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Comparative EU constitutionalism

Constitutional principles

Constitutional principles – in general

- Sovereignty

- Popular sovereignty (HU, CZ, CRO)
- National sovereignty (PL, CRO)
- State sovereignty
- Legal sovereignty

- Democracy

- Rule of law

- Division of powers: modern forms

- Market economy (HU)

- Social justice (PL)

- Subsidiarity (CRO)

Hungary – popular sovereignty

- Art 2 (2) – all power is vested to the people (pouvoir constituant)
- Exercising sovereignty – indirectly (through elected representatives); directly (exceptional), in the EU (special, Art 2/A. §)

Croatia – popular sovereignty

- Art 1 (2) – power derives from and belongs to the people
- Art 1 (2) - Exercising sovereignty (indirectly - election); directly - referenda) – Arts 86, 141

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Czech Republic – popular sovereignty

- Art 2 (1) – implicitly (people - the source of all power)
- Art 2 (2) direct exercise – „a constitutional act may define”

Poland – popular sovereignty

- Not present explicitly; SEE National sovereignty

Poland – national sovereignty

Art 4, preamble of the Const

- Collective subject of state authority – nation
- Constitutional Tribunal
 - nation: community which is formed by the citizens of the Rep.
- Exercising sovereignty: directly, indirectly
- External aspect
 - Art 5
 - Art 90: delegation of competence; NOT a limitation; Constitutional Tribunal

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Poland – national sovereignty



Poland - national sovereignty

Constitutional Tribunal (2005)

‘The Constitution remains ‘the supreme law of the Republic of Poland’ in relation to all international agreements, including agreements delegating competence. In particular [...] there could not come about a delegating of competence to the extent that would cause Poland not to be able to function as a sovereign and democratic state. Furthermore, the limiting of the scope of delegating to ‘certain matters’ means a prohibition on delegating: firstly, the entirety of the competence of a given organ; secondly, competence in the entirety of matters in a given field; and thirdly, competence as to the essence of matters defining the management of a given organ of state authority’.

Croatia- national sovereignty

preamble (right to self-determination)

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Hungary – plebiscite and referenda

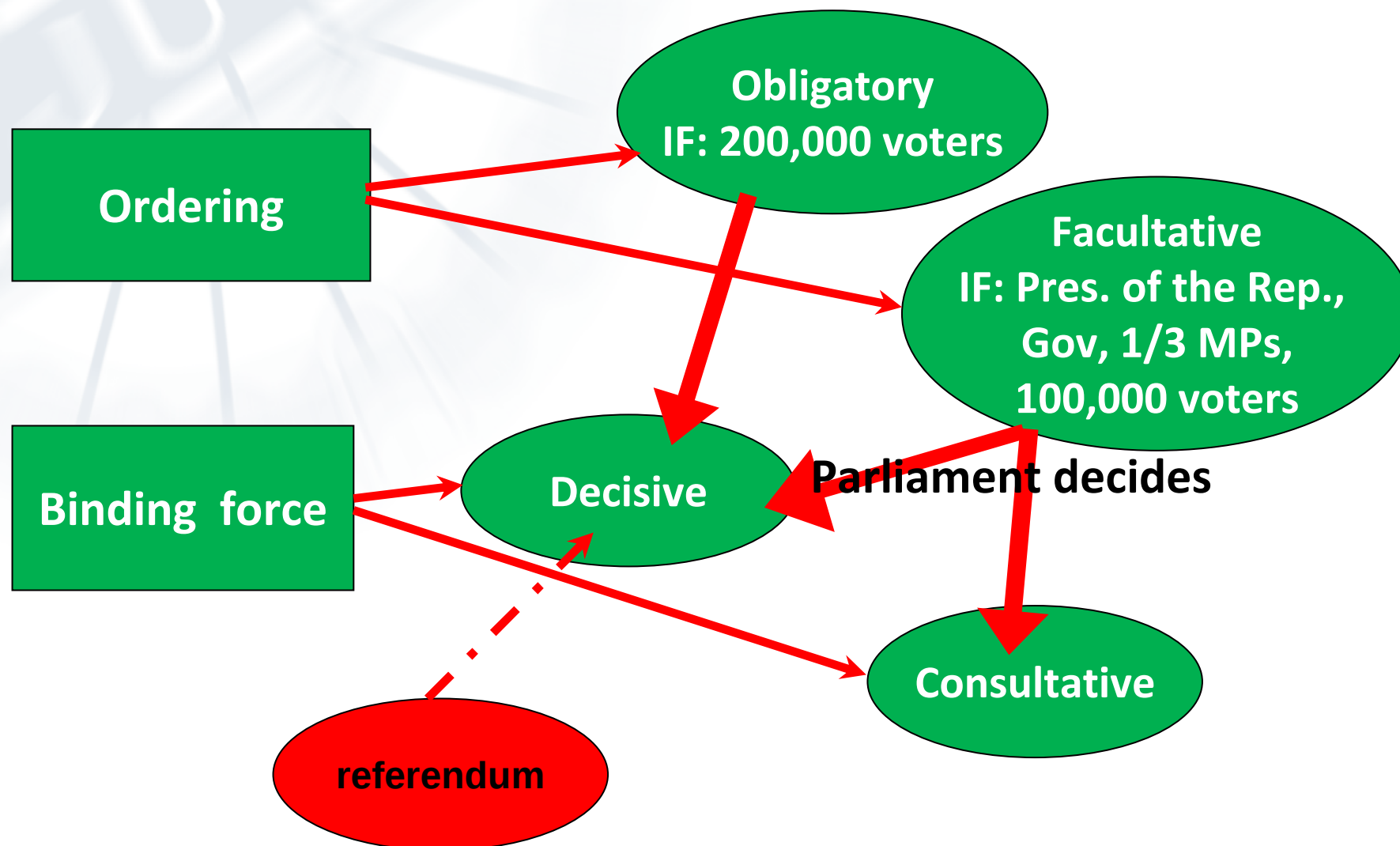
- Ordering the plebiscite
- Binding force
- Referendum

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Croatia – plebiscite and referenda

- Amendment of the Constitution by the Parl. and Pres. of the Rep (Art 86) - binding
- legislative referendum on a bill (Parl.); people's initiative on referendum; mandatory referendum (Art 141)

One state referendum

May 1991 on the proposal of the Pres. of the Rep.
CRO: sovereign/independent v. part of the Yugoslav Federation
84,94% votes, 93,94% opting FOR sovereignty and independence

Czech Republic – plebiscite and referenda

- „a constitutional act may define” (Const.Act 2002) – on the accession to the EU; local referenda are more often

Poland – plebiscite and referenda

- Amending the Constitution – confirmatory referendum (Art 235) if the amendment relates to Chapters I (Rep), II (HR's) or XII (Amending the Constitution)
- Nationwide referendum by Sejm or Pres. of the Rep and Senate (Art 125)
 - in matters of particular importance to the State,
 - including delegation of competences of state organs to international organisation/institution under international agreements (Art 90)

Hungary – state sovereignty

- autonomy; it is touched upon by the EU membership – Art 5 and 2/A
- independency; scopes of foreign affaires Art 2 (1) and 6 (rejection of war/force; co-operation; responsability; active part in EU unity)
- coat-of arms, flag, national anthem (Ch 14)

Croatia – state sovereignty

- territorial extension (Art 2)
- borders (Parl); protection (armed forces); citizenship; asylum
- special concern for citizens residing, living abroad (Art 10)
- coat-of arms. flag. national anthem

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Hungary – symbols



Duna
Tisza
Dráva
Száva



Tátra
Mátra
Fátra

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Croatia – symbols



Historical regions
Oldest known coat of arms
Republic of Dubrovnic
Dalmacia
Istria
Slavonia

Czech Republic – state sovereignty

- sovereign state (Art 1)
- transfer of sovereign rights to the EC/EU (Art 10a) – FOLLOWING SLIDE!!!
- symbols are not detailed (Act)

Poland – state sovereignty

- independence, defence (armed forces); delegation of competence to international organisation/institution is not a limitation
- coat-of arms, flag, national anthem (Art 28)

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Czech Republic – state sovereignty



Bohemia
Moravia
Silesia

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Poland – state sovereignty



Czech Republic – state sovereignty

Constitutional Court on Lisbon Treaty (2008)

The transfer of powers of bodies of the Czech Republic to an international organisation under Article 10a of the Constitution ‘cannot go so far as to violate the very essence of the republic as a democratic state governed by the rule of law, founded on respect for the rights and freedoms of human beings and of citizens, and to establish a change of the essential requirements of a democratic state governed by the rule of law (Article 9 paragraph 2 in connection with Article 1 paragraph 1 of the Constitution). If, on the basis of a transfer of powers, an international organisation could continue to change its powers at will, and independently of its members, i.e., if a constitutional competence (*Kompetenz-kompetenz*) were transferred to it, this would be a transfer inconsistent with Article 1 paragraph 1 and Article 10a of the Constitution.’

Czech Republic – state sovereignty

... ‘the limit for transfer of powers to an international organisation under Article 10a of the Constitution consists of the essential requirements of a sovereign, democratic state governed by the rule of law under Article 9 paragraph 2 and Article 1 paragraph 1 of the Constitution. However, today sovereignty can no longer be understood absolutely; sovereignty is more a practical matter. In this sense, the transfer of certain competences of the state, which arises from the free will of the sovereign and will continue to be exercised with the sovereign’s participation, in a manner that is agreed on in advance and is reviewable, is not a conceptual weakening of the sovereignty of a state, but, on the contrary, can lead to strengthening it within the joint actions of an integrated whole.’

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Czech Republic - CC



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Legal sovereignty

- rule of law
- supremacy of the Constitution prevails – basic law, binding for everyone – it is not explicitly declared (**CZ**)
- legal hierarchy
 - assesement by the Constitutional Court
 - international agreements
- equality before the law

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Democracy

„Government of / by / for the people”

- Power of the people (derives, emanates etc)
- Right to vote, plebiscite
- Parliament: popular representation / supreme body of state power
- Plurality, multi-party system, free establishment of parties, competitive election
- Principle of majority (simple, aggravated)
- Parliamentary republic (relationship bw Parliament and Government)
- Publicity and transparency of state

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Rule of law

- See legal sovereignty AND
- Exercising of public power is bound by law, limited, transparent, has democratic legitimacy
- Guarantee of HR's
- (Principle of division of powers)
- Principle of legal certainty
 - foreseeable, clear laws;
 - computability; prohibition of retroactivity
- Order of legislation

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Division of powers

- Horizontal: P – Gov - Courts
- Vertical: international organisation/EU – member state – federal state – states (lands, regions) – local self governments
- Temporal
- Constitutional: Parl with aggravated majority (**HU**) – Parl and people (**CRO**) – Constitution-making Assembly – Parls (Skandinavia) – Parl and states (USA) – two chambers (**CZ**)
- Based on decision-making: state level – political parties – associations

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Hungary – market economy

- Principle of the economic order
- Economic neutrality of the state
- The equality of private and public property, right to property
- Freedom of competition and freedom to enterprise
- Non-discrimination

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Poland – social justice

- Social state governed by rule of law
- Emphasises individual responsibility
- Purpose of the state
 - directing the processes of social development
 - ensuring impartial distribution of its fruits
- States need to undertake
 - political
 - environmental
 - social and other

} activities

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Croatia – subsidiarity

- 'At the allotment of the affairs, priority shall be given to the bodies which are closest to the citizens. ' (Art 134)
- Principle of closeness
- Principle of proportionality



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Thank you for your attention!