150 | 2.534 |
| Horodetska | 3262.355 | 3256.900 | 5.455 | 570.742 | 555.194 | 15.548 |
| Hromivska | 3429.394 | 3425.100 | 4.294 | 426.375 | 438.800 | -12.426 |
| Kocherzhynska | 3197.098 | 3195.600 | 1.498 | 495.903 | 486.500 | 9.403 |
| Kochubiivska | 2552.688 | 2546.400 | 6.288 | 582.914 | 586.200 | -3.286 |
| Maksymivska | 1831.750 | 1836.400 | -4.650 | 209.563 | 207.900 | 1.663 |
| Tomashivska | 2104.157 | 2108.100 | -3.943 | 240.953 | 244.900 | -3.947 |
| Total | 23482.050 | 23466.100 | 15.950 | 3368.124 | 3377.171 | -9.048 |

tlement should be the plan of land and economic arrangement (spatial plan of the territory development), rather than the general plan of the settlement.

3. To simplify the procedure for establishing (changing) the boundaries of settlements in the community.
4. To develop a plan of boundaries of councils that are part of a territorial community.

The implementation of these measures is possible by introducing amendments to the Constitution of Ukraine regarding the acquisition of the status of an administrative-territorial unit by communities, which will allow the development of land management projects to establish (change) the boundaries of administrative-territorial units. In our opinion, there is another path that does not require changes to the Basic Law, which require a global approach and a rethinking of the system of state power and the system of its performance of its functions.

Section “Transitional Provisions” of the Land Code of Ukraine, should be supplemented with paragraph 22 in the following wording:

To establish that the boundaries of the land (territory) of the united territorial communities, formed in accordance with the Law of Ukraine “On voluntary association of territorial communities”, before the introduction of amendments to the legislation on the administrative-territorial structure of Ukraine, are established (changed) in accordance with the procedure established by Chapter 29 of this Code and Article 45¹ of the Law of Ukraine “On Land Management”.

To lay out the procedure for establishing (change) the boundaries of united territorial communities it is important to supplement the Land Code of Ukraine with Article 173¹, and the Law of Ukraine “On Land Management” with Article 45¹.

The title of Chapter 29 of the Land Code of Ukraine should be worded as follows:

Establishment and change of boundaries of administrative-territorial units, as well as territories of united territorial communities, village, settlement and city councils.

In Article 173¹, which should be added to the Land Code of Ukraine, the definition of the boundaries of the united territorial communities, village, settlement, city councils in the following edition should be defined – conditional closed lines on the surface of the land separating the territory of the united territorial communities, village, settlement, city councils from other territories. Also, in this article it is necessary to determine that the boundaries of the united territorial communities, village, settlement, city councils are established and changed by land management projects for the establishment (change) of their boundaries. At the same time, the change of boundaries can take place on a specific segment without the development of the project on the entire territory of the corresponding UTC, or council.

The title of Article 45¹, which is proposed to be added to the Law “On Land Management”, should be worded as follows: “Land Management Schemes for territories of united territorial communities, village, settlement, city councils”.

This article should stipulate that schemes for land management of territories of united territorial communities, village, settlement, city councils are developed by the decision of the respective territorial community or council. The purpose of developing these schemes is to determine the prospects for the use and protection of land, to prepare grounded proposals in the field of land relations, the organization of rational use and protection of land and other natural

resources, depending on their suitability, value and potential, market redistribution of land taking into account the interests of the state, territorial communities, their inhabitants and legal entities.

Also, this article should declare the composition, content and procedure for the development of land management schemes for territories of united territorial communities, village, settlement, city councils.

As a consequence, we expect the following results of the proposed changes to our Ukrainian legislation:

- territorial community becomes the basic unit of local self-government;
- the formation of borders between territories of the united territorial communities, village, settlement, city councils is carried out through the development of a land management project;
- prospects for the use and protection of land of united territorial communities, villages, settlement, city councils are carried out by developing appropriate schemes for land management;
- topologically fitted limits of communities form an integral territory of Ukraine;
- borders of settlements, as administrative-territorial units, limit the area of potential development in communities or councils;
- implementation of these changes is possible without changing the basic law and accordingly does not require a global rethinking of the administrative-territorial structure of the state, its system of power vertical and the implementation of its own functions.

Conclusions.

Our studies show that under the current land legislation and the Law of

Ukraine “On a voluntary association of local communities” it is impossible to form and establish the boundaries of UTCs. Therefore, we are proposing amendments to the Land Code of Ukraine and the Law of Ukraine “On Land Management”, which will allow territorial communities to carry out land management within their own territory and promote their economic, environmental and social development.

Boundaries uncertainty has a significant impact on the level of economic development of these communities. In this regard, we must legislative regulate (to amend the Land Code of Ukraine, the Law of Ukraine “On Land Management” without amending the Basic Law, which accordingly does not require a global rethinking of the administrative-territorial structure of the state, its system of power vertical and the implementation of its own functions) this process due to the development of the Land Management Project on the formation and establishment of boundaries between the united territorial communities, village, town and city councils. Territorial communities will be able to conduct land management within their own territory, which will facilitate their economic, environmental and social development.

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ПРОБЛЕМИ ФОРМУВАННЯ ТА ВСТАНОВЛЕННЯ МЕЖ ОБ'ЄДНАНИХ ТЕРИТОРІАЛЬНИХ ГРОМАД: ЗЕМЛЕВПОРЯДНО-ПРАВОВИЙ АСПЕКТ

<https://doi.org/10.31548/zemleustruy2018.04.02>

Анотація. У результаті проведених досліджень з'ясовано, що відсутність сформованих і встановлених меж у новоутворених територіальних громадах значно впливає на здійснення землеустрою в межах їх території, достовірність обліку земель та статистичної звітності, на надходження коштів у місцеві бюджети, ефективність і раціональність використання природних ресурсів, що ускладнює діяльність органів місцевого самоврядування. З'ясовано також, що перенесення проектів формування та встановлення меж сільських і селищних рад у натуру не виконувалося, тобто формування їх меж відбувалося камеральними методами і, як наслідок, отримано неточні площі та межі. Зазначені захо-

ди можливо запровадити за умови внесення запропонованих змін до Земельного кодексу України та Закону України «Про землеустрій». Наведено очікувані результати в разі запровадження зазначених заходів.

Ключові слова: об'єднана територіальна громада, формування меж, встановлення меж, органи місцевого самоврядування

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ПРОБЛЕМЫ ФОРМИРОВАНИЯ И УСТАНОВЛЕНИЯ ГРАНИЦ ОБЪЕДИНЕННЫХ ТЕРРИТОРИАЛЬНЫХ ОБЩИН: ЗЕМЛЕУСТРОИТЕЛЬНО-ПРАВОВОЙ АСПЕКТ

<https://doi.org/10.31548/zemleustruy2018.04.02>

Аннотация. В результате проведенных исследований установлено, что отсутствие сформированных и установленных границ новообразованных территориальных общин значительно влияет на осуществление землеустройства в пределах их территории, достоверность учета земель и статистической отчетности, на поступление средств в местные бюджеты, эффективность и рациональность использования природных ресурсов, затрудняет деятельность органов местного самоуправления. Выяснено, что перенос проектов формирования и установления границ сельских и поселковых советов в натуру не выполнялось, то есть формирование их границ происходило камеральными методами и, как следствие, получены неточные площади и границы. Указанные мероприятия возможно ввести при условии внесения предложенных изменений в Земельный кодекс Украины и Закон Украины «О землеустройстве». Приведены ожидаемые результаты в случае введения указанных мер.

Ключевые слова: объединенная территориальная община, формирование границ, установление границ, органы местного самоуправления