

Sustainable Development in Land Cadastre Domain of Ukraine due to Institutional Arrangements

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Key words: decentralization, land administration, cadastre domain.

SUMMARY

This paper suggests to considerate a decentralized management approach in cadastre domain as an alternative way for centralization that traditionally exists in Ukraine. Current situation in cadastre domain has induced to it. Nowadays sustainable development of the state land cadastre system has stuck. In spite of the fact that institutions' responsibilities in cadastre and land registration processes are assigned by legislative provisions it has no effect in practice. At the time of enlarging the general state centralized power the staff of the state institutions has been increased enormously as well as bureaucracy. The costs for cadastral and registration services are becoming more expensive. Meanwhile land registration system still doesn't guarantee neither the right of ownership to land nor access to the information in registers. Information on land resources and other real estate is continue to be kept in separate registers of different organizations that can't communicate with each other and exchange/share necessary information. Let alone self government bodies which have lost their responsibilities to make decisions in land issues without final approval of respective state authority. The core idea of suggested approach is to keep balance between decentralization and centralization within cadastre domain.

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1. INTRODUCTION

According to UN Economic Commission for Europe an effective land administration system should be sustainable, affordable, open, meet requirements of all users. Current Ukrainian land administration system less agrees to determined standards. And the reason for that is not only lack of land planning control or land protections arrangements, or mechanisms for simplification of cadastre data capture capturing process as well as title registration procedures. The overall reason for this is a need for changes in land policy approach. For the state with planned economy where one agent of management played the leading role – the centralized approach was well-grounded. While in market economy conditions and development of different forms of ownership to land the leading role of the state in land administration sphere is required to be transformed. The solution is at hand in the capability to use decentralized approach in land administration system. Such approach was not considered in Ukrainian theoretical science since the majority of scientists adhere to the doctrine on handling land administration system under control of the state. However decentralization issues are well researched in the context of responsibilities' distribution between central state authorities and self-government bodies.

In this article it is suggested to consider decentralized management approach in land administration sphere by the example of cadastre domain as one of the most effective multipurpose mechanism in land administration. And also investigate the possibility of keeping balance between central and local authorities' administrative privileges in cadastre domain. Cadastre domain here is considered as a sphere of activity of different organizations which deal with capturing data about land, other real estate, owners and their rights.

2. HISTORICAL BACKGROUND FOR DECENTRALISED MANAGEMENT APPROACH

The history of Ukrainian society testifies state reluctance to leave out of the control local authorities' activities regarding land administration (excluding, probably, some towns of Western Ukraine which were under Magdeburg law in XIII century, or independent territories of Zaporizka Sich in XVII century that were considered by the state as a refuge of robbers which status should be necessarily reformed).

Having studied the world experience and analyzed the activity of independent post-Soviet Ukraine in development of cadastre domain, the author of this article had been convinced in the precision of original policy line regarding equal commissions' differentiation between state and local power. At the beginning of 90th market processes in cadastre domain were regulated by legislation in more balanced manner. That is public and private sectors were

involved equally. The strategy of direct management and disposition of municipal assets by self-government authority is legally determined by the Law of USSR on fundamentals of self-government and local economy in USSR as of 1990. Unfortunately, this strategy, in fact, was never completely realized because of the state authorities' aspiration to enhance public administration over the assets of different forms of ownership. As early as 1994 two-level subordination system has been introduced in Ukraine. Local self-government bodies have formed one horizontal line. It has three-level hierarchy structure based on administrative-territorial system, such as region Radas → rayon Radas → village Radas. State administrations which main assignment consists in regulations of local-government activities on behalf of the state have formed a vertical line. They have being subordinated to the President of Ukraine and Cabinet of Ministers of Ukraine. After a while another vertical line of the state power has come into the force that is central government authorities of particular specialization.

The idea of equilibrium power did not pass a time test. By 1997 a tendency to the strict centralization, consolidation of central government bodies' hierarchy and loss of commissions by local self-government had been tracked. It had resulted to the transformation of local bodies into powerless formal institutions with duplicate responsibilities. They approve decisions which should be confirmed by the state authority. Except powerlosses issues the problem of making decisions at local level was embarrassed by impossibility to handle material and technical bases without state-bodies sanctions. However Kharkiv economists (<http://social.kharkov.ua/page.php?id=43>) think the problem in power distribution between local self-government and local state-bodies is artificial. According to the law "...local self-government in Ukraine has enough power to implement their duties in effective way. That is another matter that the main part of these duties is delegated artificially from local state-authorities to self-government bodies".

3. THE NECESSITY OF DECENTRIESED APPROACH APPLICATION IN CADASTRE DOMAIN

For proper land administration the authorities should operate with reliable data. Knowledge of real property unit value for taxation, quantity and quality of land for land distribution between owners and tenants, land planning, monitoring of ecological situation allow to make decisions for the benefit of the society. Meanwhile the majority of vital important processes should be regulated by the communities exactly at local level. Who knows better the real needs of particular region then people who operate at particular local level? Municipal power is closer to the people and aimed at resolving day-to-day problems. In this context cadastral data serve communities along with the state since the processes of real property purchasing, redistribution, land planning affects each representative of the community.

However, in our case the state is operating for own concern leaving aside people interests. In spite of the fact that state authorities of different levels amass cadastral data the users don't have access to the information. An owner has no reliable information about his ownership, his rights are not protected, and he is involved in a long and expensive process of title registration, which is **not** actually **guaranteed** by the state. Against this background self-

government-bodies have began introducing municipal multifunctional cadastral systems with information about land, water, wood resources, transport infrastructure, realizing the need to be involved in land administration process at the territories of own competence. There are examples of Kharkivs'ka, Ivano-Frankivs'ka, Dnipropetrovs'ka regions of Ukraine. This tendency indicates insolvency of existent state cadastre domain to serve its functions and conduce to irrevocable losses of state and local budgets. In support to the statement of the mentioned insolvency is reorganization of central state body responsible for land resources, which took place twice last year.

In the present state of affairs it is important to grasp current situation with distribution of responsibilities between state and local authorities within cadastre domain and suggest improved mechanism for balanced power distribution. In author's opinion it is important to avoid creation of a new or additional organization (s) within existent administrative structure of cadastre domain. The main task is to use existent organizations as much effective as possible and reform an existent structure by means of reducing the number of agencies.

4. CURRENT ADMINISTRATIVE STRUCTURE OF CADASTRE DOMAIN

In cadastre domain of Ukraine the representatives of central state power are:

- State Committee of Ukraine on Land Resources – SCULR (which is responsible for land relations and land reform),
- State Land Cadastral Center under the State Committee of Ukraine on Land Resources – SLCC (which is responsible for data capturing for the automated state land cadastre system & title registration),
- the Ministry of Justice of Ukraine – MJ (which is responsible for registration of deeds on immovable properties),
- State Service on Geodesy, Cartography and Cadastre - SSGCC (responsible for geodetic and cartographic works and collection of geodetic data for cadastre system).

They create a vertical line of centralized state executive power which is under the Cabinet of Ministers of Ukraine. The administrative structure of central power authorities for the most part has a three-level hierarchy with local subordination. For example, SCULR has central – regional – rayon (town) levels. SLCC and MJ have the same hierarchy.

Another vertical line of centralized state power makes up of state administrations with different hierarchy levels. Its structure consists of two levels: oblast – rayon/city. The main duty of these institutions is supervision of local self-government authorities' activities.

Local self-government authorities are represented by Radas which are playing on behalf of communities. They have three-level subordinated vertical. According to the law self-government bodies have responsibilities on immovables data capturing and registration of rights to immovables. These responsibilities are delegated to them from state authorities. In fact these responsibilities are implemented by Bureaus of Technical Inventory (BTI). They act partially on self-government side (if they are in communal ownership) and partially on the private sector side (if they are in private ownership correspondingly). BTI of both forms of

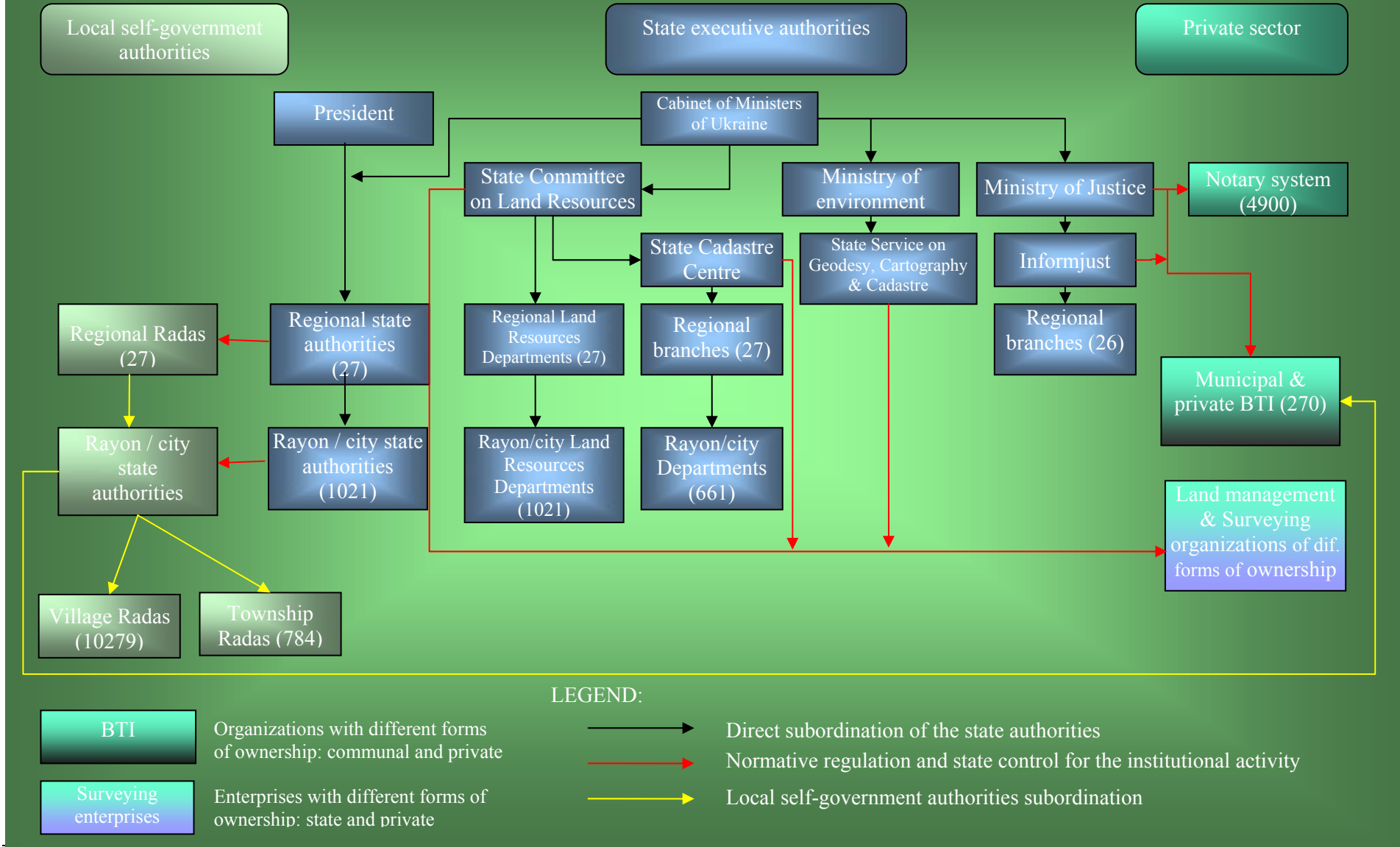
ownership deal with immovables data capturing and registration rights to them. Communal BTI work under the local Radas while legally subordinated to MJ.

Private sector is represented by licensed land management, surveying and notary entrepreneur's organizations. The first ones receive licenses from the SCULR, the second ones – from the SSGCC, and the third ones – from the MJ. Current administrative structure of the cadastre domain is presented at the picture # 1.

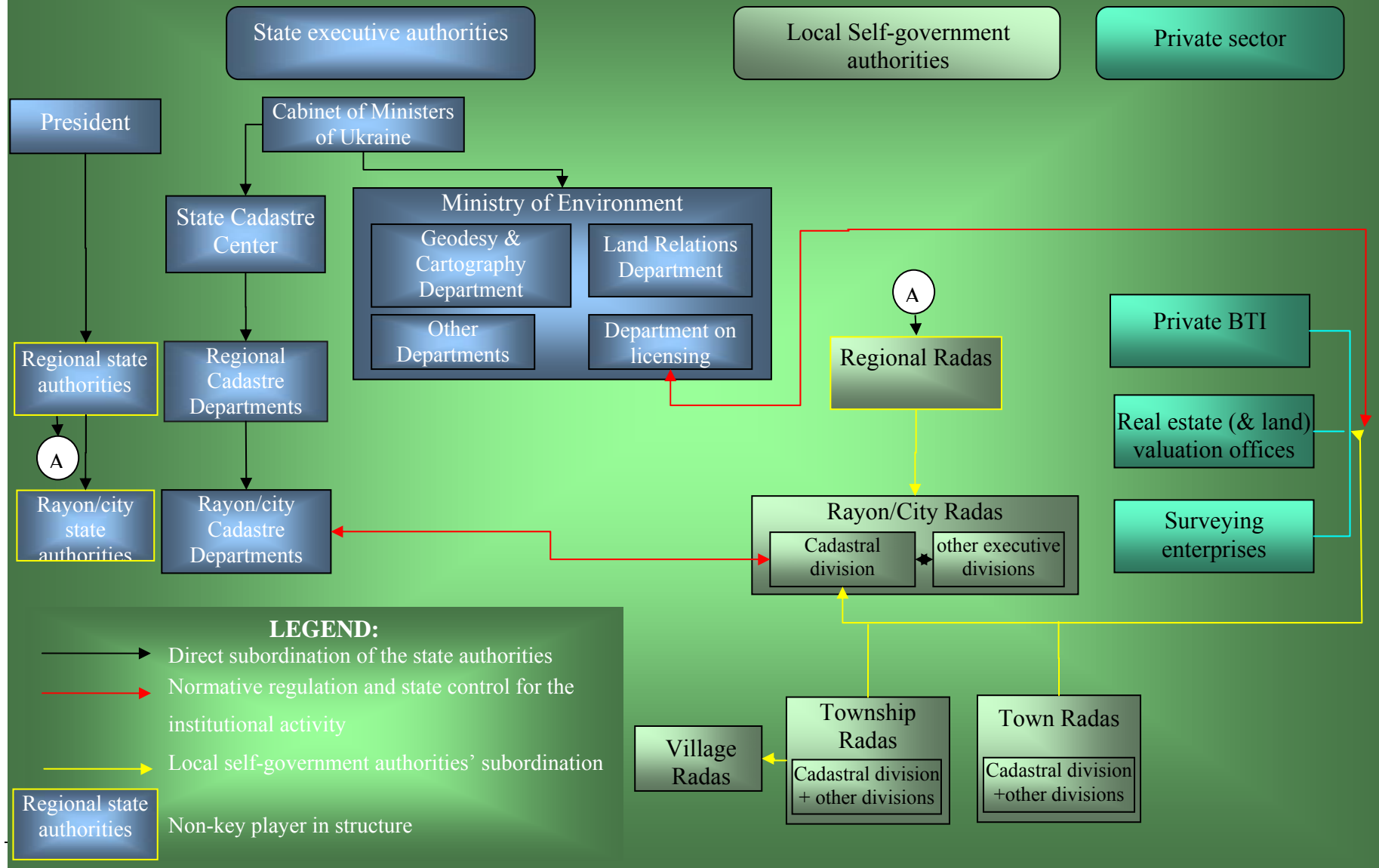
Based on the short description we can see that the division of responsibilities for the land and immovables still exists in current cadastre domain (in spite of legislation), as well as dispersal and duplication of responsibilities in cadastral data capturing. Meanwhile there is lack of information exchange between institutions. At the same time the quantity of state authorities' staff, which controls cadastre domain, is increased with time. For example 10 years ago an average quantity of local state authority staff has come up to 28290 people. During the years of independence this figure is increased three times. Another glaring example is State Land Cadastre Center which has employed 5,500 people in total. Only 13% among them deals with registration directly (though according to the law SLCC should deal with title registration exceptionally). At the same time there are more than 10,000 people working at communal and private BTI. The quantity of private notaries is goes up rapidly while dispute with estates not decreased.

Hence it is suggested to create modified administrative structure adhering to balance between centralization and fragmentation of responsibilities in cadastre domain. Modified scheme of administrative structure in cadastre domain is presented at the picture # 2.

Existent Administrative Structure in Cadastre domain of Ukraine (picture # 1)



Decentralized Administrative Structure in Cadastre domain of Ukraine (picture #2)



The main idea of modification is to transfer the responsibilities and real activities particularly in cadastre domain to the local level, in order to serve communities with reliable cadastral data. The most important level in the new structure is rayon/city level. First reason for this is difficulty to provide the lowest level with qualified staff. But high qualification is indispensable condition for rayon/city level because subordinated communities will be dependent on specialists at the top. The second reason is the most possible awareness of cadastral information. It can't be the case at oblast level because of the current administrative territorial system of Ukraine. Practically rayon/city level plays an intermediate role in getting relevant data locally and transmitting them to the top. Oblast level in case of self-government structure step forth as central level of the hierarchy. On the other hand in the state institution structure as SLCC oblast cadastre department acts more as statistical body where several specialists can assure the working process.

For the purposes of decreasing bureaucracy staff State Committee on Land Resources is amalgamated with State Service on Geodesy, Cartography and Cadastre and subordinated to the Ministry of Environment. It'll allow cutting down multitudinous officials' staff and concentrating forces on land resources regulation in one hand. There are departments on geodesy, cartography, land relations; others are to be created at the Ministry instead. Their responsibilities remain related to the state control for land resources and economic activity of private sector in cadastre domain. The Ministry of Justice is taken out of cadastre domain because coveting to have responsibilities on running own fragmented deeds' registration database this institution contributes to incapacity of current state cadastre and title registration systems.

State Land Cadastre Center (SLCC) which deals with handling the Unified State Land Cadastre System and Title Register stands separately at the picture # 2. It is subordinated directly to the Cabinet of Ministers of Ukraine. The direct subordination will guarantee property rights by the state, and also provide direct responsibility, which is currently dispersed. However there is a dread of monopolization that is always an argument for the authorities in Ukraine do not consolidate cadastre domain and have information fragmented. The structure of SLCC consists of three-level hierarchy. But the author of this paper inclines to excluding intermediate oblast level in the future when a good technological connection connecting system will be developed. There will be no need in translating cadastral data which are accumulated at rayon/city levels through regional level to the Center. SLCC central level responsibilities will consist of normative regulation of all cadastral and title registration procedures, control of its implementation at local level in own structure and by cadastre divisions of self-government bodies.

The whole process of data capturing and transformation of information into Unified State Land Cadastre System takes place at rayon/city level. Rayon/city cadastral departments of the State Land Cadastre Center deal with cadastre data capturing and title registration. In their turn municipal cadastral divisions will be created to make practical activity in cadastre domain at local level. They collect information concerning private and municipal sector for respective municipal databases. Based on justified calculations additional representative offices of cadastral divisions should be introduced at lowest local level (in townships and towns). The number of such divisions depends on the population and number of potential transactions with properties.

An exchange of cadastral information between state cadastre divisions and corresponding municipal divisions is takes place at local level. Local self-governments run own municipal land information systems using different standards for data accumulation and processing, but common standard for data exchange. Each municipal system contains part of cadastral data needed for the Unified State Land Cadastre System. Such information should be transmitted by means of communication channels. Transmission of the information from municipal databases into Unified State Land Cadastre Data Base should be done by legally determined procedure, using state standards.

To determine a degree of rational participation from local state administrations' side in the modified scheme is appeared difficult since this issue is laying in the plain of administrative reform which necessity is on the agenda in Ukraine.

The question is how to minimize involvement of state power sector in cadastre domain, giving the possibility to participate for other sectors of the society? From author's point of view it is enough to have state control over self-government bodies' activity in cadastre domain from SLCC side (whether from central or rayon/city levels). If an administrative reform will take place in Ukraine and a stereotype idea about necessity of three-level management system in Ukraine will be privileged as far as "it is reasonable for Ukraine to have three-level management territorial system where state administration authorities together with self-government presented: central, regional and local" (V.V. Mamonova, O.V. Olshansky, 2002, p.34-43), then rayon (local) state administration level should be in the modified structure of cadastre domain. If scientists will prove the need of delimitation of rayon state administration institution (reducing their responsibilities to work as representatives of regional state administrations) we can exclude rayon state administration from the modified scheme.

Communal BTI agencies keep working as executive committees of self-government authorities at the same level as municipal cadastral divisions until the information about buildings and constructions will be fully integrated into municipal database and simultaneously into the unified State Land Cadastre Database.

At modified scheme on the picture # 2 the notary system as an institution doesn't exist at all as far as it is superfluous financial load on cadastre domain. Existent responsibilities of the notary system within cadastre domain duplicate State Land Cadastre Center responsibilities in the part of title/deed registration. Besides notary's certificate is not anticipated the state guarantee of appearance/ change of rights to real estate. The notary system as judicial body can function separately from the cadastre domain serving formal signification of deeds, but only by wills of real estate owners, not by the state procedure.

Private sector is presented in cadastre domain as land surveying licensed organizations, valuation agencies. Their economical activity is under control of licensed department at the Ministry of Environment. The results of their work are accepted by cadastral division of the municipal body. The problem with having quality control of the work done by licensed organizations remains unresolved. Whether it should be created independent association similar to the Association of Chartered Surveyors or other qualified specialists (like in Denmark or Austria)? Or it is enough to strengthen control at central state body level? These questions are left open for future research.

5. CONCLUSIONS

In this paper a modified, partly decentralized administrative structure of Ukrainian cadastre domain is suggested. It should obviously be confirmed by necessary financial calculations.

Suggested model of administrative structure will allow:

- keeping cadastral and title registration data in common system, integrating them from municipal databases into Unified State Land Cadastre Data Bank;
- providing access to cadastre information for different groups of society, without exception;
- operating with relevant information on land resources and other real estate both at local level as at central level;
- accumulating cadastral information in common system. It could help to enhance an effectiveness of current cadastre domain by means of cost reduction on data migration between institutions.

Also we should take aim at improvement of cadastre domain development in a way of consolidation with private sector representatives like banking sphere, credit institutions and others. Consolidation consists in strengthening partnership connections with private sector in order to attract its force into management process, to make it more responsible for own activity.

Trying to reach effectiveness in land administration system and in cadastre domain in particular we should keep balance between public and private sector involvement. The power should be distributed in such a way that the state authorities will make control in cadastre domain whereas local authorities will implement the immediate cadastral proceedings.

Naturally the risk of disbalance exists. Power fragmentation can bring to the tight state control that means to centralization (as it was during Margaret Tetchier times in Great Britain). In its turn the pressure from the state leads to power fragmentation (which is happened recently in France). It can be also resulted in increased bureaucracy. The author of this paper agrees with the opinion that the most important power decentralized problems consist in reduction of state control in land resources sphere and difficulties in state policy implementation (Peter Newman & Andy Tournley, 1996). Glaring example of it is refusal of Kyiv local authority to integrate cadastral data into the Unified State Land Cadastre System.

The way out in such situations we can adopt from Swedish practice. If local authorities have more privilege they should have equal management responsibility. All local authorities' initiatives like regional land planning programs or other land issues which concerns citizens of the community should be discussed with constituency and finally be presented as a reports to it. At the same time the role of the state remains in strategic planning. For example, if the state has a task to integrate municipal cadastral data into unified central land cadastre database for municipalities it should be first-propriety implementation task.

Paskal's research (Y.A.Tatarnikov, 2006, p.20) discovers impossibility to polish an absolute infallible strategy owing to its permanent correction to inequable environment. But anyway the law of "adaptive mechanism" comes into force when the effectiveness of the system is reached using the whole arsenal of strategies.

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BIOGRAPHICAL NOTES

Mrs. Oksana Sukhova is working as quality control manager at BlomInfo-Ukraine Ltd. Before that she occupied a position as key specialist in the State Land Register Department at the State Committee of Ukraine on Land Resources. Since 2005 she has been employed by BlomInfo-Ukraine Ltd for implementing World Bank project on Rural Land Titling and Cadastre System Development and is currently undertaking Ph.D. research at Kyiv National University on Construction and Architecture regarding improvement of land titling system within cadastre domain. She has a M.Sc degree in Land Management from Kharkiv State Agrarian University in Ukraine and from Royal Institute of Technology in Sweden.

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