

UDC 332.142.4:556

**SCIENTIFIC APPROACHES TO THE FORMATION OF THE
CLASSIFICATION OF REGIME-FORMING OBJECTS AND RESTRICTIONS
(ON THE EXAMPLE OF TERRITORIES OF WATER OBJECTS)**

DOROSH Y.M., *Doctor of Economics Sciences, corresponding member of the
National Academy of Agrarian Sciences*

E-mail: landukrainenaas@gmail.com

BARVINSKYI A.V., *PhD in Agricultural Sciences, docent*

E-mail: bary@ukr.net

KHARYTONENKO R.A., *PhD of Economics Sciences*

E-mail: kharytonenkor@gmail.com

BRATINOVA M.V., *specialist*

E-mail: mbr4119@gmail.com

*The Institute of Land Management of
National Academy of Agrarian Sciences of Ukraine*

Scientific approaches to the role of regime-forming objects in the formation of restrictions on land use, which have been studied by scholars of economic and legal profiles, are considered. The approaches to the formation of the classifier of regime-forming objects by certain relevant groups in relation to the zones with the limited regime of land use and the territories that are formed around them are analyzed. The classification of territorial restrictions by groups and their territorial restrictions on land use is given.

It is established that in the current legislative and regulatory framework there is no classification of regime-forming objects that form restrictions on land use. The list of restrictions on land use, land plots, as well as the list of territorial zones do not contain a complete list of possible regime-forming objects in land use, which needs to be clarified and supplemented.

The list of restrictions on the use of land (land plots) and territorial zones is analyzed on the example of the territories of water bodies in accordance with current legislation. It is established that the existing information on restrictions on land use (land plots) on the example of water bodies, which is reflected on the Public Cadastral Map of Ukraine, is characterized by conditional (visual) reflection, which creates conflicts and abuses in determining such restrictions.

Keywords: *classification, regime-forming object, restrictions on land use, territories of water bodies.*

Formulation of the problem. The main purpose of establishing restrictions on land use is the realization of human rights to an environment conducive to its health and well-being through the provision of balanced socio-economic development. Restrictions on the rights and freedoms of the individual are allowed only in cases provided by law, in the interests of national security, public order, protection of morals, public health, rights and freedoms of others [1].

By consolidating the rights of ownership and use of land, the state does not fully ensure the proper establishment of restrictions and classification of regime-forming objects. After all, the current legislation in Ukraine related to the restriction of property rights and other land rights is in the process of formation. In particular, it does not contain a balanced set of legal norms that would determine the nature and objectives of restrictions, including encumbrances on land rights, their types, grounds for establishing and enforcing restrictions on property rights and other rights to land. Resolving this problem is one of the foundations for the formation of safe and rational use of land resources.

Analysis of recent research and publications. Research related to the establishment of restrictions and classification of regime-forming objects was conducted by domestic scholars of legal and economic fields. Such a combination is expedient, as the legal consequences of this process are considered in the works of the legal direction, and on the other hand, the economic and environmental losses in the use of land resources are considered. Noteworthy are the scientific works of the

legal profile, namely: Bezsmertna N.V., Shcherbiak Y.V., Andreitsev V.I. and others. In particular, Bezsmertna N.V. explored the legal nature of subjective property rights, restrictions and encumbrances of this right in existing legislation. It stipulates that the encumbrance should be understood as the external right of third parties, which prevents the owner of the thing freely or to fully exercise their powers [2].

Shcherbiak Y.V. and Andreitsev V.I. investigated the legal institution of transfer of ownership of land to citizens, given the restrictions on these land plots, and scientifically substantiated this process. Also Andreitsev V.I. considered the constitutional and legal encumbrances on the use of land ownership [3].

The works of scientists who are at the same time scientists of economic and land management profile deserve attention. In particular, Babmindra D.I., Dobriak paid attention to the study of problems related to restrictions and burdens in agricultural land use in terms of their impact on the use and protection of land resources in administrative-territorial entities. They substantiate the scientific and methodological approaches to the assessment of restrictions and burdens, which are established through the formation of protection and sanitary protection zones, sanitary protection zones and zones of special land use regime [4].

Dorosh J.M. and Tretiak A.M. scientifically substantiated the concepts of “restrictions on land use” and “encumbrances on land use” in terms of economic and legal categories. Taking into account the previous research of scientists and the analysis of the legislation on the formation of restrictions, they proved the need to distinguish between the above concepts and proposed their author's definition [5].

Dorosh J.M. and Dorosh OS proposed to improve the classification of restrictions and regime-forming objects in land use by types and species. They proposed methodological approaches to the assessment of lost income and compensation for losses and damages caused by restrictions on land use [6].

The work of scientists is quite capacious, but given the significant changes in environmental and land legislation in recent years, there is a need for a scientific basis for the classification of regime-forming objects and restrictions on land use.

The purpose of the study is to form scientific approaches to the classification of regime-forming objects and restrictions on land use (land plots) on the example of water bodies.

Results of research and discussion. The use of property according to the Basic Law of Ukraine may not harm the interests of citizens, society, worsen the environmental situation and natural qualities of the land (Article 41) [7]. In addition, everyone is obliged not to harm nature, cultural heritage, to compensate for the damage caused by them (Article 66) [7]. Therefore, there can be no absolute right without established obligations, which give rise to restrictions on property rights under current law. The norms of current legislation that may form restrictions on land use include land, civil, environmental, urban planning legislation and their bylaws, standards, norms and rules. According to the listed legal norms, restrictions on land use may apply to the territory of regime-forming objects, to zones, as well as to land plots located both on the territories of regime-forming objects and in zones formed by such objects. The basis for the formation of restrictions on land use is an object, which by its purpose or characteristics requires a special regime of use or protection from the impact of related landowners and land users. Hence the term mode-forming object.

Dorosh J.M. and Dorosh O.S. proposed to classify the restrictions by the respective groups in relation to the zones with the limited regime of land use and the territories of the regime-forming objects that are formed around them. The following groups of territorial restrictions on land use include [6]: Group I - territories of regime-forming objects with internal functional zones and zones with limited land use regime formed around them; Group II - territories with limited land use regime with internal functional zones, around which zones with limited land use regime are not formed; Group III - territories with limited land use regime, around which zones with limited land use regime are not formed; Group IV - regime-forming objects

around which zones with limited land use regime are formed (Fig. 1).

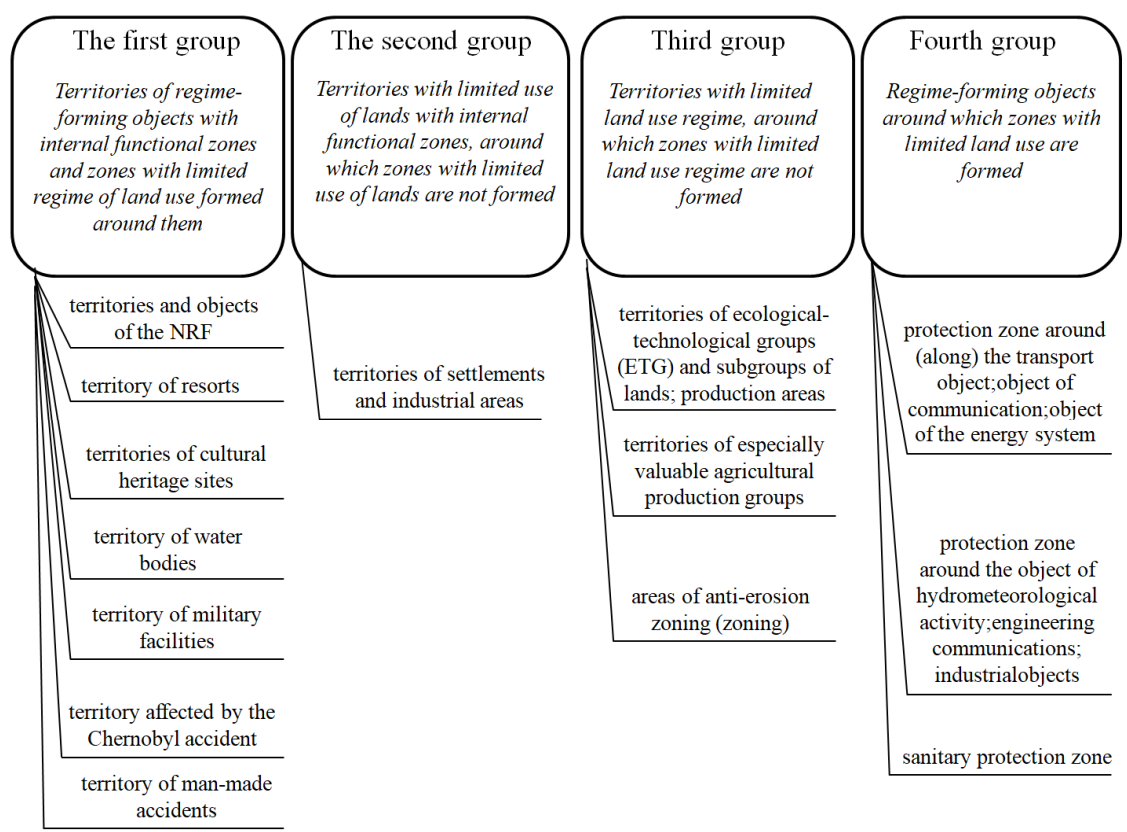


Fig. 1. Classification of territorial restrictions by groups and their territorial restrictions on land use.

Formed on the basis of the source [6]

The next gradation of groups of territories with limited land use should be the division by their functional zones. As an example of division, let's take the first group, which includes “water bodies”, to specify the restrictions in it. The following restrictions are set on the territory of water bodies in accordance with legislative and regulatory acts: water protection zone within which coastal protection strips are allocated; zones of sanitary protection of water objects in the areas of water intake for centralized water supply, medical and health needs; diversion lanes, etc.

Given the above, we can group these restrictions on the territories of water bodies of the first group of territories of regime-forming objects with internal functional zones and zones with limited use of land formed around them (Table 1).

Tabke 1.

List of restrictions on the use of land (land plots) on the example of water bodies in accordance with applicable law

The first group. (territories of regime-forming objects with internal functional zones and zones with limited regime use of lands formed around them)			Regulations on the basis of which the territories of regime-forming objects were determined
Territories of water bodies			
Water protection zone			<i>Water Code of Ukraine (Article 87), Land Code of Ukraine (Article 58), Resolution of the Cabinet of Ministers of 08.05.1996 № 486</i>
Coastal protection strip	Coastal protection strips along river banks and around water bodies	for small rivers, streams and streams up to 3 hectares	<i>Water Code of Ukraine (Article 88), Land Code of Ukraine (Article 60)</i>
		for medium rivers, reservoirs and ponds over 3 hectares	
		for large rivers, reservoirs and lakes	
	Coastal protection strips along the seas and around sea bays and estuaries		
	Beach area		
Sanitary protection zones of water bodies in the areas of water intake for centralized water supply			<i>Water Code of Ukraine (Article 93), Land Code of Ukraine (Article 113)</i>
	The first belt (strict mode)		<i>Resolution of the Cabinet of Ministers of December 18, 1998 № 2024</i>
	Second belt (restrictions and observations)		
	Third belt (restrictions and observations)		

Diversion lanes	Drainage strips for the needs of operation and protection against pollution, damage and destruction of main, inter-farm and other canals on irrigation and drainage systems, hydraulic and hydrometric structures, as well as reservoirs and dams on rivers		<i>Water Code of Ukraine (Article 91), Land Code of Ukraine Art. 63), Resolution of the Cabinet of Ministers of April 14, 1997 № 347</i>
	Coastal strips of waterways		

Formed on the basis of sources [8, 9, 10, 11, 12]

This example shows that information about the water regime-forming object is concentrated in many laws, regulations, norms and rules. In part, the information related to water-forming objects in the legislative acts is duplicated and complements each other regarding the water protection zone, the coastal protection strip and the drainage strip. However, the zone of sanitary protection of water bodies under the Land and Water Codes of Ukraine does not belong to the water protection zone. According to the resolution of the Cabinet of Ministers of Ukraine of 08.05.1996 №486 paragraph 4 clearly states that “*within the water protection zones are allocated lands of coastal protection strips and drainage strips with a special regime of their use in accordance with Articles 88-91 of the Water Code of Ukraine*” [9]. However, another Resolution of the Cabinet of Ministers of Ukraine of 18.12.1998 №2024 “On the legal regime of sanitary protection zones of water bodies” paragraph 4 established “*Sanitary protection zone of surface and groundwater bodies are part of water protection zones and is divided into three zones special regime*” [11].

According to the Resolution of the Cabinet of Ministers of Ukraine of 17.10.2012 № 1051 as amended on 28.07.2021 № 821 Annex 6 “List of restrictions on the use of land and land” Zone of sanitary protection of water bodies and Water Protection Zone are generally on the same gradation of division according to the code of the list of restrictions. (*Zone of sanitary protection of sources and objects of*

centralized drinking water supply on 02.01. And Water protection zone on 05.01.) [13]. Note that the name *Zone of sanitary protection of water bodies* is no longer found in the above-mentioned “List of restrictions on land use and land” but retains the division by zones of special use, which corresponds to the *Zone of sanitary protection of water bodies* in accordance with the Cabinet of Ministers from 18.12.1998 № 2024 [11].

Similarly, in the Resolution of the Cabinet of Ministers of Ukraine dated 17.10.2012 № 1051 as amended on 28.07.2021 №821 Annex 2 “List of territorial zones (groups of objects of the State Land Cadastre) Sanitary protection zone (008), Water protection zones (011) are again on the same gradation of the division of territorial zones (groups of objects) [13]. Also, the Coastal Protection Zone (012) has been assigned to a separate gradation of the division of territorial zones (groups of objects), which according to the Land and Water Codes should be part of the Water Protection Zones. Thus, in addition to the inconsistency of the gradation of division specified in the current legislation on *water protection zones*, there is also a difference in gradation between the List of Territorial Zones and the List of Restrictions on Land Use and Land Plots from the Resolution of the Cabinet of Ministers of Ukraine dated 17.10.2012 № 1051 [13].

Note that the “List of restrictions on the use of land and land” and “List of territorial zones (groups of objects of the State Land Cadastre)” contained in the Resolution of the Cabinet of Ministers of Ukraine dated 17.10.2012 № 1051 as amended on 28.07.2021 №821, are mandatory components of land management documentation to be entered into the State Land Cadastre (Fig. 2) [13].

<p><i>The list of restrictions on the use of land (land plots) has been formed in accordance with the current legislation</i></p>	<p><i>The existing list of restrictions on land use in accordance with the resolution of the Cabinet of Ministers № 1051 Annex 2.6</i></p>
<p>Water protection zone</p> <ul style="list-style-type: none"> Coastal protection strip <ul style="list-style-type: none"> Coastal protection strips along river banks and around water bodies along the water's edge Coastal protection strips along the seas and around sea bays and estuaries Beach area Zones of sanitary protection of water objects in the areas of water intake for centralized water supply, medical and health needs <ul style="list-style-type: none"> The first belt (strict mode) Second belt (restrictions) Third belt (observations) Diversion lanes <ul style="list-style-type: none"> Drainage strips for the needs of operation and protection against pollution, damage and destruction of irrigation and drainage systems Coastal strips of waterways 	<ul style="list-style-type: none"> 02 Sanitary protection zone <ul style="list-style-type: none"> 02.01 Sanitary protection zone of springs and objects of central drinking water supply <ul style="list-style-type: none"> 02.01.1 The first belt (strict regime) 02.01.2 Second belt (restriction) 02.01.3 Third belt (observation) 05 Water protection restriction <ul style="list-style-type: none"> 05.01 Water protection zone 05.02 Coastal protection strip along rivers, around water bodies and on islands 05.03 Coastal protection strip along seas, bays and estuaries and on islands in inland waters 05.04 Coastal strip of waterways 05.05 Diversion lane 05.06 Beach area

Fig. 2. List of restrictions on the use of land (land plots) and territorial zones on the example of water bodies

Formed on the basis of sources [8, 9, 10, 11, 12, 13]

Conclusions. It is established that the current legislative and regulatory acts of Ukraine do not contain an agreed system of legal norms for determining the regime-forming objects and burdens in land use. The example of the division by functional zones of the “territory of water bodies” to specify the restrictions in it revealed inaccuracies in existing regulations, differences in terminology, reference to the relevant functional zones.

Information on restrictions on the use of land and regime-forming objects on the example of water bodies, which is displayed on the information portal of the Public Cadastral Map of Ukraine, is characterized by insufficient information about the

object of restriction and has a conditional (visual) display that needs clarification. This current situation creates conflicts and abuses in determining the limitations of regime-forming objects.

References

1. Dorosh Y. M., Dorosh O. S. (2017). Formuvannia obmezhen ta obtiazhen u zemlekorystuvanni. Navchalnyi posibnyk. Kherson. Hrin D.S. 650.

2. Bezsmertna N. V. (2005). Obmezhennia ta obtiazhennia prava vlasnosti v zakonodavstvi Ukrainy. Pravo Ukrainy. 1. 103-105.

3. Andreitsev V. I. (2004). Konstytutsiino – pravovi obtiazhennia vykorystannia prav vlasnosti na zemliu. Konkurentsii. 3. 37-41.

4. Dobriak D. S., Babmindra D. I. (2006). Ekoloho-ekonomichni zasady reformuvannia zemlekorystuvannia v rynkovykh umovakh [Ecological and economic principles of land use reform in market conditions]. Urozhai. 336.

5. Dorosh Y. M., Tretiak A. V. (2016). Naukove obgruntuvannia sutnosti poniat “obmezhennia u vykorystanni zemel” i “obtiazhen prav na zemelnu dilianku”. Zemleustrii, kadastr i monitorynh zemel. 3. 40-46. doi : <http://dx.doi.org/10.31548/zemleustriy2016.03.040>

6. Dorosh Y. M., Dorosh O. S. (2016). Teoretyko-metodolohichni zasady formuvannia obmezhen u vykorystanni zemel ta obtiazhen prav na zemelni dilianky [Theoretical and methodological principles of land use restrictions and encumbrances on land rights]. Monohrafiia. Hrin D.S. 656.

7. Konstytutsiia Ukrainy № 254k/96-VR stanom na 01.01.2020 r. Available at : <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

8. Zemelnyi kodeks Ukrainy № 2768-III stanom na 26.11.2021 r. Available at : <https://zakon.rada.gov.ua/laws/show/2768-14>

9. Vodnyi kodeks Ukrainy № 213/95-VR stanom na 02.10.2021 r. Available at : <https://zakon.rada.gov.ua/laws/show/213/95-%D0%B2%D1%80#Text>

10. Postanova Kabinetu Ministriv Ukrainy “Pro zatverdzhennia Poriadku vyznachennia rozmiriv i mezh vodookhoronnykh zon ta rezhymu vedennia

hospodarskoi diialnosti v nykh” № 486-96-p stanom na 24.07.2021 r. Available at : <https://zakon.rada.gov.ua/laws/show/486-96-%D0%BF#Text>

11. Postanova Kabinetu Ministriv Ukrainy “Pro pravovyi rezhym zon sanitarnoi okhorony vodnykh obiektiv” № 2024-98-p stanom na 17.09.2020 r. Available at : <https://zakon.rada.gov.ua/laws/show/2024-98-%D0%BF#Text>

12. Postanova Kabinetu Ministriv Ukrainy “Pro zatverdzhennia Poriadku skladannia pasportiv richok i Poriadku ustanovlennia berehovykh smuh vodnykh shliakhiv ta korystuvannia nymy” № 347-97-p stanom na 17.09.2020 r. Available at : <https://zakon.rada.gov.ua/laws/show/347-97-%D0%BF#Text>

13. Postanova Kabinetu Ministriv Ukrainy “Pro zatverdzhennia Poriadku vedennia Derzhavnoho zemelnogo kadastru” № 1051b-2012-p stanom na 11.08.2021 r. Available at : <https://zakon.rada.gov.ua/laws/show/1051%D0%B1-2012-%D0%BF#Text>

Дорош Й.М., Барвінський А.В., Харитоненко Р.А., Братінова М.В.

НАУКОВІ ПІДХОДИ ЩОДО ФОРМУВАННЯ КЛАСИФІКАЦІЇ РЕЖИМОУТВОРЮЮЧИХ ОБ’ЄКТІВ ТА ОБМЕЖЕНЬ (НА ПРИКЛАДІ ТЕРИТОРІЙ ВОДНИХ ОБ’ЄКТІВ)

Розглянуто наукові підходи щодо ролі режимоутворюючих об’єктів на формування обмежень у використанні земель, які досліджувалися науковцями економічного та юридичного профілів. Проаналізовано підходи щодо формування класифікатору режимоутворюючих об’єктів за певними відповідними групами по відношенню до зон з обмеженим режимом використання земель та територій, які формуються навколо них. Наведено класифікацію територіальних обмежень за групами та їх територіальними обмеженнями у використанні земель.

Встановлено, що в діючій законодавчій та нормативно-правовій базі відсутня класифікація режимоутворюючих об’єктів, які формують обмеження у використанні земель. Наведений перелік обмежень щодо використання земель, земельних ділянок, а також перелік територіальних зон

не містять повного переліку можливих режимоутворюючих об'єктів у використанні земель, що потребує уточнення та доповнення.

Проаналізовано перелік обмежень щодо використання земель (земельних ділянок) та територіальних зон на прикладі територій водних об'єктів згідно діючого законодавства. Встановлено, що існуюча інформація про обмеження щодо використання земель (земельних ділянок) на прикладі територій водних об'єктів, яка відображена на Публічній кадастровій карті України, характеризується умовним (візуальним) відображенням, що породжує колізії та зловживання при визначенні такого обмеження.

Ключові слова: *класифікація, режимоутворюючий об'єкт, обмеження у використанні земель, території водних об'єктів.*

Дорош И.М., Барвинский А.В., Харитоненко Р.А., Братинова М.В.

НАУЧНЫЕ ПОДХОДЫ ПО ФОРМИРОВАНИЮ КЛАССИФИКАЦИИ РЕЖИМООБРАЗУЮЩИХ ОБЪЕКТОВ И ОГРАНИЧЕНИЙ (НА ПРИМЕРЕ ТЕРРИТОРИЙ ВОДНЫХ ОБЪЕКТОВ)

Рассмотрены научные подходы к роли режимообразующих объектов для формирования ограничений в использовании земель, которые исследовались учеными экономического и юридического профилей. Проанализированы подходы к формированию классификатора режимообразующих объектов по определенным соответствующим группам по отношению к зонам с ограниченным режимом использования земель и территорий, которые формируются вокруг них. Приведена классификация территориальных ограничений по группам и их территориальным ограничениям в использовании земель.

Установлено, что в действующей законодательной и нормативно правовой базе отсутствует классификация режимообразующих объектов, формирующих ограничения в использовании земель. Приведенный перечень ограничений использования земель, земельных участков, а также перечень территориальных зон не содержит полного перечня возможных

режимообразующих объектов в использовании земель, что требует уточнения и дополнения.

Проанализирован перечень ограничений использования земель (земельных участков) и территориальных зон на примере территорий водных объектов согласно действующему законодательству. Установлено, что существующая информация об ограничении использования земель (земельных участков) на примере территорий водных объектов, которая отражена на Публичной кадастровой карте Украины, характеризуется условным (визуальным) отражением, что порождает коллизии и злоупотребления при определении такого ограничения.

Ключевые слова: *классификация, режимообразующий объект, ограничение использования земель, территории водных объектов.*