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## **PECULIARITIES OF FORENSIC EXAMINATION OF LAND REGISTRATION DOCUMENTS REGARDING ESTABLISHMENT OF ADMINISTRATIVE AREAS**

*The paper considers the administrative-territorial system of Ukraine. The procedure of boundary determination, the development of the relevant land management project, the procedure for conducting the state land survey of the project, its approval and certification of the borders are analyzed.*

*The problematic aspects of the execution of the judicial examination of documentation on the establishment of boundaries of administrative-territorial units are characterized. The emphasis is placed on the importance of adhering to the procedure of analysis of normative-legal and regulatory-technical documents in force now of making the relevant decisions and development of relevant documentation.*

*Ways to improve scientific and methodological support of forensic activities in Ukraine are proposed.*

*Keywords: administrative-territorial unit, forensic examination, settlement limit, establishment of boundaries in kind, forensic expert, local self-government.*

**Formulation of Research Problem.** In case of disputes concerning the boundaries of administrative areas (entities) (hereinafter referred to as AA), belonging to the respective land plots, determining the jurisdiction of state authorities and local self-government, there is a need to conduct judicial expertise (expert studies) in the specialty 10.20 «Research in the field of research », Which is performed by forensic experts of the judicial review institutes of the Ministry of Justice of Ukraine. Administrative and Territorial Structure (hereinafter referred to as ATS) is defined by Article 133 of the Constitution of Ukraine: «... The system of Administrative and Territorial Structure of Ukraine consists of: Autonomous Republic of Crimea, oblasts, regions, cities, districts in cities, towns and villages.»

Elements of this system do not include village, township or city councils, as well as United Territorial Communities (UTCs) whose existence is defined at the state level. It should also be noted that projects for the formation of territories of the village councils, city councils, etc. are among main documents.

Land management projects for establishing (changing) the boundaries of ATS, which are stipulated by modern legislation, are not discussed in this paper, since, in their presence, the issue of defining the boundaries of settlements does not arise: it is enough only information about the boundaries of the settlement using GIS software in the required format and analyze their progress. As is well known, the boundaries are determined by the method of analysis of the source materials and decoding of the corresponding contours and territories on orthophotos or according to the coordinates of the coordinates contained in the documentation on land management.

Land reporting is required to compare the areas indicated therein and the area of territories calculated because of defining the boundaries of a UTCs or a settlement. The boundaries of the councils are today defined on the basis of: documentation, charts, maps, atlases that were developed and approved in the USSR, or in the early 1990s on special documentation that requires a court expert to be aware of the provisions of the relevant legal and regulatory framework, regulatory and technical acts, including not valid ones, as well as certain knowledge not only in land management, but in urban planning too.

The problem is that such documentation has been developed in different years, including in the times of the USSR, different in purpose, content, composition, bodies that approved and approved it and so on.

Therefore, the tasks of a forensic expert at the stage of preliminary work on the study of the submitted materials for research also include the analysis of normative-legal and regulatory-technical documents that were in force at the time of making the relevant decisions and developing the relevant documentation.

**Analysis of recent research and publications.** During forensic examinations on land management, the decision on the issues of establishing the boundaries of the AA is currently accompanied by a lack of methodological support in the State Register there are no methods that would help solve the expert tasks. The existing methodological guidelines for determining the compliance of the land management documentation with the requirements of the legislation contain only general recommendations for certain types of land management documentation, which may testify to the boundaries of territorial communities.

The indicates the need for further development of a scientific and methodological base for conducting research on land management by the staff of the research institutions of judicial expertise of the Ministry of Justice of Ukraine with the involvement of leading experts and scientists of the field.

**Article Purpose.** The purpose of the study is to determine the required list of developed land management documents that can be used in conducting judicial expertise on land management in order to establish its compliance with the requirements of land legislation and other regulatory documents on land management and land use.

**Main content presentation.** What is the territory of a council or an ATS? Let us look at the definition of the territory: «territory (lat. Territorium – area, territory; from terra – land) – region, a limited part of the earth's surface within natural, state, administrative or conditional boundaries: determined by the length, as a specific kind of *spatial* resource, area, geographical location, natural conditions, economic development.

Territory is the object of specific activity.«In other words, to call a plot of the earth's surface *territory* it must have homogeneity now, earlier or in the future. The same administrative and territorial structure is the uniformity of administration or authority within certain spatial boundaries.

From all this it follows that, although there is no such administrative-territorial unit as village, town and city councils or UTC, the concept of territory as areas of the earth's surface with specific boundaries is inherent to.

Until 1996, there was such an administrative-territorial unit as the Council of People's Deputies. On August 22, 2018, the Verkhovna Rada of Ukraine received the Draft Law of Ukraine (hereinafter referred to as the Law) № 8051 «On the Principles of the Administrative-Territorial System of Ukraine», in which the community is an administrative-territorial unit of the basic level, comprising one or more settlements. That is, again, among the lawmakers there is a tendency for the recognition of land outside settlements with territorial community land, which it will manage directly or through representative bodies, which are local self-government bodies (hereinafter referred to as municipality). Article 4 of the Law «On voluntary association of territorial communities» defines: «The territory of the united territorial community must be indissoluble; the boundaries of the united territorial community shall be determined at the external borders of the jurisdiction of the united territorial communities' councils».

Formation of united territorial communities and transfer of agricultural land from state-owned land to municipal property in the territory of Ukraine for 2018, is presented in table 1

Table 1

**Formation of integrated territorial communities and transfer of agricultural land from state-owned land to municipal property for 2018**

| №  | Oblast                 | UTC number in terms of schedule of land transfer | Number of UTCs received communally owned land plots of agricultural purpose | The area of land transferred to the farms, thousand hectares | % off UTCs that received land plots from planned ones |
|----|------------------------|--------------------------------------------------|-----------------------------------------------------------------------------|--------------------------------------------------------------|-------------------------------------------------------|
| 1  | Vinnysia Oblast        | 34                                               | 34                                                                          | 37, 6                                                        | 100                                                   |
| 2  | Volyn Oblast           | 40                                               | 30                                                                          | 49, 4                                                        | 75, 0                                                 |
| 3  | Dnepropetrovsk Oblast  | 56                                               | 55                                                                          | 185                                                          | 98, 2                                                 |
| 4  | Donetsk Oblast         | 9                                                | 9                                                                           | 41, 8                                                        | 100                                                   |
| 5  | Zhytomyr Oblast        | 45                                               | 44                                                                          | 95                                                           | 97, 8                                                 |
| 6  | Zakarpattia Oblast     | 6                                                | 6                                                                           | 1, 7                                                         | 100                                                   |
| 7  | Zaporozhye Oblast      | 36                                               | 36                                                                          | 105, 6                                                       | 100                                                   |
| 8  | Ivano-Frankivsk Oblast | 20                                               | 20                                                                          | 13, 4                                                        | 100                                                   |
| 9  | Kiev Oblast            | 9                                                | 8                                                                           | 7, 4                                                         | 88, 9                                                 |
| 10 | Kirovohrad Oblast      | 13                                               | 13                                                                          | 25, 8                                                        | 100                                                   |
| 11 | Lugansk Oblast         | 8                                                | 8                                                                           | 13, 5                                                        | 100                                                   |
| 12 | Lviv Oblast            | 35                                               | 35                                                                          | 41, 5                                                        | 100                                                   |
| 13 | Nikolaev Oblast        | 28                                               | 28                                                                          | 81, 2                                                        | 100                                                   |
| 14 | Odessa Oblast          | 25                                               | 25                                                                          | 97, 5                                                        | 92, 0                                                 |
| 15 | Poltava Oblast         | 39                                               | 39                                                                          | 91, 1                                                        | 100                                                   |
| 16 | Rivne Oblast           | 25                                               | 25                                                                          | 27, 8                                                        | 100                                                   |
| 17 | Sumy Oblast            | 28                                               | 28                                                                          | 71, 8                                                        | 100                                                   |
| 18 | Ternopil'ska Oblast    | 40                                               | 40                                                                          | 36, 4                                                        | 100                                                   |
| 19 | Kharkiv Oblast         | 12                                               | 12                                                                          | 28, 1                                                        | 100                                                   |
| 20 | Kherson Oblast         | 26                                               | 26                                                                          | 89, 2                                                        | 96, 2                                                 |
| 21 | Khmelnitsky Oblast     | 39                                               | 39                                                                          | 100, 5                                                       | 100                                                   |
| 22 | Cherkasy Oblast        | 26                                               | 26                                                                          | 40, 4                                                        | 100                                                   |
| 23 | Chernivtsi Oblast      | 26                                               | 26                                                                          | 7,3                                                          | 100                                                   |
| 24 | Chernihiv Oblast       | 37                                               | 37                                                                          | 161, 8                                                       | 100                                                   |
|    | Total in Ukraine       | 662                                              | 646                                                                         | 1450, 8                                                      | 97, 6                                                 |

Compiled according to the data obtained from authors.<sup>1</sup>

<sup>1</sup> Storonianska I. Z. Detsentralizatsiia v Ukraini ta yii vplyv na sotsialno-ekonomichniy rozvytok terytorii [Decentralization in Ukraine and its impact on the

Thus, in the framework of the reform of decentralization of power in management 646 united territorial communities transferred 8 thousand hectares or 6 % of the planned agricultural land in 2018. The largest number of united territorial communities was created in Dnepropetrovsk region – 55, Zhytomyr – 44 and Ternopil – 40. In contrast, the consolidation of territorial communities continues at a much slower pace in the Transcarpathian region – 6, Luhansk – 8, Donetsk – 9, and Kyiv – 8 and Kharkiv – 12. In 2019, the process of land transfer continues for newly created united territorial communities. Prospective plans envisage the creation of 1285 united territorial communities (however, 18.0% of the country territory is not covered by the prospective plans). The absence of well-defined perspective plans entails the risks of not meeting the timeframes of forming united territorial communities and the possibility of forming potentially disadvantaged communities. Yes, as of January 1 10 In 2019, 876 united territorial communities were created in Ukraine because of the unification of 4010 territorial communities (6% of all territorial communities), whose territory covers 37.6% of the country's area<sup>1</sup>. It should be noted that the continuity of the territory can only be achieved by uniting the boundaries of village councils (at that time Councils of People's Deputies), formed in the early 1990s.

Before the Law of Ukraine: *On Local Self-Government in Ukraine* was adopted on May 21, 1997, the issue of regulating the activity of legislative bodies on the ground was regulated by another Law: dated December 7, 1990, № 533-XII, *On Local Councils of People's Deputies and Local and Regional Self-Government*, Article 1 of which states: «... The territorial basis of local self-government is the village council, settlement, city. Local self-government bodies are village, settlement, city councils of people's deputies. The basic level of local self-government is the village council, townships, towns...». In other words, the law clearly stated that the powers of the Soviets of People's Deputies extend beyond the settlements. Almost all the time of the Law's implementation there was no other document that would regulate the issue of the administrative and territorial structure of Ukraine, since there was no separate law regulating this issue, and the Constitution of Ukraine was adopted only in 1996.

Among the powers of the Councils of People's Deputies were the powers delegated by the state in the field of land resources management, according to which the executive committee of the village, settlement, city

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Socio-Economic Development of Territories]: metodychni pidkhody ta rezultaty otsiniuvannya. Lviv : iRD NANU, 2018. 144 s. [in Ukrainian].

<sup>1</sup> Monitorynh protsesu detsentralizatsii vladny reformuvannya mistsevoho samovriaduvanniax [Monitoring the decentralization process and reforming local self-government]. Ministerstvo rehionalnoho rozvytku, budivnytstva ta zhytlovo-komunalnoho hospodarstva Ukrainy. 2019. URL : <https://storage.decentralization.gov.ua/uploads/library/file/396/10.04.2019.pdf> (data zvernennia 20.06.2019) [in Ukrainian].

Council of People's Deputies, in accordance with part three of Article 32 of this Law, exercises the powers delegated to it by the state:

1) exercise control over the use and protection of the land, its subsoil, reservoirs, forests, atmospheric air, flora and fauna, other natural resources in the respective territory within the limits and in the order established by the legislation of Ukraine;

2) registers land ownership and land use rights and land lease agreements;

3) organizes control over the compliance with the legislation of the land use and nature protection by agricultural enterprises, organizations and peasant (farmer) farms located in the territory of the Council.«

The territories of the council were determined based on projects of their formation, developed in the early 90-s by regional branches of the Institute of Land Management. The territories of the Soviets were formed mainly based on the lands of collective and state agricultural enterprises, as well as forestry.

The cartographic basis taken from the materials of the internal economic structure of the same enterprises, which were created in the 70's of the last centuries. The cartographic basis has occasionally been updated.

The territory subordinated to the Soviets of People's Deputies for these projects was not limited to the lands of settlements, but extended beyond their borders. Territories of village, settlement, city councils of People's Deputies could also be formed based on technical documentation on land inventory of the territory. They were also developed in the early 1990s by regional branches of the Institute of Land Management.

Regardless of the name of the documentation (which may differ depending on the region), it was developed for the implementation of the Decree of the Verkhovna Rada of the Ukrainian SSR of December 18, 1990 №563-12 «On Land Reform». The boundaries of village / town / city councils were approved by the district councils of people's deputies, which contained annexes with explications reflecting the total area of village / town / city council, as well as the area within settlements. If you open a project of formation of the territory and compare the areas indicated in it with the data of the state statistical reporting on quantitative land registration, the so-called 6-land form, then most likely the figures will not be the same.

The reason for this is that during the privatization of agricultural enterprises and the issuance of state acts for the collective ownership of land, the contours of the contours were adjusted, so their total area, equal to the area of the council's territory, also changed. Preferably, the minor adjustments are less than 1% of the area. From this it follows that in determining the boundaries of the UGF as the district boundary of the united councils territory, the projects of divestment of agricultural enterprises and land accounting in the form of 6-land should be taken into account. The territories of the Soviets before the entry into force of the current Land Code of Ukraine – January 1, 2002 – were formal for the

territorial organization of power. After January 1, 2002, the habit of resolving issues, including in the field of land management, remained with the heads of these councils, while making decisions, they continued to be guided by the concept of the territory of the village council when identifying the location of land.

In addition, state statistical reporting on quantitative land registration continued to be maintained within these territories. The boundary of an ATG is determined by the district boundary of the united village / town councils. For this purpose, projects for the formation of the territories of these councils, developed in the early 1990s, are analyzed.

Since the landforming projects have been developed using large-scale surveys, and the contours along which the boundaries of the councils have undergone changes, these boundaries need clarification. In practice, this is done by deciphering the boundaries of the territories of the councils on orthophotos and adjusting them to consider the formed land plots adjacent to those boundaries.

Deciphering orthophoto plans means identifying and marking on them the same with the projects of contours and conditional lines formation: the edge of the highway, the boundaries of the array of agricultural land, etc. Additional materials to consider: projects for the divestiture of agricultural enterprises, decisions of district councils regarding the change of territories of the Soviets of People's Deputies, form 6 – ground.

According to Article 173 of the Land Code of Ukraine, the boundary of an area, village, settlement, city, district in a city is a conditional closed line on the surface of the earth separating the territory of a district, village, settlement, city, district in a city from other territories. Such boundaries shall be established and modified by the land management projects for the establishment (change) of the ATO boundaries and shall be established in accordance with the Land Code.

The main legislative act that defines the requirements for documentation on establishing the boundaries of the ATO is the Law of Ukraine «On Land Management»<sup>1</sup>. Territories of ATO are objects of land management. According to Article 46 of the Law of Ukraine «On Land Management», the project of land management for establishing (changing) boundaries of administrative-territorial units includes:

- a) explanatory note;
- b) the task of performing the works;
- c) the decision to develop a land management project to establish or change the boundaries of the AAs;
- d) copies of the master plan of the settlement, certified in

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<sup>1</sup> Pro zemleustrii [About land management] : Zakon Ukrainy vid 22.05.2003 №858-iv. Vidomosti Verkhovnoi Rady Ukrainy. 2003. № 36. St. 282. URL : <https://zakon.rada.gov.ua/laws/show/858-15> (data zvernennia: 27.06.2019) [in Ukrainian].

accordance with the established procedure, and the decision on its approval (in case of changing the boundaries of the settlement);

e) copying from the scheme of land management and feasibility study of the use and protection of the lands of the ATO, and in the absence of such – copying from the project of formation of territories of village, settlement councils;

f) copying from cadastral maps (plans) with display of existing (if any) and project boundaries of AAs;

According to results of explication of land within the existing (if any) and project boundaries of the AAs;

description of the boundaries of the AAs;

g) project approval materials;

with materials of border removal of AA ion terrain with the catalog of coordinates of their turning points.

The Law of Ukraine «On Land Management» stipulates general requirements for the development, approval and approval of such land management projects.

The decision to establish (change) the boundaries of the ATO is at the same time the decision to approve land management projects for their installation (change). The main question that can be put to the judgment of a court expert is to determine the conformity of the developed documentation with land management (land management project) and its approval to the requirements of land legislation and other normative documents on land management and land use.

At the same time, there may be other challenges to the forensic expert who do not currently have a clear legal basis and methodological solution. Thus, in the legal acts that determine the order of land management, the boundaries of regions are not defined.

However, disputes over the boundaries of regions arise in practice (at the disposal of state authorities or local self-government land plots «on the border of regions»), which requires a forensic expert to carefully study archival, planning, mapping and other information, modeling the relevant boundary on a specific date, remote from current, etc. It should be borne in mind that the boundaries of settlements could be certified in different ways, depending on the legislation in force at the time of setting the boundaries for this category of settlement (city, town, village).

*For villages:*

In 1970–1991, the boundaries of rural settlements, classified as promising for further development, were separated from other lands by setting the boundaries of settlements in accordance with the projects of their planning and construction, which were approved by the executive committees of the Regional Soviets of Workers' Deputies. The lands of rural settlements not classified as promising were distinguished from other lands in the order of land management (Article 105 of the Land Code of the Ukrainian SSR in 1970). 1991 – January 1, 2002 (date of entry into force of the Law on Land Use) boundaries were established according to

the project of formation (or inventory) of the territories of village and settlement councils, which could then be changed by the decision of the district council when allocating lands to local self-government bodies for expansion of settlements. These changes were mainly reflected in agricultural divestment projects. From January 1, 2002 to June 26, 2015, inclusive, the boundaries of all administrative-territorial entities were certified by a state act of Ukraine, which was made based on documentation on land management (Article 176 of the LCU). From June 27, 2015, the boundaries of all administrative-territorial entities certify an extract from the State Land Cadastre (hereinafter – SCC), which is issued to the local self-government body after entering the information about the boundaries in the cadastre based on the approved documentation on land management for the establishment (change) of boundaries of administrative-territorial boundaries formations. Therefore, there has always been a graphical representation of the boundaries of villages and settlements, and the decision of the district council to approve them, and in the period from 1970 to 1991, the regional council, and then only for the category of promising villages.

*For cities and towns:*

until 1970, the boundaries of cities were certified by a state act on the right of permanent use of land.

1970-1981 The boundaries of cities and villages were established based on the master plan or the technical and economic foundations of city development.

The boundaries of cities whose master plans are subject to approval by the Council of Ministers of the Ukrainian SSR are established and modified by the Presidium of the Verkhovna Rada of the Ukrainian SSR.

The boundaries of other cities are established and modified by the executive committees of the Regional Soviets of Workers' Deputies (Article 85 of the Land Code of the Ukrainian SSR in 1970).

1981-1991 the boundaries of cities and towns were established based on the master plan or the technical and economic foundations of city development. The boundaries were set and changed by the Presidium of the Verkhovna Rada of the Ukrainian SSR upon the submission of the Executive Committee of the Regional, City (City of Republican Subordination) Council of People's Deputies. 1991 – January 1, 2002 the boundaries of cities and towns were established according to the city planning and construction project or the feasibility study of the city's development.

The boundary of the city was established and changed in the order determined by the Verkhovna Rada of Ukraine (Article 63 of the Land Code of Ukraine in 1990).

From January 1, 2002 to June 26, 2015, inclusive, the boundaries of all administrative-territorial entities were certified by a state act of Ukraine, which was made based on documentation on land management

(Article 176 of the LCU). From June 27, 2015, the boundaries of all administrative-territorial entities certify an extract from the State Land Cadastre (hereinafter – SCC), which is issued to the local self-government body after entering the information about the boundaries in the cadastre on the basis of approved documentation from the land management on the establishment (change) of administrative-territorial boundaries.

Thus, the boundaries of cities and towns were established and changed on the basis of town planning documentation until 2002, and only after 2002 for this purpose began to produce documentation of land management.

When defining a city boundary, the most recent available documentation should be guided and Verkhovna Rada decision to establish or change the city boundaries adopted in accordance with it.

**Conclusions.** projects of forming the territories of the Soviets of People's Deputies;

- projects of divestiture of agricultural enterprises;
- State acts for the right of permanent use of cities;
- topographic maps and plans;
- data of the State Land Cadastre;
- documents certifying the right to land plots, which are, according to preliminary estimation, located along the boundary of the TFG, as well as files of exchange of information on the results of works on land management (so-called exchange files) or directories of coordinates of land boundaries contained in the relevant documentation on land management;
- general plans of settlements;
- decisions of the authorities regarding the boundaries of the village councils or settlements;
- state / administrative reporting on quantitative land accounting.

These materials, when used, can and should be an integral part of land management projects for establishing the boundaries of ATO and, therefore, are subject to investigation for compliance with applicable law in the performance of judicial expertise on land management.

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***А. І. Ріпенко, Ю. І. Яремко, І. В. Пєсков***  
**ОСОБЛИВОСТІ СУДОВОЇ ЕКСПЕРТИЗИ ДОКУМЕНТАЦІЇ**  
**ІЗ ЗЕМЛЕУСТРОЮ ЩОДО ВСТАНОВЛЕННЯ МЕЖ**  
**АДМІНІСТРАТИВНО-ТЕРИТОРІАЛЬНИХ ОДИНИЦЬ**

*Розглянуто систему адміністративно-територіального устрою України. Проаналізовано процедуру визначення меж, зокрема розробку відповідного проекту землеустрою, порядок проведення державної землепорядної експертизи проекту, його затвердження та посвідчення меж.*

*Охарактеризовано проблемні аспекти виконання судової експертизи документації щодо встановлення меж адміністративно-територіальних одиниць. Акцентовано увагу на важливості дотримання порядку проведення аналізу нормативно-правових та нормативно-технічних документів, що діяли на час прийняття відповідних рішень та розробки відповідної документації.*

*Запропоновано шляхи вдосконалення науково-методичного забезпечення судово-експертної діяльності в Україні.*

*Ключові слова: адміністративно-територіальна одиниця; судова експертиза; межа населеного пункту; встановлення меж в натурі; судовий експерт; місцеве самоврядування.*

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