



**SUNICOP**

## Comparative governance in CEE



**SUNICOP**

## Teaching material

Chronowski Nóra – Drinóczi Tímea – Takács Tamara eds: Governmental Systems of Central and Eastern European States. Wolters Kluwer Polska - OFICYNA, Warszawa 2011

Tímea Drinóczi – József Petrétai: Constitutional principles of the judicial system and guarantees of the independence of judges

**Requirements:** active participation in the course; test

# Book



# Structure of the book

- Principles determining the governmental system
- The governmental system
  - Tasks and competences (constitution making; legislation; governance; unrelated and interrelated competences)
  - Mandate of the government; trust and responsibility
- Safeguarding the Constitution
  - Restrictions against the constitution changing power
  - Judicial review (constitutional)

# Basic values and rules - common

# Legal sovereignty

- rule of law
- supremacy of the Constitution prevails – basic law, binding for everyone
- legal hierarchy
  - assesement by the Constitutional Court
  - international agreements
- equality before the law

# 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

## 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;
  - prohibition of retroactivity
- Order of legislation

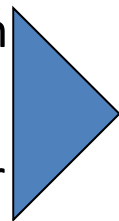
# Division of powers

- 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

# Governmental systems

# State structure – legal approach

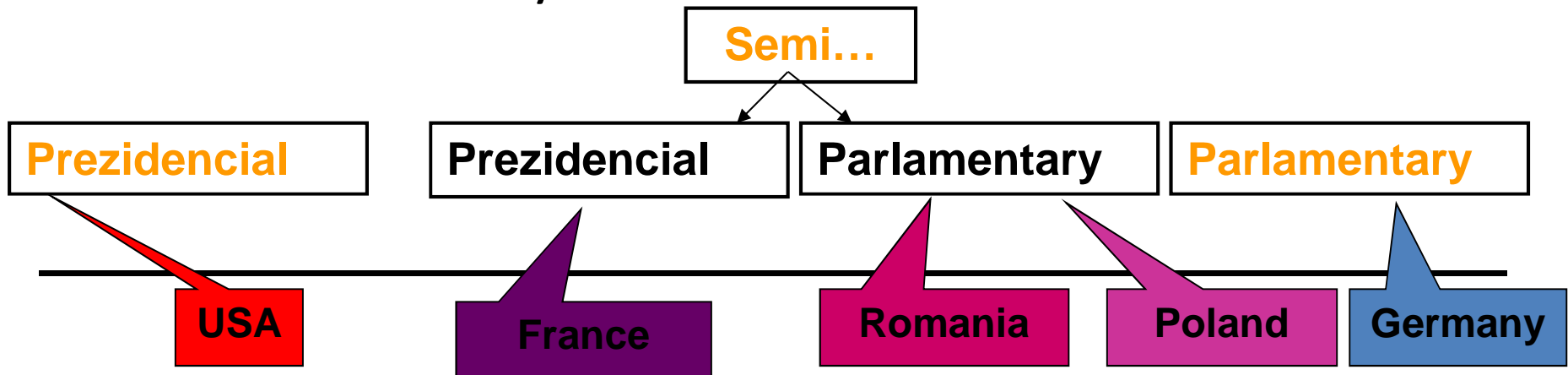
- State structure principles
  - Form of state (democracy, monarchy, dictatorship, aristocracy)
  - Form of government (parliamentary, presidential, etc. democracy)
  - Territorial structure (unitary, federal etc.)
  - Principles (rule of law, sovereignty, etc.)
- Structure of the state (state organs)
  - Functional approach
  - Organisational sociology
  - Static – dynamic approach
- System
  - Political system
  - Social system
  - Economic order



Constitutional order

# Governmental systems

- Governance
- Democratic governmental systems
  - Parliamentary system
  - Prezidencional system



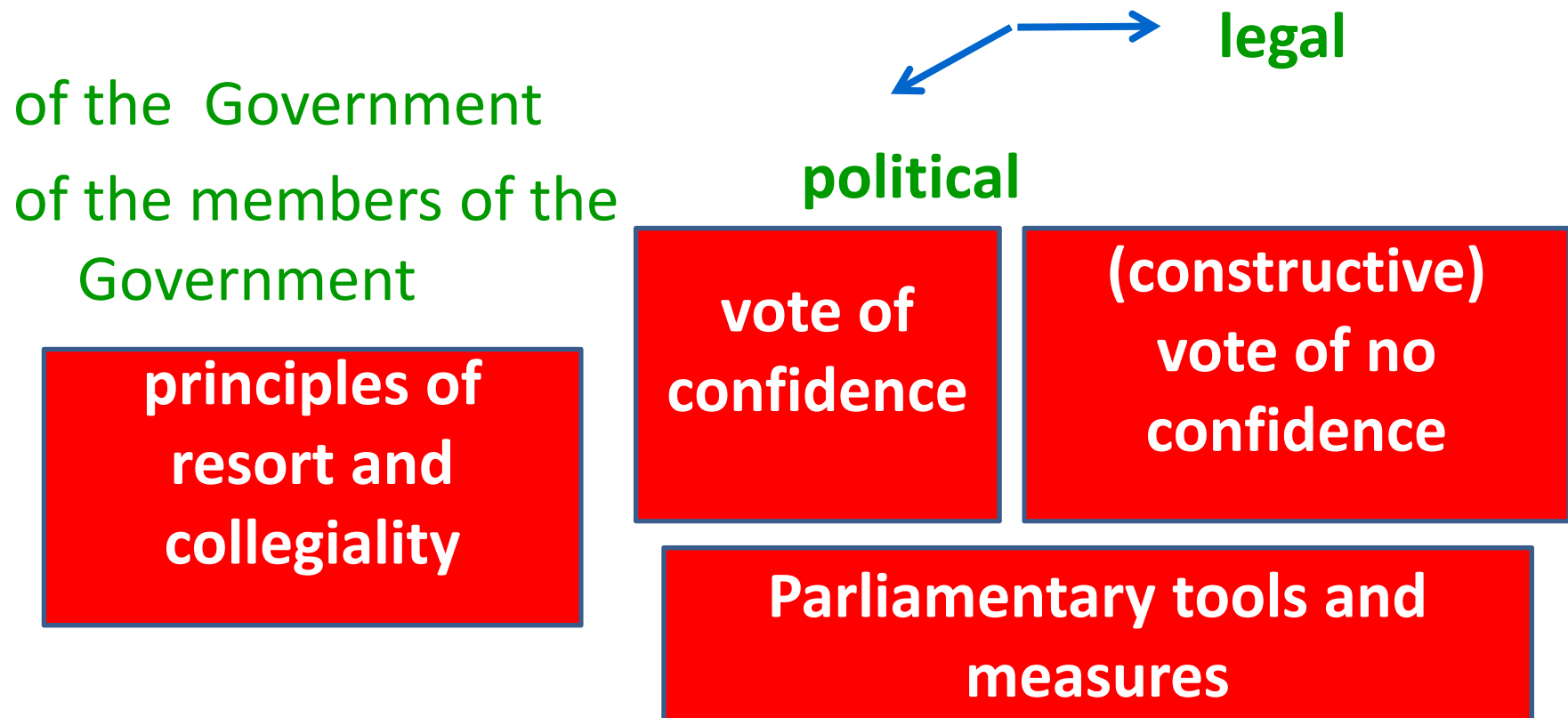
# Parliamentary governmental systems

- Close relationship between the Government and the parliamentary majority
- Government + parliamentary majority fronts the parliamentary minority (opposition)
- Government/its leader usually has the right to ask the head of state to dissolve the Parliament
- Dual executive (usually)
- The head of state can nominate the PM
- Outstanding role of PM
- Cabinet **OR** chancellar type

Germany, Hungary

# Trust and responsibility

## Responsibility in general



# Presidential governmental systems

- Separation of powers
- Constitutional power of the President
  - Executive (exclusively)
  - Head of state
  - PM
- Strict separation of legislative and executive
  - President – Parliament dependency question
  - Dissolution
  - Functional incompetency
- Cooperation of the legislative and executive
  - financials
  - Initiation of bills - veto
  - Informing obligation
  - Involvement of the Parliament
- Undivided office
- Checks and balances
- Diffusion of powers

USA

# Semi... governmental systems

Semi...

**semiprezidencial**

**French constitution**

**(1958)**

**Semiparliamentary/**

**Rational parliamentary/**

**Romania**

More power is  
attributed to President

# Evolution

- After the fall of the state socialist regimes (Croatia, Poland),

**BUT!**

**there is a moving towards the parliamentary system**

- Parliamentary system becomes instable; more powerful presidential rights

**BUT!**

**the head of state can gain real political power if its party affiliation is identical with that of the parliamentary majority**

## The semi... differs from

### prezidencial

- Government is lead by a PM – they are responsible to the Parliament

### parliamentary

- Head of state is elected directly
- More powerful head of state

## Problems of classification

**Russia:** teoretically semipresidential, **BUT!** significant presidential power (const.)

**Austria:** president is elected directly, **BUT!** s/he has no significant powers

# Safeguarding the constitution (inter alia: judiciary and constitutional courts)

# Judiciary



# Independence of judicial system

Legislature

Executive

Judicature

Division of power – horizontal level

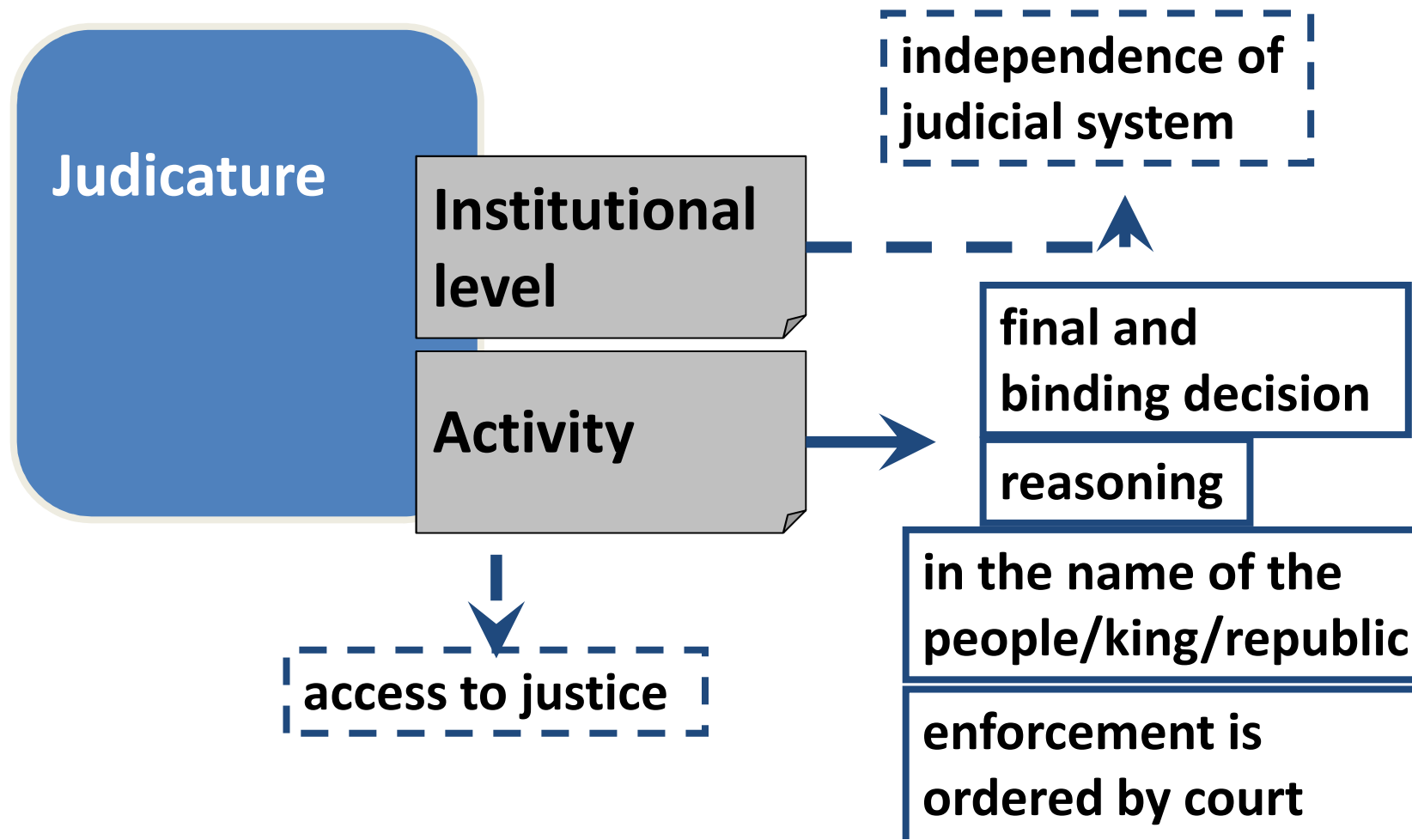
independence of judge!

administrative  
independence

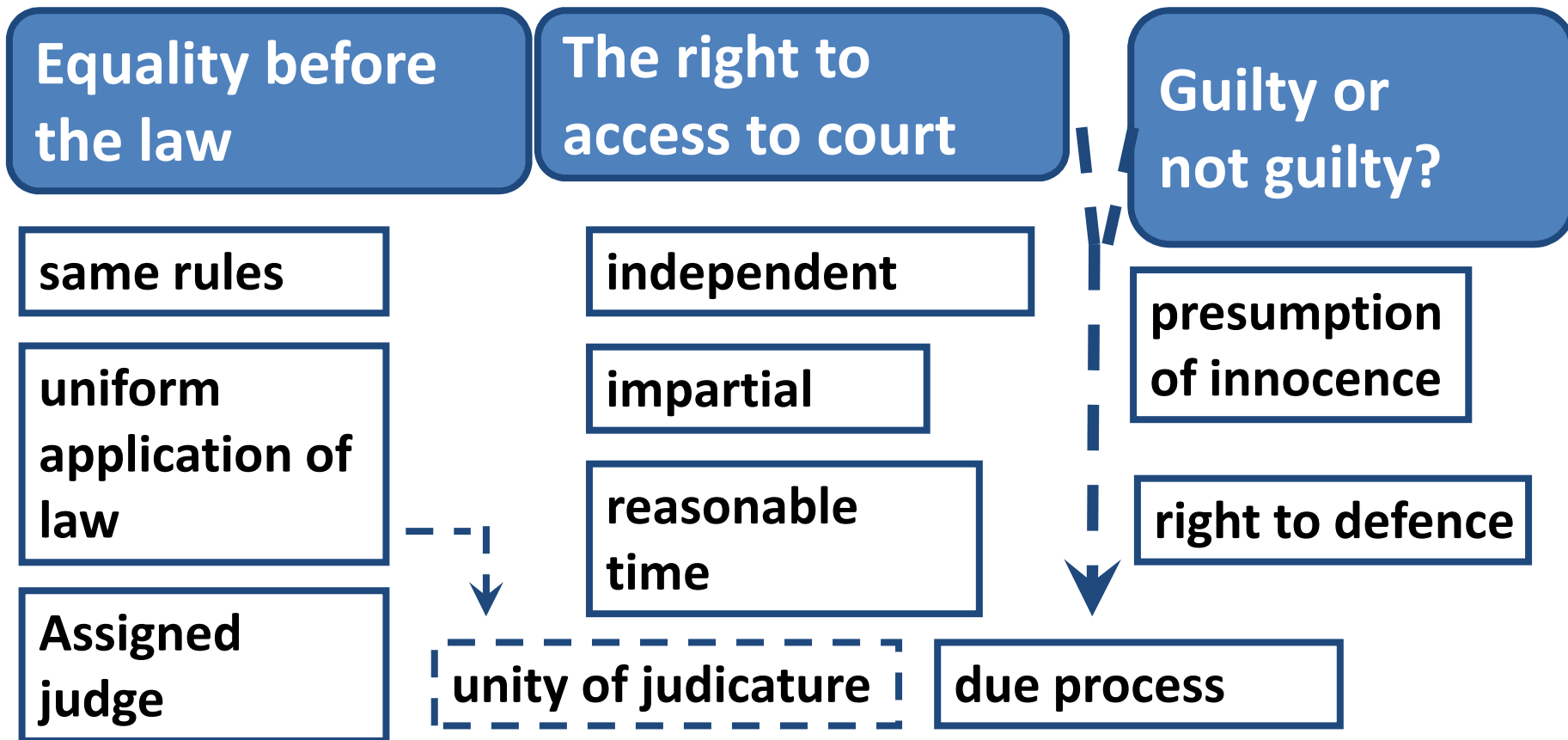
passing of judgement

careful  
legislation

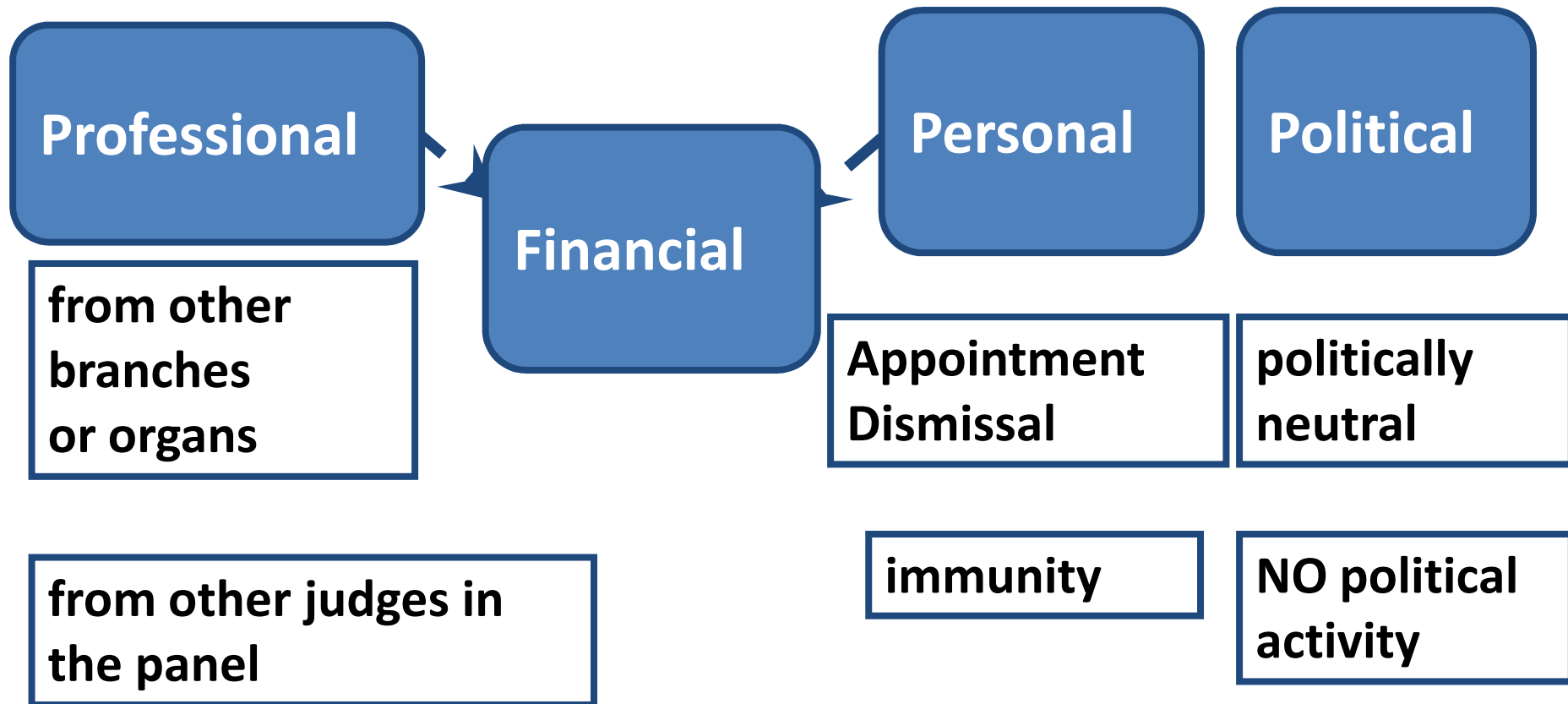
# Monopoly of administration of justice



# Access to justice (FR)



# Independence of judges



# Unity of judicature

## Organisational unity

formation of judicial system

ordinary courts

special courts

## Uniform application of law

~~extraordinary courts~~

# Due process (FR) and right to remedy (FR)

## Content elements of due process

- equality before the courts
  - impartiality
- right to a judgment
- publicity of court proceedings
- reasonable time
- reasoning
- mother tongue
- etc.

subject

limitation of due process

in itself

components

Possibility of the simplification of procedure



# Ensuring democratism and control

**Publicity**

**Involvement of lay persons**

**system of non-  
professional  
judges**

**jury trial**

# Judicial review/constitutional courts



	<b>„American type”</b>	<b>„European type”</b>
Development	<b>Marbury v. Madison</b>	<b>Austria (Kelsen)</b>
Structure	<b>decentralised</b>	<b>centarlised</b>
Decision on constitutional matters	<b>cases; complementary</b>	<b>Primary role (no case/it is not the case that is important)</b>
„Decision”	<b>set aside</b>	<b>annulment</b>
Effect	<b>inter partes, precedent</b>	<b>erga omnes</b>

# Competences of constitutional courts

## General

**Norm control (ex ante -  
posteriori; abstract -  
concrete)**

**Interpretation (abstract  
- concrete)**

**Protection of FR's**

## Special

**Conflict of ompetences**

**Harmony bw  
internatonal and  
national law**

**„Electoral disputes”  
Impeachment cases**

## Other

**Unconstitutionality by omission**

**Dissolution of political parties**

**Protection of rights of minority**

**etc.**

# Thank you for your attention!