

El agua en las **Constituciones de Europa**



En el marco del proceso constitucional que actualmente se desarrolla en Chile, presentamos un especial sobre “Agua y Constitución”, en que identificaremos cómo el tema del agua se recoge en las Constituciones del mundo.

Este número está dedicado a Europa, revisando la situación de los 43 países que integran este continente. Para visualizar de un modo más comprensivo e integral la materia que nos convoca, nos focalizaremos en tres grandes ámbitos: agua propiamente tal, saneamiento y referencias explícitas y generales a los recursos naturales, de modo de detectar las principales disposiciones que, a su respecto, tienen los textos constituciones vigentes en Europa. Se excluyen de esta enunciación las menciones y regulaciones relativas al medio ambiente, por exceder la extensión y el carácter más acotado y particular de este documento.

Se han utilizado las versiones oficiales y algunas traducciones de las respectivas Cartas Fundamentales, incluyéndose un hipervínculo en cada caso.

ÍNDICE

I. Presentación esquemática de la regulación del agua en las Constituciones de Europa	4
II. Tratamiento del agua, saneamiento y recursos naturales (en general) en las Constituciones de Europa	8
1. Albania	8
2. Alemania	8
3. Andorra.....	9
4. Austria.....	9
5. Belarús	10
6. Bélgica	11
7. Bosnia y Herzegovina	11
8. Bulgaria.....	11
9. Chipre	11
10. Croacia.....	12
11. Dinamarca.....	12
12. Eslovaquia.....	13
13. Eslovenia	13
14. España	14
15. Estonia.....	14
16. Finlandia.....	15
17. Francia.....	15
18. Grecia	15
19. Hungría	15
20. Irlanda	16
21. Islandia.....	16
22. Italia.....	16
23. Letonia.....	17
24. Liechtenstein	17
25. Lituania	17
26. Luxemburgo.....	17
27. Macedonia del Norte	18

28. Malta..... 18

29. Mónaco 18

30. Montenegro 19

31. Noruega..... 19

32. Países Bajos 19

33. Polonia..... 20

34. Portugal..... 20

35. Reino Unido de Gran Bretaña e Irlanda del Norte 21

36. República Checa 21

37. República de Moldova 22

38. Rumania..... 22

39. San Marino..... 22

40. Serbia 23

41. Suecia 23

42. Suiza 23

43. Ucrania 25

I. Presentación esquemática de la regulación del agua en las Constituciones de Europa

La siguiente tabla muestra los aspectos más relevantes detectados en el análisis de la regulación constitucional del agua en Europa. Para facilitar la sistematización de las disposiciones que luego se transcriben literalmente, hemos categorizado nuestros hallazgos, distinguiendo los países cuyas Constituciones:

- i) no tienen ninguna referencia específica al agua;
- ii) incluyen el agua, normalmente de modo implícito, en preceptos más genéricos sobre recursos naturales;
- iii) precisan la naturaleza jurídica del agua;
- iv) aluden al carácter o función territorial del agua (integrante del territorio del Estado);
- v) contienen mandatos o prescripciones sobre el uso racional, sostenible, sustentable, equitativo o equilibrado del agua;
- vi) reconocen explícitamente el acceso al agua para uso personal y doméstico y/o saneamiento como derechos humanos;
- vii) consagran la propiedad privada sobre los derechos de aprovechamiento de aguas; y,
- viii) otras alusiones relacionadas.

País	Sin menciones específicas al agua	Preceptos genéricos sobre recursos naturales	Naturaleza jurídica del agua	Carácter o función territorial del agua	Uso racional, sostenible, equitativo o equilibrado del agua	Reconocimiento explícito de derechos humanos al agua y/o saneamiento	Propiedad privada sobre derechos de aprovechamiento de aguas	Otros
Albania					<input checked="" type="checkbox"/>			
Alemania		<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>
Andorra		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>			
Austria								<input checked="" type="checkbox"/>
Belarús		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					
Bélgica	<input checked="" type="checkbox"/>							
Bosnia y Herzegovina	<input checked="" type="checkbox"/>							
Bulgaria		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					
Chipre		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					
Croacia		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					
Dinamarca	<input checked="" type="checkbox"/>							
Eslovaquia		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>
Eslovenia		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
España		<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>
Estonia		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>				
Finlandia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						
Francia	<input checked="" type="checkbox"/>							
Grecia								<input checked="" type="checkbox"/>

País	Sin menciones específicas al agua	Preceptos genéricos sobre recursos naturales	Naturaleza jurídica del agua	Carácter o función territorial del agua	Uso racional, sostenible, equitativo o equilibrado del agua	Reconocimiento explícito de derechos humanos al agua y/o saneamiento	Propiedad privada sobre derechos de aprovechamiento de aguas	Otros
Hungría		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/> *
Irlanda		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>
Islandia								<input checked="" type="checkbox"/>
Italia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						
Letonia	<input checked="" type="checkbox"/>							
Liechtenstein			<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>
Lituania		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>
Luxemburgo	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						
Macedonia del Norte	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						
Malta		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>
Mónaco	<input checked="" type="checkbox"/>							
Montenegro	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						
Noruega	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						
Países Bajos								<input checked="" type="checkbox"/>
Polonia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						
Portugal		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
Reino Unido de Gran Bretaña e Irlanda del Norte								
República Checa	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						
República de Moldova		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					
Rumania		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					

País	Sin menciones específicas al agua	Preceptos genéricos sobre recursos naturales	Naturaleza jurídica del agua	Carácter o función territorial del agua	Uso racional, sostenible, equitativo o equilibrado del agua	Reconocimiento explícito de derechos humanos al agua y/o saneamiento	Propiedad privada sobre derechos de aprovechamiento de aguas	Otros
San Marino	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						
Serbia		<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>
Suecia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						
Suiza		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
Ucrania		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>

Fuente: elaboración propia, en base a la Constitución de cada país.

*En el caso de la Constitución de Hungría, cabe precisar que, si bien no hay un reconocimiento explícito del derecho humano al agua, sí se dispone que, para promover la aplicación efectiva del derecho a la salud física y mental, el Estado garantiza, entre otros, el acceso a agua potable.

II. Tratamiento del agua, saneamiento y recursos naturales (en general) en las Constituciones de Europa

1. Albania

The Constitution of Albania

“Article 59. 1. The state, within its constitutional powers and the means at its disposal, aims to supplement private initiative and responsibility with:

[...] f) rational exploitation of forests, waters, pastures and other natural resources on the basis of the principle of sustainable development; [...]”

2. Alemania

Ley Fundamental de la República Federal de Alemania

“Artículo 15 [Socialización]. Con fines de socialización, el suelo, los recursos naturales y los medios de producción pueden ser situados bajo un régimen de propiedad colectiva o de otras formas de gestión colectiva por una ley que fije el modo y el monto de la indemnización. Con respecto a la indemnización se aplicará por analogía lo establecido en el artículo 14, apartado 3, frases 3 y 4.”

“Artículo 20a [Protección de los fundamentales naturales de la vida y de los animales]. El Estado protegerá, teniendo en cuenta también su responsabilidad con las generaciones futuras, dentro del marco del orden constitucional, los fundamentos naturales de la vida y los animales a través de la legislación y, de acuerdo con la ley y el Derecho, por medio de los poderes ejecutivo y judicial.”

“Artículo 72 [Legislación concurrente de la Federación, concepto]. [...] (3) Si la Federación ha hecho uso de su competencia legislativa, los Länder pueden adoptar por ley regulaciones divergentes sobre:

[...] 2. la protección de la naturaleza y el cuidado del paisaje (con exclusión de los principios generales de la protección de la naturaleza, de la protección de las especies o de la protección de la naturaleza del mar);

[...] 5. el régimen hidráulico (con exclusión de las regulaciones referidas a las sustancias e instalaciones); [...]”

“Artículo 74 [Legislación concurrente de la Federación]. (1) La legislación concurrente abarca las materias siguientes:

[...] 15. la transferencia de la tierra, de los recursos naturales y medios de producción a un régimen de propiedad colectiva u otras formas de economía colectiva;

[...] 17. el fomento de la producción agrícola y forestal (con exclusión del Derecho de concentración parcelaria), el aseguramiento del abastecimiento de alimentos, la importación y exportación de productos agrícolas, ganaderos y forestales, la pesca costera y de alta mar y la protección de las costas;

[...] 29. la protección de la naturaleza y el cuidado del paisaje;

[...] 32. el régimen hidráulico; [...]”

“Artículo 89 [Vías navegables federales]. (1) La Federación es propietaria de las anteriores vías navegables del Reich.

(2) La Federación administrará las vías navegables federales por medio de órganos propios. Se ocupará de las tareas estatales resultantes de la navegación interior que excedan el ámbito de un Land y de las de la navegación marítima que le sean transferidas por ley. La Federación podrá transferir a un Land, cuando le fuere solicitado y con carácter de administración delegada, la Administración de vías navegables ubicadas en el territorio de aquél. Cuando una vía navegable atraviese el territorio de varios Länder, la Federación la podrá delegar en el Land que propongan los Länder interesados.

(3) En la administración, la ampliación y la construcción de vías navegables se respetarán, de conformidad con los Länder, las necesidades de los cultivos regionales y del régimen hidráulico.”

3. Andorra

Constitución del Principado de Andorra

“Artículo 31. Es función del Estado velar por la utilización racional del suelo y de todos los recursos naturales, con la finalidad de garantizar a todos una calidad de vida digna, restablecer y mantener para las generaciones futuras un equilibrio ecológico racional en la atmósfera, el agua y la tierra y defender la flora y fauna autóctonas.”

“Artículo 80. 1. En el marco de la autonomía administrativa y financiera de los Comuns, sus competencias son delimitadas mediante ley calificada, al menos en las materias siguientes:

[...] g) Recursos naturales. [...]

[...] 2. En el marco de la potestad tributaria del Estado, la mencionada ley calificada determina las facultades económicas y fiscales de los Comuns para el ejercicio de sus competencias. Estas facultades se referirán, al menos, al aprovechamiento y explotación de los recursos naturales, a los tributos tradicionales y a las tasas por servicios comunales, autorizaciones administrativas, radicación de actividades comerciales, industriales y profesionales y propiedad inmobiliaria. [...]

4. Austria

Federal Constitution Law of Austria

“Article 10. (1) The Federation has powers of legislation and execution in the following matters:

[...] 9. traffic- system relating to the railways, aviation and shipping in so far as the last of these does not fall under Art. 11; motor traffic; matters, with exception of the highway police, which concern roads declared by federal law as Federal highways on account of their importance for transit traffic; river and navigation police in so far as these do not fall under Art. 11; the postal and telecommunications system; environmental compatibility evaluation for projects relating to these matters where material effects on the environment are to be anticipated;

10. mining; forestry, including drifting; water rights; control and conservation of waters for the safe diversion of floods or for shipping and raft transport; regulation of torrents; construction and maintenance of waterways;

regulation and standardization of electrical plants and establishments as well as safety measures in this field; provisions pertaining to electric power transmission in so far as the transmission extends over two or more provinces; matters pertaining to steam and other power-driven engines; surveying; [...]

“Article 11. (1) *In the following matters legislation is the business of the Federation, execution that of the provinces:*

[...] 5. sanitation;

6. inland shipping as regards shipping licences, shipping facilities and compulsory measures pertaining to such facilities in so far as it does not apply to the Danube, Lake Constance, Lake Neusiedl, and boundary stretches of other frontier waters; river and navigation police on inland waters with the exception of the Danube, Lake Constance, Lake Neusiedl, and boundary stretches of other frontier waters;

7. Environmental impact assessment for projects relating to these matters where material effects on the environment are to be anticipated; in so far as a need for the issue of uniform regulations is considered to exist, the approval of such projects. [...]”

“Article 15. [...] (4) *To what extent executive responsibility matters in the domain of the road police with the exception of local traffic police (Art. 118 para 3 sub-para 4) and the river and navigation police on the Danube, Lake Constance, Lake Neusiedl, and boundary stretches of other frontier waters, for areas of a municipality in which the police directorate of a province simultaneously is security authority of first instance, shall be assigned to the police directorate of the province, shall be prescribed in corresponding laws of the Federation and the province concerned. [...]*”

“Article 78d. (1) *Constabularies are armed or uniformed or otherwise militarily patterned units invested with tasks of a police character. In particular not to be counted among the constabularies are guard personnel established for the protection of certain branches of soil cultivation, such as agriculture and forestry (field, crops, and forest protection), for mining, hunting, fishing or other licensed water usages, market supervision officials, and fire brigades. [...]*”

“Article 102. [...] (2) *The following matters can within the framework of the constitutionally established sphere of competence be directly performed by federal authorities:*

[...] river and navigation police, the postal and telecommunications system, mining, Danube control and conservation, regulation of torrents, construction and maintenance of waterways, [...]”

5. Belarús

Constitution of the Republic of Belarus

“Article 13. *Property may be state-owned or private.*

[...] The mineral wealth, waters and forests are the exclusive property of the State. The land for agricultural use is the property of the State.

Law may determine facilities that are in the ownership of the State only, or establish a special procedure for their transfer to private ownership, or grant the State an exclusive right to conduct certain types of activity. [...]”

“Article 46. [...] The State shall supervise the rational utilisation of natural resources to protect and improve living conditions, and to preserve and restore the environment.”

“Article 97. The House of Representatives shall:

[...] 2) [...] environmental protection and rational utilisation of natural resources; [...]”

6. Bélgica

[The Belgian Constitution](#)

7. Bosnia y Herzegovina

[Constitution of Bosnia and Herzegovina](#)

8. Bulgaria

[Constitution of the Republic of Bulgaria](#)

“Art. 15. The Republic of Bulgaria shall ensure the protection and reproduction of the environment, the conservation of living Nature in all its variety, and the sensible utilization of the country's natural and other resources.”

“Art 18. (1) The State shall enjoy exclusive ownership rights over the underground resources; beaches and national thoroughfares, as well as over waters, forests and parks of national importance, and the natural and archaeological reserves established by law. [...]”

9. Chipre

[Constitution of the Republic of Cyprus](#)

“Article 23. 1. Every person, alone or jointly with others, has the right to acquire own, possess, enjoy or dispose of any movable or immovable property and has the right to respect for such right. The right of the Republic to underground water, minerals and antiquities is reserved. [...]”

“Article 25. [...] 3. As an exception to the aforesaid provisions of this Article a law may provide, if it is in the public interest, that certain enterprises of the nature of an essential public service or relating to the exploitation of sources of energy or other natural resources shall be carried out exclusively by the Republic or a municipal corporation or by a public corporate body created for the purpose by such law and administered under the control of the Republic, and having a capital which may be derived from public and private funds or from either such source only: [...]”

10. Croacia

Constitution of the Republic of Croatia

“Article 2. The sovereignty of the Republic of Croatia is inalienable, indivisible and non-transferable.

The sovereignty of the Republic of Croatia encompasses its land, rivers, lakes, canals, internal maritime waters, territorial sea, and all air space above these.

The Republic of Croatia, in accordance with international law, shall exercise sovereign rights and jurisdiction over the maritime zones and seabed of the Adriatic Sea outside its state territory up to the borders of neighbouring countries.

The Croatian Parliament and people shall directly, independently, and in compliance with the Constitution and law, decide upon:

- the regulation of economic, legal and political matters in the Republic of Croatia;*
- the preservation of natural and cultural wealth and use of the same;*
- association in alliances with other states. [...]”*

“Article 3. Freedom, equal rights, national and gender equality, peace-making, social justice, respect for human rights, inviolability of ownership, conservation of nature and the environment, the rule of law and a democratic multiparty system are the highest values of the constitutional order of the Republic of Croatia.”

“Article 50. In the interest of the Republic of Croatia, ownership may be restricted or rescinded by law, subject to indemnification equal to the market value of the pertinent property.

Free enterprise and property rights may be exceptionally restricted by law for the purposes of protecting the interests and security of the Republic of Croatia, nature and the human environment and human health.”

“Article 52. The sea, seashore, islands, waters, air space, mineral resources, and other natural assets, as well as land, forests, flora and fauna, other components of the natural environment, real estate and items of particular cultural, historical, economic or ecological significance which are specified by law to be of interest to the Republic of Croatia shall enjoy its special protection.

The manner in which any assets of interest to the Republic of Croatia may be used and exploited by holders of rights thereto and by their owners, as well as compensation for any restrictions as may be imposed thereon, shall be regulated by law.”

“Article 70. [...] Everyone shall, within the scope of their powers and activities, accord particular attention to the protection of human health, nature and the human environment.”

11. Dinamarca

Constitutional Act of Denmark

12. Eslovaquia

Constitución de la República de Eslovaquia

“Article 4. 1. Raw materials, caves, underground water, natural and thermal springs and streams are the property of the Slovak Republic. The Slovak Republic protects and develops these resources, and makes careful and effective use of mineral resources and natural heritage to the benefit of its citizens and subsequent generations.

2. The transport of water taken from water bodies located within the territory of the Slovak Republic outside the borders of the Slovak Republic by vehicles or pipeline is prohibited. This prohibition does not apply to water intended for personal use, drinking water put into consumer containers within the territory of the Slovak Republic and natural mineral water put into consumer containers within the territory of the Slovak Republic; nor to water provided for humanitarian help or assistance in states of emergency.

Details of conditions for transporting water for personal use or water provided for humanitarian help and assistance in states of emergency shall be stated in a specific Law.”

“Article 20. [...] (3) The ownership is binding. It shall not be misused causing injury to others or in contradiction with the public interests protected by the law. The exercise of right in property must not be detrimental to the health of other people, nature, cultural sites or the environment beyond the margin laid down by a law. [...]”

“Article 44. [...] 3. No one may endanger, or damage the environment, natural resources, and the cultural heritage beyond the extent laid down by law.

4. The state looks after a cautious use of natural resources, protection of agricultural and forest land, ecological balance, and effective environmental care, and provides for the protection of specified species of wild plants and animals.

[...] 6. The details of the rights and obligations according to paragraphs 1 to 5 shall be laid down by law.”

13. Eslovenia

Constitution of the Republic of Slovenia

“Article 70 [Public Good and Natural Resources]. Special rights to use a public good may be acquired, subject to conditions established by law.

The conditions under which natural resources may be exploited shall be established by law.

The law may provide that natural resources may also be exploited by foreign persons and shall establish the conditions for such exploitation.”

“Article 70a [Right to Drinking Water]. Everyone has the right to drinking water.

Water resources shall be a public good managed by the state.

As a priority and in a sustainable manner, water resources shall be used to supply the population with drinking water and water for household use and in this respect shall not be a market commodity.

The supply of the population with drinking water and water for household use shall be ensured by the state directly through self-governing local communities and on a notfor-profit basis."

"Article 73 [Protection of the Natural and Cultural Heritage]. Everyone is obliged in accordance with the law to protect natural sites of special interest, rarities, and cultural monuments.

The state and local communities shall promote the preservation of the natural and cultural heritage."

14. España

Constitución Española

"Artículo 45. [...] 2. Los poderes públicos velarán por la utilización racional de todos los recursos naturales, con el fin de proteger y mejorar la calidad de la vida y defender y restaurar el medio ambiente, apoyándose en la indispensable solidaridad colectiva.

3. Para quienes violen lo dispuesto en el apartado anterior, en los términos que la ley fije se establecerán sanciones penales o, en su caso, administrativas, así como la obligación de reparar el daño causado."

"Artículo 132. 1. La ley regulará el régimen jurídico de los bienes de dominio público y de los comunales, inspirándose en los principios de inalienabilidad, imprescriptibilidad e inembargabilidad, así como su desafectación.

2. Son bienes de dominio público estatal los que determine la ley y, en todo caso, la zona marítimo-terrestre, las playas, el mar territorial y los recursos naturales de la zona económica y la plataforma continental. [...]"

"Artículo 148. 1. Las Comunidades Autónomas podrán asumir competencias en las siguientes materias:

[...] 10.^a Los proyectos, construcción y explotación de los aprovechamientos hidráulicos, canales y regadíos de interés de la Comunidad Autónoma; las aguas minerales y termales.

11.^a La pesca en aguas interiores, el marisqueo y la acuicultura, la caza y la pesca fluvial. [...]"

"Artículo 149. 1. El Estado tiene competencia exclusiva sobre las siguientes materias:

[...] 22.^a La legislación, ordenación y concesión de recursos y aprovechamientos hidráulicos cuando las aguas discurran por más de una Comunidad Autónoma, y la autorización de las instalaciones eléctricas cuando su aprovechamiento afecte a otra Comunidad o el transporte de energía salga de su ámbito territorial. [...]"

15. Estonia

The Constitution of the Republic of Estonia

"§ 2. The land, territorial waters and airspace of Estonia constitute an inseparable and indivisible whole. [...]"

"§ 5. The natural wealth and resources of Estonia are national riches which must be used economically."

16. Finlandia

The Constitution of Finland

“Section 20. Responsibility for the environment

Nature and its biodiversity, the environment and the national heritage are the responsibility of everyone. [...].”

17. Francia

Constitution of the French Republic

18. Grecia

The Constitution of Greece

“Article 18. 1. The ownership and disposal of mines, quarries, caves, archaeological sites and treasures, mineral, running and underground waters and underground resources in general, shall be regulated by special laws.

2. The ownership, exploitation and administration of lagoons and large lakes, as well as the general disposal of areas resulting from the draining of such, shall be regulated by law. [...].”

“Article 106. 1. In order to consolidate social peace and protect the general interest, the State shall plan and coordinate economic activity in the Country, aiming at safeguarding the economic development of all sectors of the national economy. The State shall take all measures necessary to develop sources of national wealth in the atmosphere, in underground and underwater deposits, and to promote regional development and to further especially the economy of mountainous, insular and frontier areas. [...].”

19. Hungría

The Fundamental Law of Hungary

FOUNDATION

“Article P). (1) Natural resources, in particular arable land, forests and the reserves of water, biodiversity, in particular native plant and animal species, as well as cultural assets shall form the common heritage of the nation; it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations. [...].”

FREEDOM AND RESPONSIBILITY

“Article XX. (1) Everyone shall have the right to physical and mental health.

(2) Hungary shall promote the effective application of the right referred to in Paragraph (1) by an agriculture free of genetically modified organisms, by ensuring access to healthy food and drinking water, by organising

safety at work and healthcare provision, by supporting sports and regular physical exercise, as well as by ensuring the protection of the environment.”

THE STATE

PUBLIC FUNDS

“Article 38. (1) The property of the State and of local governments shall be national assets. The management and protection of national assets shall aim at serving public interest, meeting common needs and preserving natural resources, as well as at taking into account the needs of future generations. The requirements for preserving and protecting national assets, and for the responsible management of national assets shall be laid down in a cardinal Act. [...]”

20. Irlanda

Constitution of Ireland

“Article 10. 1. All natural resources, including the air and all forms of potential energy, within the jurisdiction of the Parliament and Government established by this Constitution and all royalties and franchises within that jurisdiction belong to the State subject to all estates and interests therein for the time being lawfully vested in any person or body.

2. All land and all mines, minerals and waters which belonged to Saorstát Éireann immediately before the coming into operation of this Constitution belong to the State to the same extent as they then belonged to Saorstát Éireann.

3. Provision may be made by law for the management of the property which belongs to the State by virtue of this Article and for the control of the alienation, whether temporary or permanent, of that property.

4. Provision may also be made by law for the management of land, mines, minerals and waters acquired by the State after the coming into operation of this Constitution and for the control of the alienation, whether temporary or permanent, of the land, mines, minerals and waters so acquired.”

21. Islandia

Constitution of the Republic of Iceland

“Article 21. The President of the Republic concludes treaties with other States. Unless approved by Althingi, he may not make such treaties if they entail renunciation of, or servitude on, territory or territorial waters, or if they require changes in the State system.”

22. Italia

Constitution of the Italian Republic

“Art. 9. The Republic promotes the development of culture and of scientific and technical research.

It safeguards natural landscape and the historical and artistic heritage of the Nation.”

23. Letonia

Constitution of the Republic of Latvia

24. Leichtenstein

Constitution of the Principality of Liechtenstein

“Article 21. The State shall have sovereign rights over bodies of water under the conditions set forth in the laws existing or to be enacted in this regard. The use, channelling of, and defence against the bodies of water shall be regulated by way of law and promoted, with due regard to the development of technology. Electricity rights shall be regulated by law.”

25. Lituania

Constitution of the Republic of Lithuania

“Article 47. The subsurface, as well as the internal waters, forests, parks, roads, and historical, archaeological, and cultural objects of state importance, shall belong by right of exclusive ownership to the Republic of Lithuania.

[...] In the Republic of Lithuania, foreign entities may acquire the ownership of land, internal waters, and forests according to a constitutional law. [...]”

“Article 54. The State shall take care of the protection of the natural environment, wildlife and plants, individual objects of nature, and areas of particular value, and shall supervise the sustainable use of natural resources, as well as their restoration and increase.

The destruction of land and subsurface, the pollution of water and air, radioactive impact on the environment, as well as the depletion of wildlife and plants, shall be prohibited by law.”

26. Luxemburgo

Constitution of the Grand Duchy of Luxembourg

“Article 11bis. The State guarantees the protection of the human and cultural environment, and works for the establishment of a durable equilibrium between the conservation of nature, in particular its capacity for renewal, and the satisfaction of the needs of present and future generations.”

27. Macedonia del Norte

Constitution of the Republic of North Macedonia

“Article 55. The freedom of the market and entrepreneurship is guaranteed. The Republic ensures an equal legal position to all parties in the market. The Republic takes measures against monopolistic positions and monopolistic conduct on the market. The freedom of the market and entrepreneurship can be restricted by law only for reasons of the defence of the Republic, protection of the natural and living environment or public health.”

“Article 56. All the natural resources of the Republic of Macedonia, the flora and fauna, amenities in common use, as well as the objects and buildings of particular cultural and historical value determined by law, are amenities of common interest for the Republic and enjoy particular protection. The Republic guarantees the protection, promotion and enhancement of the historical and artistic heritage of the Macedonian people and of the nationalities and the treasures of which it is composed regardless of their legal status. The law regulates the mode and conditions under which specific items of general interest for the Republic can be ceded for use.”

28. Malta

Constitution of the Republic of Malta

“1. [...] (2) The territories of Malta consist of those territories comprised in Malta immediately before the appointed day, including the territorial waters thereof, or of such territories and waters as Parliament may from time to time by law determine.”

“37. [...] (2) Nothing in this article shall be construed as affecting the making or operation of any law so far as it provides for the taking of possession or acquisition of property -

[...] (k) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon -

(i) of work of soil conservation or the conservation of other natural resources of any description or of war damage reconstruction; [...]

(3) Nothing in this article shall be construed as affecting the making or operation of any law so far as it provides for vesting in the Government of Malta the ownership of any underground minerals, water or antiquities. [...]”

“124. (1) In this Constitution, unless the context otherwise requires -

[...] “Malta” means the Island of Malta, the Island of Gozo and the other islands of the Maltese Archipelago, including the territorial waters thereof; [...]”

29. Mónaco

Constitution of the Principality of Monaco

30. Montenegro

Constitution of Montenegro

“Article 58. Property. [...] Natural wealth and goods in general use shall be owned by the state.”

“Article 59. Entrepreneurship. Freedom of entrepreneurship shall be guaranteed.

Freedom of entrepreneurship may be limited only if so necessary in order to protect the health of the people, environment, natural resources, cultural heritage or security and defense of Montenegro.”

“Article 78. Protection of natural and cultural heritage. Everyone shall be obliged to preserve natural and cultural heritage of general interest.

The state shall protect the national and cultural heritage.”

31. Noruega

Constitution of the Kingdom of Norway

“Article 112. Every person has the right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well.

In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to information on the state of the natural environment and on the effects of any encroachment on nature that is planned or carried out.

The authorities of the state shall take measures for the implementation of these principles.”

32. Países Bajos

Constitution of the Kingdom of the Netherlands

“Article 103. 1. The cases in which a state of emergency, as defined by Act of Parliament, may be declared by Royal Decree in order to maintain internal or external security shall be specified by Act of Parliament. The consequences of such a declaration shall be governed by Act of Parliament.

2. Such a declaration may depart from the provisions of the Constitution relating to the powers of the executive bodies of the provinces, municipalities, public bodies as referred to in Article 132a and water authorities (waterschappen), the basic rights laid down in Article 6, insofar as the exercise of the right contained in this Article other than in buildings and enclosed places is concerned, Articles 7, 8, 9 and 12, paragraphs 2 and 3, Article 13 and Article 113, paragraphs 1 and 3. [...]”

“Article 133. 1. Insofar as it is not otherwise provided by or pursuant to Act of Parliament, the establishment or dissolution of water authorities (waterschappen), the regulation of their duties and organisation together with the composition of their administrative organs shall be effected by provincial ordinance according to rules laid down by Act of Parliament.

2. The legislative and other powers of the administrative organs of water authorities and public access to their meetings shall be regulated by Act of Parliament.

3. Supervision of these administrative organs by provincial and other bodies shall be regulated by Act of Parliament. Decisions by the administrative organs may be quashed only if they conflict with the law or the public interest.”

33. Polonia

Constitution of the Republic of Poland

“Article 5. The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development.”

“Article 31. [...] 3. Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.”

34. Portugal

Constitution of the Portuguese Republic

“Article 5 (Territory). [...] 2. The law shall define the extent and limit of Portugal’s territorial waters, its exclusive economic zone and its rights to the adjacent seabeds. [...]”

“Article 9 (Fundamental tasks of the state). The fundamental tasks of the state are: [...]”

e) To protect and enhance the Portuguese people’s cultural heritage, defend nature and the environment, preserve natural resources and ensure correct town and country planning; [...]”

“Article 66 (Environment and quality of life). 1. Everyone has the right to a healthy and ecologically balanced human living environment and the duty to defend it.

2. In order to ensure the right to the environment within an overall framework of sustainable development, the state, acting via appropriate bodies and with the involvement and participation of citizens, is charged with:

[...] c) Creating and developing natural and recreational reserves and parks and classifying and protecting landscapes and places, in such a way as to guarantee the conservation of nature and the preservation of cultural values and assets that are of historic or artistic interest;

d) Promoting the rational use of natural resources, while safeguarding their ability to renew themselves and ecological stability, with respect for the principle of inter-generational solidarity; [...]”

“Article 80 (Fundamental principles). Society and the economy shall be organised on the basis of the following principles:

[...] d) The public ownership of natural resources and the means of production, in accordance with the collective interest; [...]"

"Article 81 (Priority duties of the state). *In the economic and social field the state is under a priority duty:*

[...] m) To adopt a national energy policy that preserves natural resources and the ecological balance, while promoting international cooperation in this domain;

n) To adopt a national water policy that uses, plans and manages water resources rationally."

"Article 84 (Public domain). *1. The following belong to the public domain:*

a) Territorial waters, together with their beds and the adjacent seabeds, and lakes, lagoons and watercourses that are suitable for navigation or flotation, together with their beds;

[...] c) Mineral deposits, mineral and medicinal water sources and natural subterranean cavities below the ground, save for rocks, ordinary earth and other materials that are habitually used for construction; [...]"

2. The law shall define what property forms part of the public state domain, the public domain of the autonomous regions and the public domain of local authorities, as well as the regime, terms and conditions of use and limits governing it."

"Article 93 (Agricultural policy objectives). *1. The objectives of the agricultural policy shall be:*

[...] d) To ensure the rational use and management of the soil and other natural resources and to maintain their regenerative capability; [...]"

"Article 164 (Executive legislative competence). *The Assembly of the Republic has exclusive competence to legislate on the following matters:*

[...] g) The definition of the limits of territorial waters, the exclusive economic zone and Portugal's rights to the adjacent seabeds; [...]"

"Article 227 (Powers of autonomous regions). *1. The autonomous regions are territorial legal persons and have the following powers, which shall be defined in their statutes:*

[...] s) To participate in the definition of policies concerning territorial waters, the exclusive economic zone and the adjacent seabeds; [...]"

35. Reino Unido de Gran Bretaña e Irlanda del Norte

Sin Constitución escrita.

36. República Checa

Constitution of the Czech Republic

"Article 7. *The state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth."*

37. República de Moldova

Constitution of the Republic of Moldova

“Article 37. Right to a Healthy Environment. [...] (2) The State shall guarantee to every individual the right to free access and dissemination of the trustworthy information regarding the state of the natural environment, living and working conditions and the quality of food and household appliances. [...]”

“Article 111. Autonomous Territorial - Unit of Găgăuzia. [...] (4) The soil, subsoil, waters, flora and fauna, as well as other natural resources on the territory of the autonomous territorial unit of Găgăuzia shall belong to the people of the Republic of Moldova and shall simultaneously constitute the economic basis of Găgăuzia. [...]”

“Article 126. Economy. [...] (2) The State must ensure:

[...] e) rational exploitation of the soil and other natural resources, in accordance with the national interests; [...]”

“Article 127. Property. [...] (3) Public property shall belong to the State or to the territorial-administrative units.

(4) All the underground resources, airspace, waters and forests used to the benefit of the public at large, natural resources of the economic regions and continental shelf, lines of communication, as well as other assets stipulated by law, shall constitute the exclusive objects of public property.”

38. Rumania

Constitution of the Republic of Romania

“Article 135. [...] (2) The State must secure:

[...] d) exploitation of natural resources, in conformity with national interests; [...]”

“Article 136. [...] (2) Public property is guaranteed and protected by the law, and belongs to the State or to territorial-administrative units.

(3) The mineral resources of public interest, the air, the waters with energy potential that can be used for national interests, the beaches, the territorial sea, the natural resources of the economic zone and the continental shelf, as well as other possessions established by the organic law, shall be public property exclusively.

(4) Public property is inalienable. Under the terms of the organic law, the public property can be managed by autonomous régies or public institutions, or can be granted or leased; also, it can be transferred for free usage to public utility institutions. [...] ”

39. San Marino

Declaration on the Citizen`s Rights and Fundamental Principles of San Marino Constitutional Order

“Article 10 (art. 10, Law N. 59/1974)

[...] The Republic shall protect its historical and artistic heritage, as well as its natural environment.”

40. Serbia

Constitution of the Republic of Serbia

“Article 83. [...] Entrepreneurship may be restricted by the Law, for the purpose of protection of people’s health, environment and natural goods and security of the Republic of Serbia.”

“Article 85. [...] Foreigners may obtain a concession right for natural resources and goods, as well as other rights stipulated by the Law.”

“Article 87. Natural resources, goods which are stipulated by the Law as goods of public interest and assets used by the bodies of the Republic of Serbia shall be the state assets. State assets shall include other things and rights, according to the Law.

Natural and legal entities may obtain particular rights on particular goods in public use, under the terms and in a manner stipulated by the Law.

Natural resources shall be utilised under the terms and in a manner stipulated by the Law.

Assets of autonomous provinces and local self-government units, method of its utilisation and management shall be stipulated by the Law.”

“Article 183. [...] Autonomous provinces shall, in accordance with the Law, regulate the matters of provincial interest in the following fields:

[...] 2. agriculture, water economy, forestry, hunting, fishery, tourism, catering, spas and health resorts, environmental protection, industry and craftsmanship, road, river and railway transport and road repairs, organising fairs and other economic events, [...]”

41. Suecia

Constitution of Sweden. Fundamental Laws and the Riksdag Act

Chapter 2. Fundamental rights and freedoms

“Art. 15. [...] Everyone shall have access to the natural environment in accordance with the right of public access, notwithstanding the above provisions.”

42. Suiza

Federal Constitution of the Swiss Confederation

“Art. 2. Aims. 1 The Swiss Confederation shall protect the liberty and rights of the people and safeguard the independence and security of the country.

2 It shall promote the common welfare, sustainable development, internal cohesion and cultural diversity of the country.

3 It shall ensure the greatest possible equality of opportunity among its citizens.

4 It is committed to the long term preservation of natural resources and to a just and peaceful international order.”

“Art. 48a. Declaration of general application and requirement of participation. 1 At the request of interested Cantons, the Confederation may declare intercantonal agreements to be generally binding or require Cantons to participate in intercantonal agreements in the following fields:

[...] f. waste water treatment; [...]”

“Art. 54. Foreign relations. 1 Foreign relations are the responsibility of the Confederation.

2 The Confederation shall ensure that the independence of Switzerland and its welfare is safeguarded; it shall in particular assist in the alleviation of need and poverty in the world and promote respect for human rights and democracy, the peaceful co-existence of peoples as well as the conservation of natural resources. [...]”

“Art. 73. Sustainable development. The Confederation and the Cantons shall endeavour to achieve a balanced and sustainable relationship between nature and its capacity to renew itself and the demands placed on it by the population.”

“Art. 74. Protection of the environment. 1 The Confederation shall legislate on the protection of the population and its natural environment against damage or nuisance. [...]”

“Art. 76. Water. 1 The Confederation shall within the scope of its powers ensure the economic use and the protection of water resources and provide protection against the harmful effects of water.

2 It shall lay down principles on the conservation and exploitation of water resources, the use of water for the production of energy and for cooling purposes, as well as on other measures affecting the water-cycle.

3 It shall legislate on water protection, on ensuring appropriate residual flow, on hydraulic engineering and the safety of dams, and on measures that influence precipitation.

4 The Cantons shall manage their water resources. They may levy charges for the use of water, subject to the limits imposed by federal legislation. The Confederation has the right to use water for its transport operations subject to payment of a charge and compensation.

5 The Confederation, in consultation with the Cantons concerned, shall decide on rights to international water resources and the charges for them. If Cantons are unable to agree on rights to intercantonal water resources, the Confederation shall decide.

6 The Confederation shall take account of the concerns of the Cantons where the water originates in fulfilling its duties.”

“Art. 78. Protection of natural and cultural heritage. 1 The protection of natural and cultural heritage is the responsibility of the Cantons.

2 In the fulfilment of its duties, the Confederation shall take account of concerns for the protection of natural and cultural heritage. It shall protect the countryside and places of architectural, historical, natural or cultural interest; it shall preserve such places intact if required to do so in the public interest.

3 It may support efforts made for the protection of natural and cultural heritage and acquire or preserve properties of national importance by contract or through compulsory purchase.

4 It shall legislate on the protection of animal and plant life and on the preservation of their natural habitats and their diversity. It shall protect endangered species from extinction.

5 Moors and wetlands of special beauty and national importance shall be preserved. No buildings may be built on them and no changes may be made to the land, except for the construction of facilities that serve the protection of the moors or wetlands or their continued use for agricultural purposes.”

“Art. 81a. Public transport. 1 The Confederation and the Cantons shall ensure that an adequate range of public transport services is provided on rail, roads, water and by cableway in all regions of the country. In doing so, appropriate account must be taken of the interests of rail freight transport. [...]”

“Art. 104. Agriculture. 1 The Confederation shall ensure that agricultural sector, by means of a sustainable and market oriented production policy, makes an essential contribution towards:

[...] b. the conservation of natural resources and the upkeep of the countryside; [...]”

“Art. 104a. Food security. In order to guarantee the supply of food to the population, the Confederation shall create the conditions required for:

[...] b. food production that is adapted to local conditions and which uses natural resources efficiently;

[...] e. using food in a way that conserves natural resources.”

43. Ucraina

Constitution of the Republic of Ukraine

“Article 13. The land, its subsoil, atmosphere, water and other natural resources within the territory of Ukraine, the natural resources of its continental shelf, and the exclusive (maritime) economic zone, are objects of the right of property of the Ukrainian people. Ownership rights on behalf of the Ukrainian people are exercised by bodies of state power and bodies of local self-government within the limits determined by this Constitution.

Every citizen has the right to make use of the natural objects of the people’s right of property in accordance with the law. [...]”

“Article 66. *Everyone is obliged not to harm nature, cultural heritage and to compensate for any damage he or she inflicted.”*

“Article 92. *The following are determined exclusively by the laws of Ukraine: [...]*

[...] 5) the principles of the use of natural resources, the exclusive (maritime) economic zone and the continental shelf, the exploration of outer space, the organisation and operation of power supply systems, transportation and communications; [...]”

“Article 137. *The Autonomous Republic of Crimea exercises normative regulation on the following issues:*

[...] 7) public transportation, roadways, water supply; [...]”

“Article 142. *The material and financial basis for local self-government is movable and immovable property, revenues of local budgets, other funds, land, natural resources owned by territorial communities of villages, settlements, cities, city districts, and also objects of their common property that are managed by district and oblast councils. [...]*”

*Todos los destacados son agregados.

***Selección, sistematización y revisión de textos: Daniela Rivera, Amalia Octavio y Nicole Ávila**

Boletín Huella Hídrica
N°24. Marzo 2021

Av. Libertador Bernardo
O'Higgins 340, Santiago. Chile

Edición general: Centro de
Derecho y Gestión de Aguas UC
(CDGA)

Cada artículo es
responsabilidad de su autor y
no refleja necesariamente la
opinión del CDGA