

Is It Real To Have Effective Land Administration When There Is Power Disproportion?

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Key words: land administration, institutional system, decentralization

SUMMARY

Ineffective land administration in Ukraine is a consequence of disproportion in power distribution between two institutions: state authorities and self-government. On the other hand it caused by lack of well-grounded conception of interrelations between these two power institutions. Current stage of reforming land administration sphere in Ukraine is characterized by lack of scientific approach to the elaboration of practicable structure, forms, sizes and functions of power institutions which are responsible for implementing land policies. It adversely affects human living standards and regions' development. So, the problem of balancing between centralization/decentralization in land administration sphere is still on the agenda.

The purpose of current research is to prove an expediency of decentralized method for reforming land administration system and support effective local municipal management.

Неэффективное земельное администрирование в Украине обусловлено дисбалансом в системе органов государственной власти и местного самоуправления с одной стороны, отсутствием обоснованной концепции взаимоотношений между ними с другой стороны. На данном этапе реформирования системы земельного администрирования ощущается недостаток научного подхода к разработке целесообразной структуры, формы, размеров и функций институтов власти, ответственных за принятие решений в земельной сфере. Для решения этой задачи была предпринята попытка доказать целесообразность применения децентрализованного подхода на данном этапе построения системы управления земельными ресурсами.

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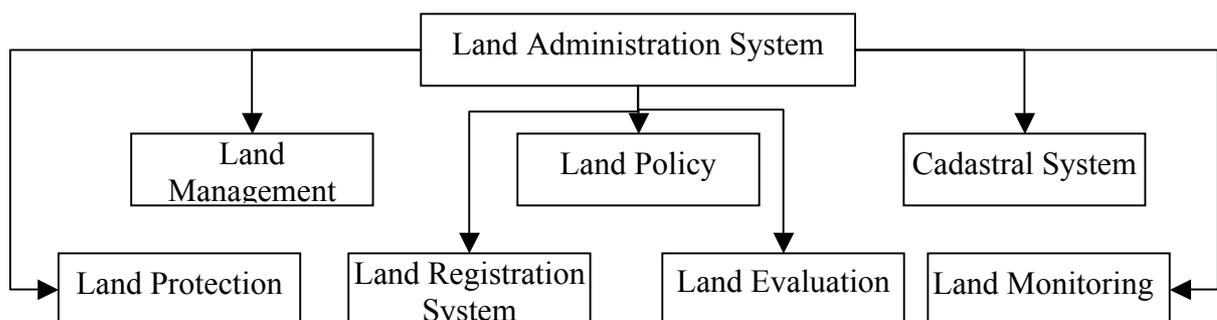
1. INTRODUCTION

1.1. Fundamental Questions

In order to give comprehensive answer on the above stressed question we should first answer following questions: *What is the substance of effective land administration? Who is in need of effective land administration? Who is responsible for effective land administration?* Let's start from the beginning.

What is the substance of effective land administration? A merit of this process is in “determining, recording and disseminating information about the ownership, value and use of land when implementing land management policies” [FIG, 1999]. For evaluating effectiveness in land administration sphere numerous of macroeconomic figures which reflect land profitability, time and labor consuming, GDP, prime costs and values of the end products, labor-intensiveness, etc are used. On the other hand the level of intrusion into environment is also evaluated: how human's activity effects quality of soil, pollution, environmental degeneration, sustainability. Fundamental prerequisites for effective land administration are constructive land policies and strategy, cadastral system development, secured property system, appropriate land planning and land management, land monitoring and protection. All mentioned mechanisms help to develop comprehensive land administration system within certain geopolitical area.

Figure 1: Components of Land Administration System



Who is in need of effective land administration? On one hand it can be any person/community who makes activities on/with the land. That is because the quality of peoples' lifestyle is entirely dependent on the range of effectiveness in land administration. For all that a legal mouthpiece of peoples'/communities' interests is self-government bodies. On the other hand

state authorities are always in need in accurate information about ownership, value and use of land, because it strengthens of state power and helps to make rational decisions.

Who is responsible for effective land administration? Who is the master of the information about the land and implements land management policies?

- a master of the land,
- a land manager as a specialist who works on behalf of state or municipal authorities,
- power bodies in the person of state and self-government authorities, which actually make land policy,
- by the highest standards it is a society, which is responsible for effective land administration or us and you. A society allows to the master making useful or harmful activities on the land. A society demands and pays for well-educated land managers. A society chooses government and vests it with authority.

Equal degree of responsibilities of 4 named items in theory means equal rights in making decisions in land administration in the interests of the society or its separate groups. In Ukraine the parity is rarely the case in practice. That's why analysis of land policies' implementation and their consequences for Ukraine could be useful, especially in the period of land administration reform implementation.

The main purpose of this paper is to prove that effective land administration is possible when there is equal participation in making decisions of self-government bodies and state authorities. Analysis of several cases would help to dip into the problem.

2. CASE STUDIES

CASE 1. There are 25 regions in Ukraine, which are different from each other by climate, area, natural resources dissemination, ethnic, demographic, cultural, settling methods and other features. In Eastern part of Ukraine there are more fertilized, sown areas of big sizes per head than in Western part. Therefore, for example, in Poltavaska region the average size of land plots attached to house amounts 1,5 acres (60 hundreds parts). This is historically formed size. While in Ivano-Frankiska region the same type of land amounts 10 hundreds parts. According to the Land Code of Ukraine the average size of the land plot attached to a house on the territory of Ukraine shouldn't exceed 25 hundreds in villages. In order to issue the State Act which confirms ownership right to 1 plot state authorities force executors to prepare 3 documents instead of 1 document. They make reallocation of 1 plot into 2 pieces for different purposes as such: 20 hundreds – homestead land, 40 hundreds – cottage land.

Conclusions. Thus, with relation to official or state regulations the action is correct. But let's see this from master point of view. The master used to work on this plot far before land reform had started and he going to use the whole area as it was further on. Does he need 2 State Acts instead of 1? No. Does he change the purpose of use a land plot? No. Why he should pay twice for cadastral survey and other official conformations and wait about a year or two to get a document from the State? From self-government side there were no actions,

cause the matter is beyond its regulations. Self-government will impose a tax for the whole area in 60 hundreds. In practice people doesn't want to issue another State Act for additional area, but use it as before if they are retired. In case of heritage a task to issue additional State Act is shifted to relatives' shoulders. Still the state has no accurate cadastral information about unexecuted documents on land.

Option: If self-government takes a decision will it allow to the master to issue 1 document instead of 2, taking into consideration regional specifics? But for all that accurate cadastral data showing reallocation and 2 different purposes of land use will be represented in this 1 document. No offence against the law, saving master's money and efforts of state officials and making decision in the interests of community (society).

CASE 2. A farmer from the village wants to lease 9 ha of agricultural land from the village land reserve. Village Rada (self-government institution) gave permission to the farmer to lease a land for 5 years. Official procedure of issuing land lease agreement could take 1-1,5 years, including survey, several confirmations from numerous state authorities like cultural heritage authority, ecological department, architecture department, local land resources department, cadastral office during land lease agreement registration procedure. In addition all official procedures will cost about 4227 UAH (521\$) plus land lease payment. Thus, a farmer should work off these payments during at least 1 year.

Conclusion. Is it worth for the farmer to issue legal documents for land lease? He would prefer to pay bribe for village administration directly. Also all procedures are taking place at rayon level and it's time consuming to go from village to rayon and run between different authorities' buildings.

Option. What if the quantity of officials who should confirm agreements will decrease? What if necessary specialist will be at a place means his working place will be situated in the village and he will be in charge to get all confirmation documents since that is his job? Then, local authorities will be kept informed about what's going on within the region of their competence. The master will save his time and money and pay more attention to his real work – developed agrarian sector. The State will save money for the society on unnecessary state officials.

CASE 3. World Bank project on Issuing State Acts in exchange of Land Share Certificates and Cadastral System Development has been running in Ukraine since 2004. According to the legislation the main responsibilities in the process of land sharing and land privatization belongs to local self-government. Local self-government is in charge of preparation the list of potential owners; of controlling land surveying activities implemented by private surveyors; of approving a project design on land sharing, of controlling land redistribution between the owners of land share certificates. After all self-government knows actual information whether the owners died or moved or whatever. In reality all the procedure is under total state control. All documents prepared by self-government authorities are neglected because preferences are given to rayon or regional state administration resolutions which decision is privileged. Thus

compiling the report on work implementation within the project a contractor should gather all documents prescribed by the law. Yet on each local reference a contractor should submit conformation from state authorities (rayon administration, rayon land resources department, regional land resources department, rayon cadastral centre, etc.) At that when the contractor finishes up his work in the part of delivering State Acts on the right of private ownership to land to the owners the top state authorities don't rely on the information from their subordinated divisions. They demand final quantity of issued State Acts from local self-governmnet. So, it seems a vicious circkle.

Conclusion - Option. The country could waste much less efforts on Land Reform and pay much less money as a credit to international organizations if the reform would take place at the local level without putting efforts on strenthening a structure of state executive authorities.

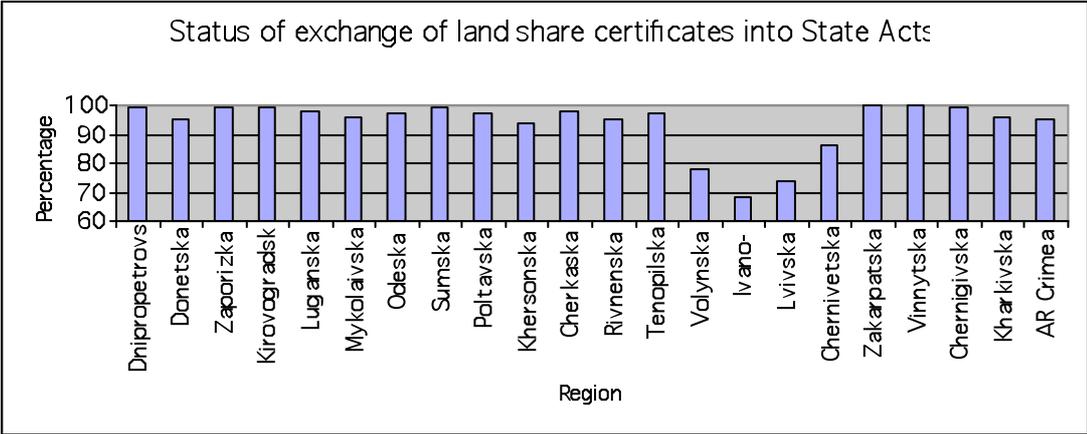
CASE 4 - Global. We have been started land administration reform in Ukraine since 1991. Three main tasks were outlined for reform's implementation:

- general land privatization, especially it concerns agricultural land;
- development of cadastral and registration system for securing property rights;
- land consolidation.

In the reports of international specialists who have been involved in land reform projects we can see positive results of reforming process and statements that 2 first tasks were almost finished. For now we have:

- 6.9 million land share certificates were converted into State Acts (see Table 2),
- about 12 million state acts on the right of private ownership to land are issued to the citizens and registered in the cadastral system,
- about 5 million agreements on land lease are registered,
- about 40 thousand state acts on the right of private ownership are issued to the juridical entities and registered.

Figure 2. Status of completion the process of exchange land share certificates into State Acts

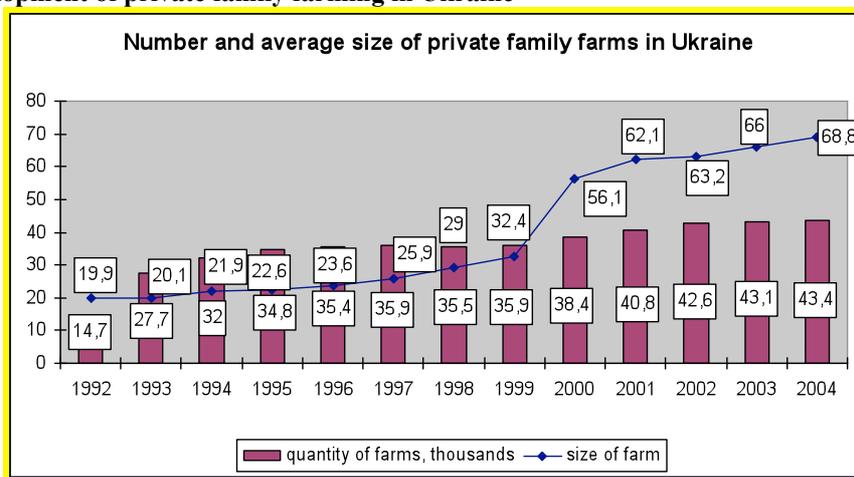


Seeing the reform from inside we can discover that most of new born owners were forced to become them, in particularly in Eastern part of Ukraine. There are lots of examples all over

Ukraine (Chernivetska, Vinnitska, Poltavska, Odessa, Kharkivska regions) where state administration forces people to apply for permission on land share. There are lots of people who wasn't ready to start own individual farming because of majority reasons. First of all not all persons are enterprising, some of them needs to be coordinated by the leader (as they used to be working in the collective farmers). The consciousness of the majority peasants wasn't ready to work individually. They were taught to work with/for the collective during 70 years. Only people from Western regions (Lvivska, Ivano-Frankivska, Ternopilska, Chernivetska, Volynska, Rivnenska) had historical and cultural prerequisites to demand private property because they observed transboundary experience to work for own benefits. Western regions people in particularly suffered from administrative-command system and met reform as welfare. But even there state authorities' mechanisms didn't give successful results. Most of the people had no experience to build up a production circle (land cultivating, plant protection, farming, harvesting, selling of agricultural products, processing of left agroproducts). Also, nobody cares about land protection, crop rotation, necessity in melioration, renovation of hydraulic facilities, and improvement of soil quality. To see achievements and drawbacks of land administration reform let's analyze some figures below.

First of all we should list positive results which were achieved during last 20 years. There are following: establishment of land market, introduction of private property right, creation of private family farming, denationalization, land privatization, establishment of land registration system to provide security for real estate owners, introduction of marketing financial mechanisms like land mortgaging, loans, banking system development. 11847 agricultural enterprises were restructured into 11831 private companies. As of 01.01.2007 23883 new agrarian formations were established. The number of private family farms during 15 years is increased from 80 to 43403.

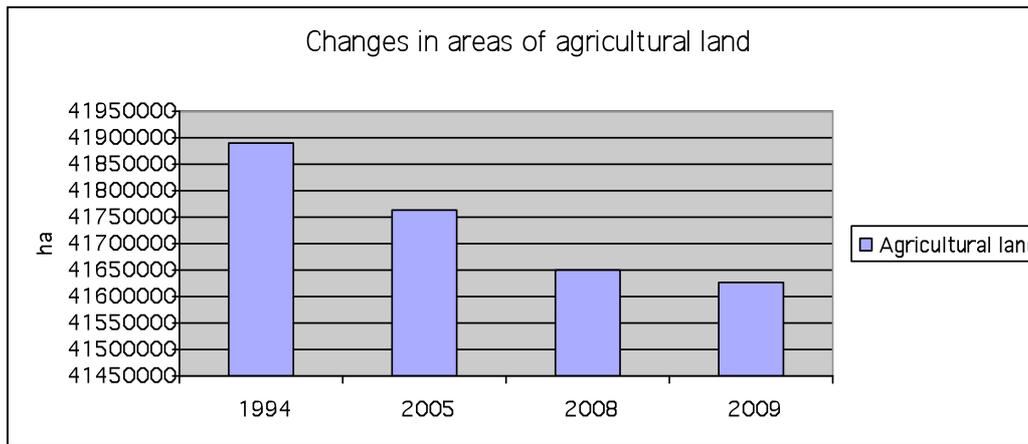
Figure 3. Development of private family farming in Ukraine



Along with achievements we lost a lot during the same period:

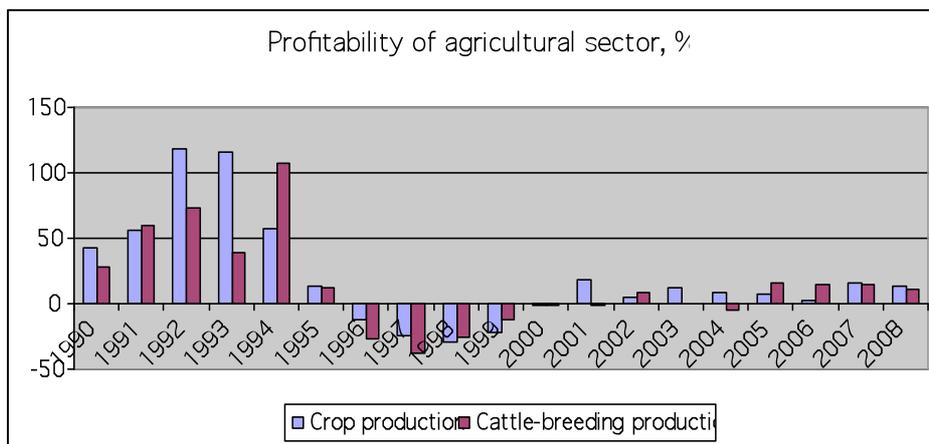
1. The area of degraded and underproductive soil in Ukraine is exceeded 6,5 million ha or 20 % of arable land. All of land should be conserved. Share of productive lands decreased from 93,5% to 83,8% of total agricultural land.

Figure 4. Changes with areas of agricultural land in Ukraine



2. Lots of profitable agricultural enterprises were unjustifiably ruined. Gardens and vineyards were destroyed, 2/3 of capital assets of agricultural enterprises were making away, 40 sugar-beet factories were demolished. Melioration systems and system of crop rotation were destroyed. Cattle-breeding industry was ruined as unprofitable. The decrease is bigger then after World War 2^d (3 times decrease).

Figure 5. Dynamic of agricultural production during years of independence of Ukraine



3. Demographic situation in Ukraine is challenged. Ukraine has lost 6 million people in total. Young generation, well-graduated specialists has been migrated abroad while less graduated people moved to the capital or at least to a higher administrative level of settlements (village – rayon – oblast (region) – capital). One of the regions – Chernigivska oblast - we can take as an example. Annually the whole rayon has been disappeared. There are 1489 settlements in the region, including 114 which have not more than 10 inhabitants and 23 where there are no inhabitants at all.

Conclusion. Having constitutional equity of three forms of ownership to land in Ukraine as state, communal and private what's the reason for forcing people to have land in private ownership? Land Reform has been initiated by state power without comprehensive economic and social analysis of willingness and readiness of peasants for operating under new market conditions. What is the benefit for the state in destroying several economies that used to work as successful collective farms, implementing global task instead of leaving them along until people feel ready to work individually? Why after forced sharing land into pieces we need to continue implementation of 3d stage of land reform consisted in land consolidation. If nobody would divide the land and help enterprises to survive without interfering into the economy then there is no need for consolidation. Cadastral data could be put into database as it is. Existent situation in land management system doesn't allow using land effectively for the sake of peasants as individuals. The situation is excused only if the state decided to redistribute agricultural land and give the possibility to buy land from individuals by new rich owners. In this case the land could be consolidated. Was it the purpose of land administration reform? Again who cares then about ordinary peoples' interests?

Option. If the state is really cared about the impact of land administration reform on ordinary people it would started from conditional separation of Western oblasts or several raions as a pilot areas that were ready for privatization from Eastern regions that were not. In the majority of Ukrainian regions except Western we could follow Israel experience of communities' land management or Netherlands approach of giving leased land to the farmers who are willing to work in the collective, or Chinese forward movement approach to land reforming. They started reforms using marketing principles and giving an agricultural land into long-term lease earlier than Ukraine (in the middle 80th), but managed to increase GDP 4 times. Chinese have started reformation from one pilot area, evaluated the results and took another area into the process. If they saw that local people were not ready for reformation they had left the area as it was for 5 years for increasing potential.

3. REASONS FOR UNSUCCESSFUL LAND ADMINISTRATION

Why Ukraine has failed in land administration reform whereas Nicaragua, Kenya, Baltic countries, Georgia has gained achievements? Where is stumbling block? I think there are several.

1. One of the main reasons of poor land administration is in irrational interrelations in administrative-command system which is still works for Ukraine. Existent self-government lost its positions as horizontal power line and plays as formal institution. In 20 years state power took main responsibilities in making decisions at all levels of administrative hierarchy. Local self-government has neither legal, nor financial basis for implementation its own or delegated commissions. This power field works owing to state subsidies which amounts 70-90%. Only 1/3 part of financial funds gathered by self-government in the form of taxes, penalties, donations, etc. is left at local disposal. Such situation doesn't encourage municipalities to feel free financially in developing regional policies and stimulating business activities, innovations. In many regions municipalities feel administrative pressure from state

authorities during elaboration of regional policies. If municipalities resist state dictate then local officials will leave overhead posts.

2. Next reason is resources and power redistribution. At the beginning of 90th all former countries of Soviet Union accepted marketing way of development. At that time big political elite started to fight for resources. By 2000 the main financial assets as industrial complexes, factories, real estate, machineries and tractors were distributed between oligarch structures, who acquired real power. It concerns agricultural sector less, because it always seemed unprofitable sphere for investments in Ukraine. However it didn't prevent oligarchs from buying whole raions illegally. By now the moratorium on sale of agricultural land was cancelled. So, all illegal operations with land will be legalized and a new stage of agrarian sector redistribution is on the agenda. Moreover the business in Ukraine is now supportive to administration. Officials are paid or took up a post thanks to businessmen. So, we have double power in that case. Then in order to reach the goal in changes of administrative-territorial system or other important land policies' issues for the progress of the state or municipalities we should not only develop good scientific background but also persuade authorities/businessmen in expediency of such activities for them particularly.

3. Political factor. Any well-grounded land policy will be inefficient in instable political situation. During last 4 years the Head of the State Committee on Land Resources (Derzhkomzem) have taken turns 6 times. The Head of subordinated to Derzhkomzem structure – State Land Cadastre Centre have taken 7 turns, let along Prime-Minister – 5 turns. As a result since 2005 we had the same number of delays in 3-4 months trying to implement new land strategy of land reformation process. Moreover each new top-leader came with new initiatives to develop cadastral system, title registration system using new methods, technologies and professionals, etc. As a result we have no unified cadastral –registration system as we suppose to start building-up in 2005. At that territorial land resources divisions keep processing documentation manually or using local software.

4. No confidence from people to the power. Agrarians think that all reforms in agricultural sector are directed on sector destruction. If we analyse the figures presented in paragraph 2. “Case studies” we understand that agricultural sector is border-line on the decline.

5. Power centralization. Exaggerated staff of state officials, particularly in land administration sphere is the fifth reason. While quantity of local self-government officials on lower levels of administrative hierarchy has decreased the number of state officials at any levels has increased. If we take land administration sphere where 8000 officials in 2005 seemed as a problem, which stuck the development of the sphere, makes cadastral and registration procedures more complicated, than what we should do with expected increase of state officials up to 17000? [Kulinich O., 2009]. One could compare previous figure with existent total amount of state and self-government officials equal to 16418 as of beginning of 2008.

4. CONCLUSIONS & PROPOSALS

If Ukraine should adopt one of Western European ways of society development instead of elaborating its own then it's better to start from reforming administrative system. The differences of developed countries like England, Sweden, Denmark, Australia, Canada, Japan is that their democratic societies are based on well-developed self-operating self-government.

Nowadays the issue about the need in decentralization for Ukraine is urgent as never before. It caused by excessive concentration of power in the centre. It leads to entirely disappointment and inactivity of the citizens. As Shutenko O.A. fairly mentioned "...people used to think that any activity at the local level would be unsuccessful since anyway a final decision dependent on the centre" [Shutenko O.A., 2008].

In order to make land administration effective Ukraine should revise its administrative policy in land relations sphere in particular and make following steps:

1. To redistribute responsibilities between state and municipal power. Power decisions shall be correlated with local people needs. What does it mean? If the matter concerns development of state cadastral system, cadastral or land management standards, land legislation or license requirements then there are entirely state authorities' responsibilities. The way of implementation of above mentioned issues should be given to local specialists.
2. Do not apply administrative pressure forcing people to rush into market economy. Give time to inactive people to get use to new conditions. Take into consideration Chinese experiences which help citizens to feel benefits from new life conditions, involving them step by step into it.
3. Implementing land management policy to use different proportional approaches, taking into consideration regional specifics, economical conditions, interests of variety of social groups in the West and East of Ukraine.
4. To promote institutional cooperation between self-government and state authorities
5. To conduct social policy. Those peasants who are retired or ill should be secured by the state and municipality
6. Local self-government authorities should apply sanctions when there are any offences with a land use.
7. To give public access to cadastral data in order to make land market transparent
8. To reduce a number of state authorities involved in land administration process
9. To improve land legislation correcting contradictions in legal acts which promote corruption and bureaucracy

10. To simplify cadastral and registration procedures
11. To renew proper land management on scientific basis, keeping soils fertility

Ukrainian economists think that institutional problems in land administration should be resolved only in complex with reformation of administrative-territorial system. Theoretically it's true, because there is close connection between these two issues. But in practice such systematic global reforming process takes years. Eric Stubkjær confirms that institutional changes in property rights, reformatting state administration system, decentralizing power takes 10 to 100 years [Stubkjær E. 2009]. I'd like to trust to O. Williamson, who is convinced that rules of the game could be changed in 1-10 years period [Williamson O., 2000]. Ukraine hasn't even 10 years under the threat of losing natural potential of the country. So, we need to elaborate new rules today.

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BIOGRAPHICAL NOTES

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