



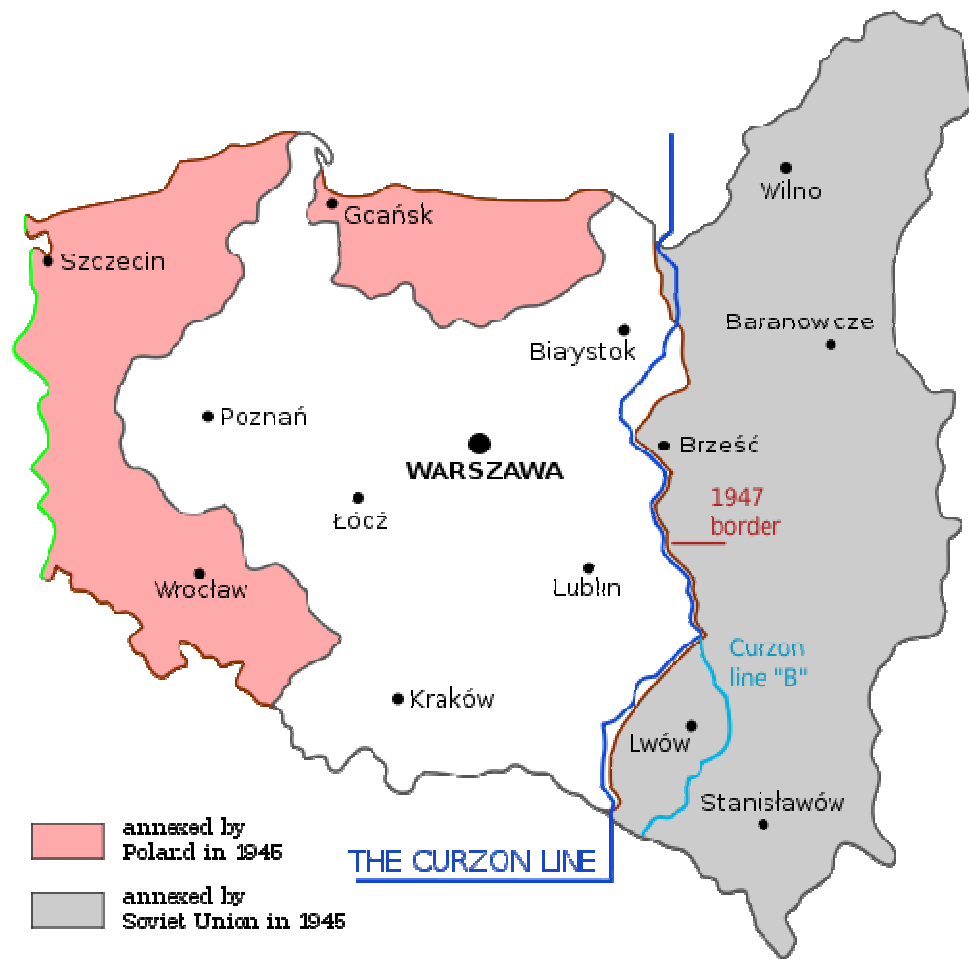
SUNICOP

Comparative governance in CEE



SUNICOP

Poland



Solidarity and Round Table Talks (1989)



Lech Wałęsa



**Bicameral legislature
President**

Popular sovereignty

Not present explicitly; SEE



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

National sovereignty

Art. 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.

Art. 90. The Republic of Poland may, by virtue of international agreements, delegate to an international organization or international institution the competence of organs of State authority in relation to certain matters.

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’.

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)

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)



Separation of powers

- Legislative power – Parliament (two chambers)
- Executive power – dualist type
 - Government and head of state
 - Government is responsible to the Parliament
 - head of state does not control the executive
 - co-operation: countersignature
- President of the Republic
 - elected by the people
 - competences are restricted (see above)

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

Executive

Chancellor type

- constructive vote of no confidence

Presidential system

- Prerogatives (no countersignature is needed)



**‘...eclecticism of legal regulations and their inconsistency’
(B.Banaszak)**

Electoral system

- 460 MPs; 4 years – proportional;
D'Hondt, 41 constituencies
- 100 senators – majoritarian,
40 constituencies

???

Sources of law: Ch III of the Constitution

- Constitution
- Acts  **Two types: with(out) prior consent (Art 89)**
- ratified international agreements and
community law 
**‘If an agreement, ratified by the Republic of Poland,
establishing an international organization so provides, the
laws established by it shall be applied directly and have
precedence in the event of a conflict of laws’ (Art 91)**
- **Regulations: scope of statutory authorisations
(authorised organ, scope of matters)**

Extraordinary sources of law: Ch XI of the Constitution

Situation

- martial law
- state of emergency
- state of natural disaster

Introduction

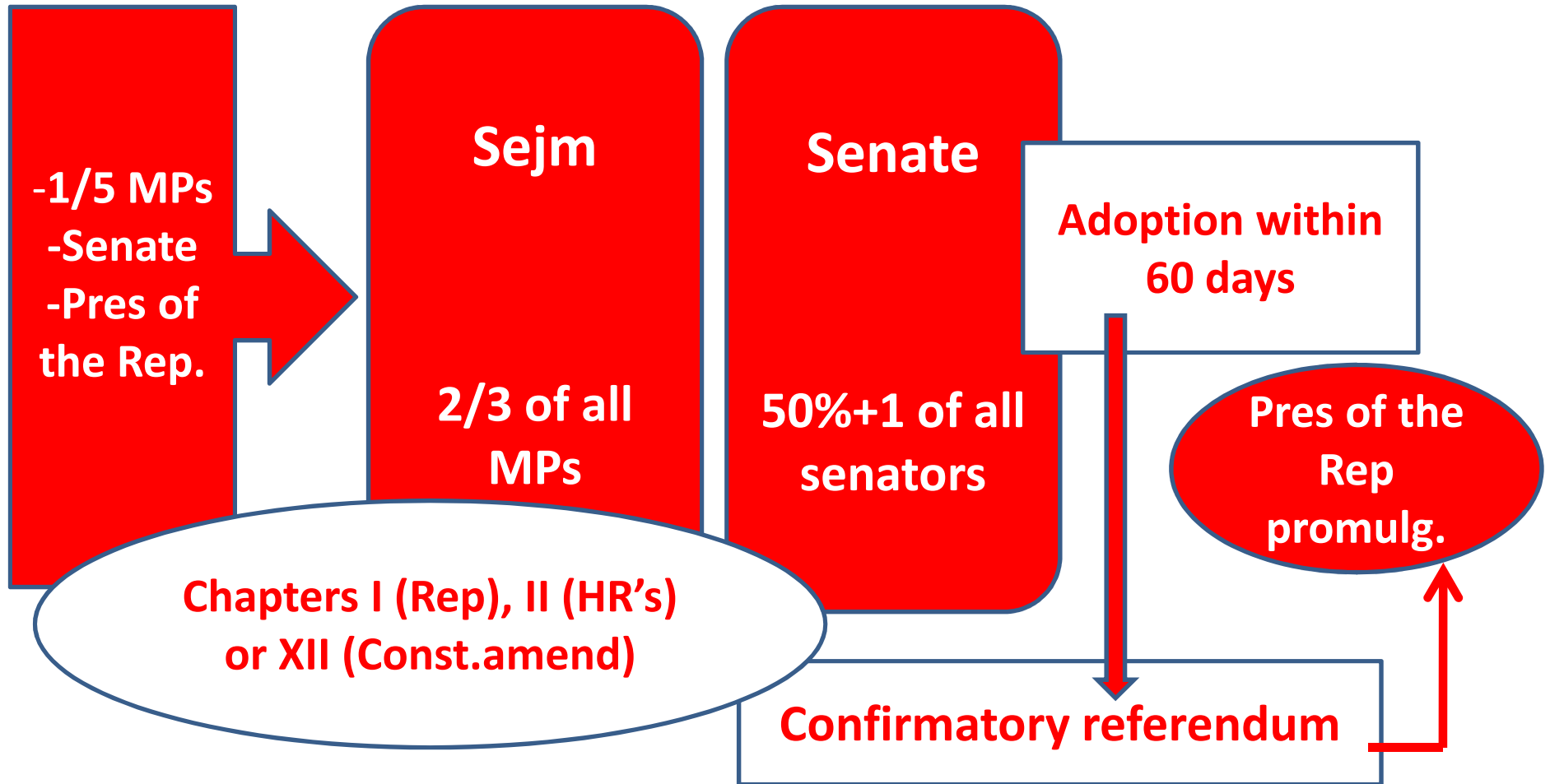
President of the Republic

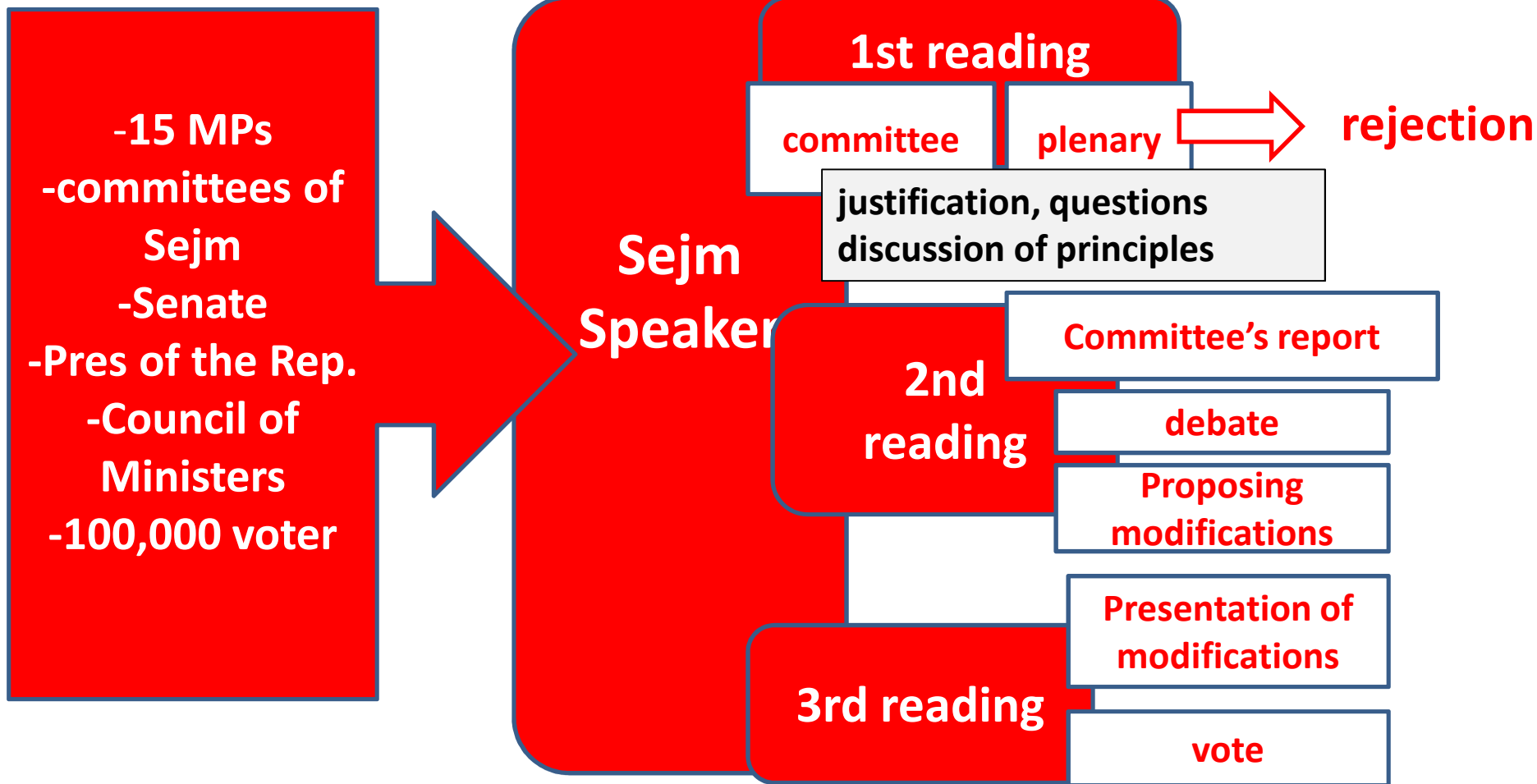
Council of Ministers



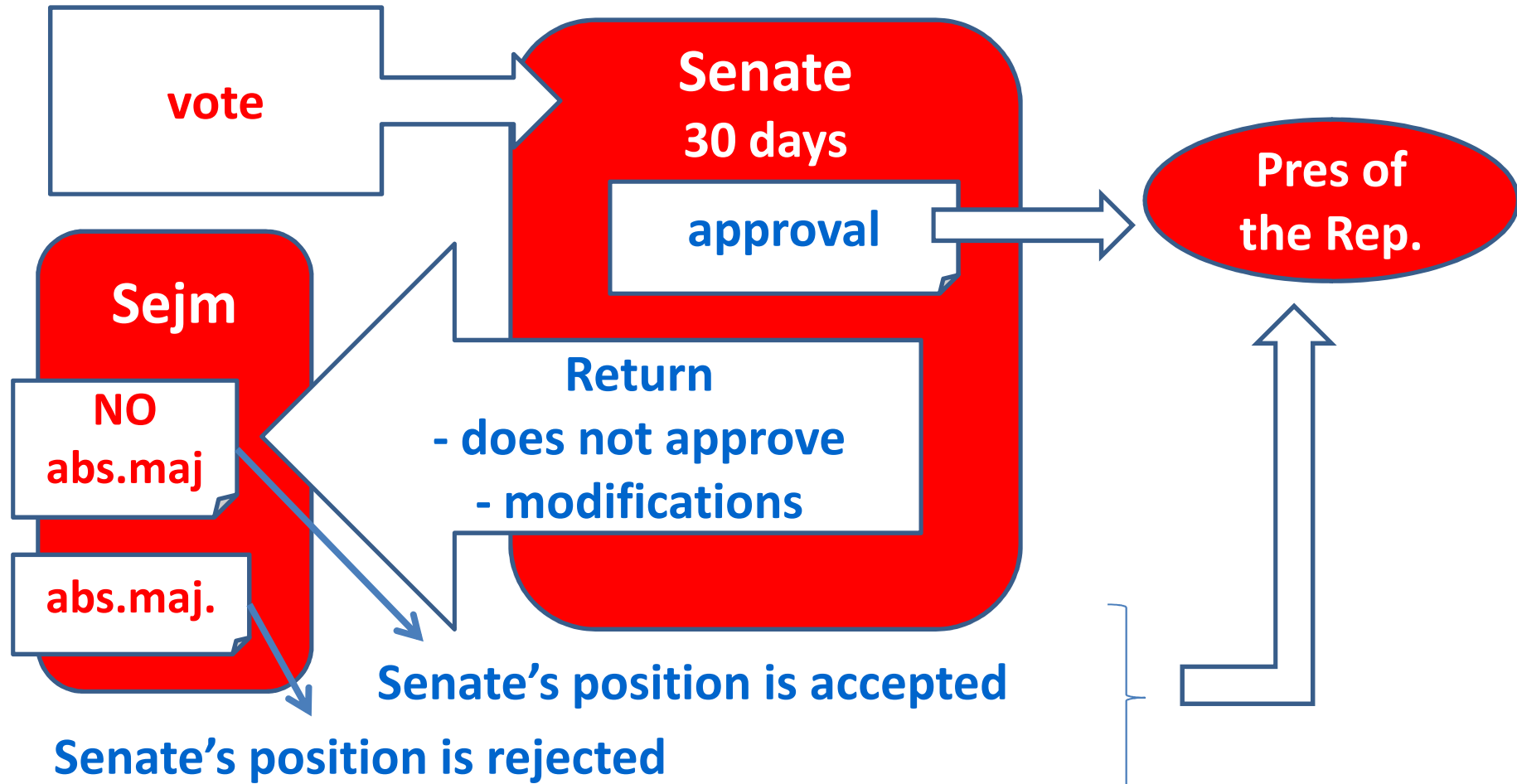
Regulation with a force of law

Constitution-making

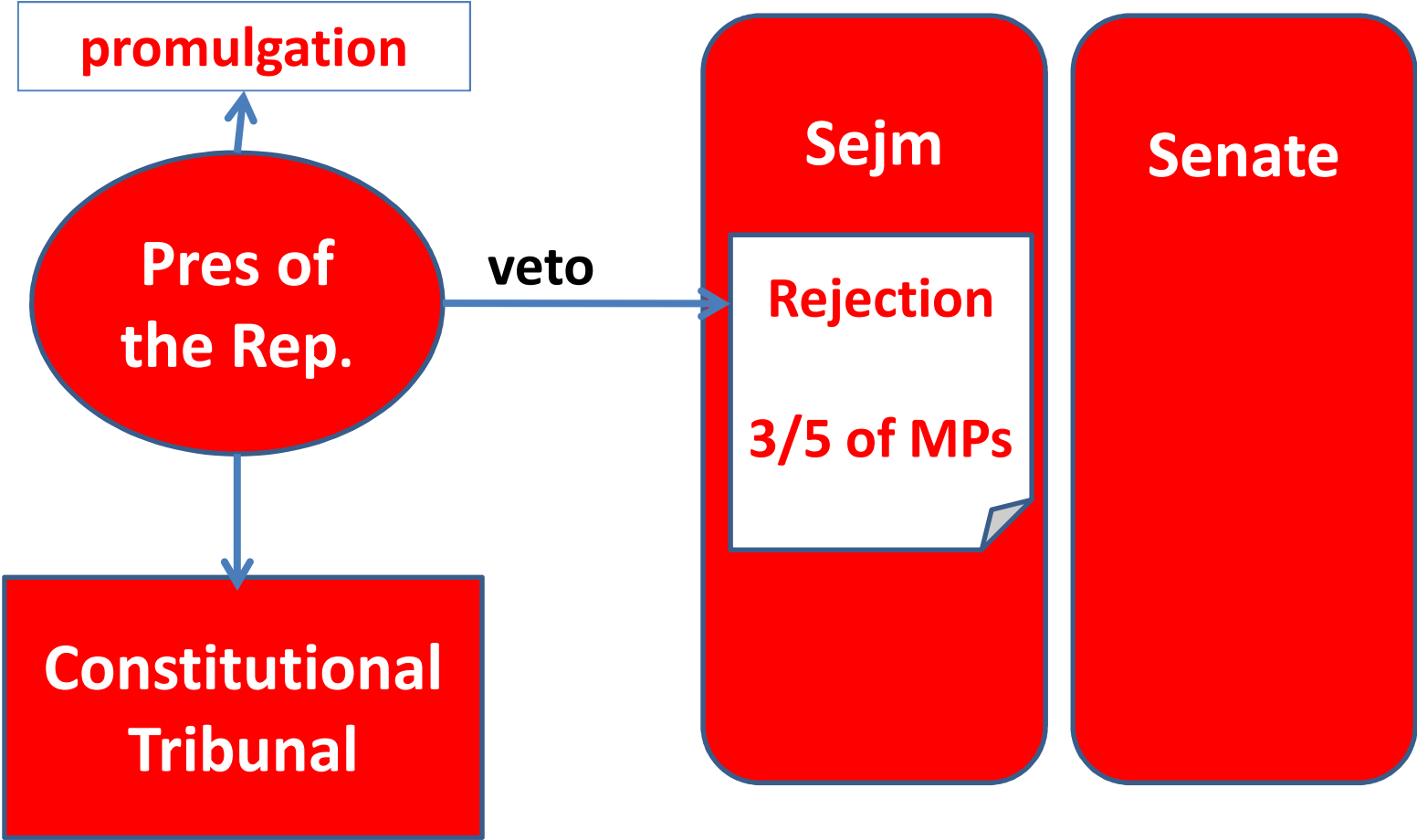




Poland – Legislation



Legislation



Constitutional Tribunal 2005

‘The essence of the legislative function is the possibility of influencing the shape of the law binding in the country. In consequence, the powers of Parliament relating to the influencing the content of the position adopted by Poland in the forum of the Council of the EU should be included within this very function. After the accession of Poland to the EU, the legislative competences have to be interpreted after all with due consideration of the new conditions for making law. As the regulations adopted by the organs of EU will be binding on the territory of Poland (partly directly, partly through implementation statutes), the expression of opinions on legislative proposals of the Union becomes a significant form of co-participation in the creation of EU law. Delegating some legislative competences to the organs of the European Community did not mean the disposal by national legislatures of their prerogative in this field.’

Foreign policy

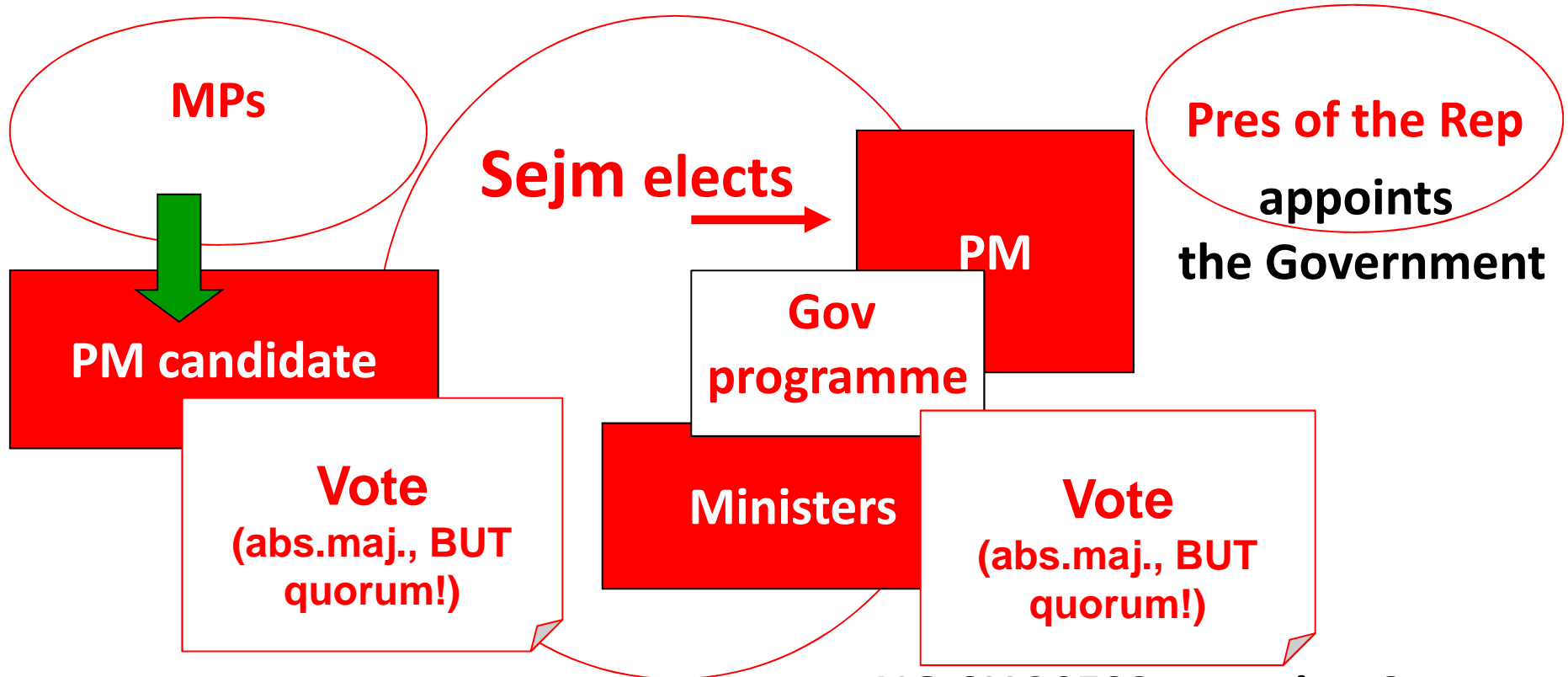
- int.treaties: P+Gov+Pres.of the Rep.
- foreign policy: P+Gov+Pres.of the Rep
- representation: Pres.of the Rep.

Budgetary policy

P, Gov

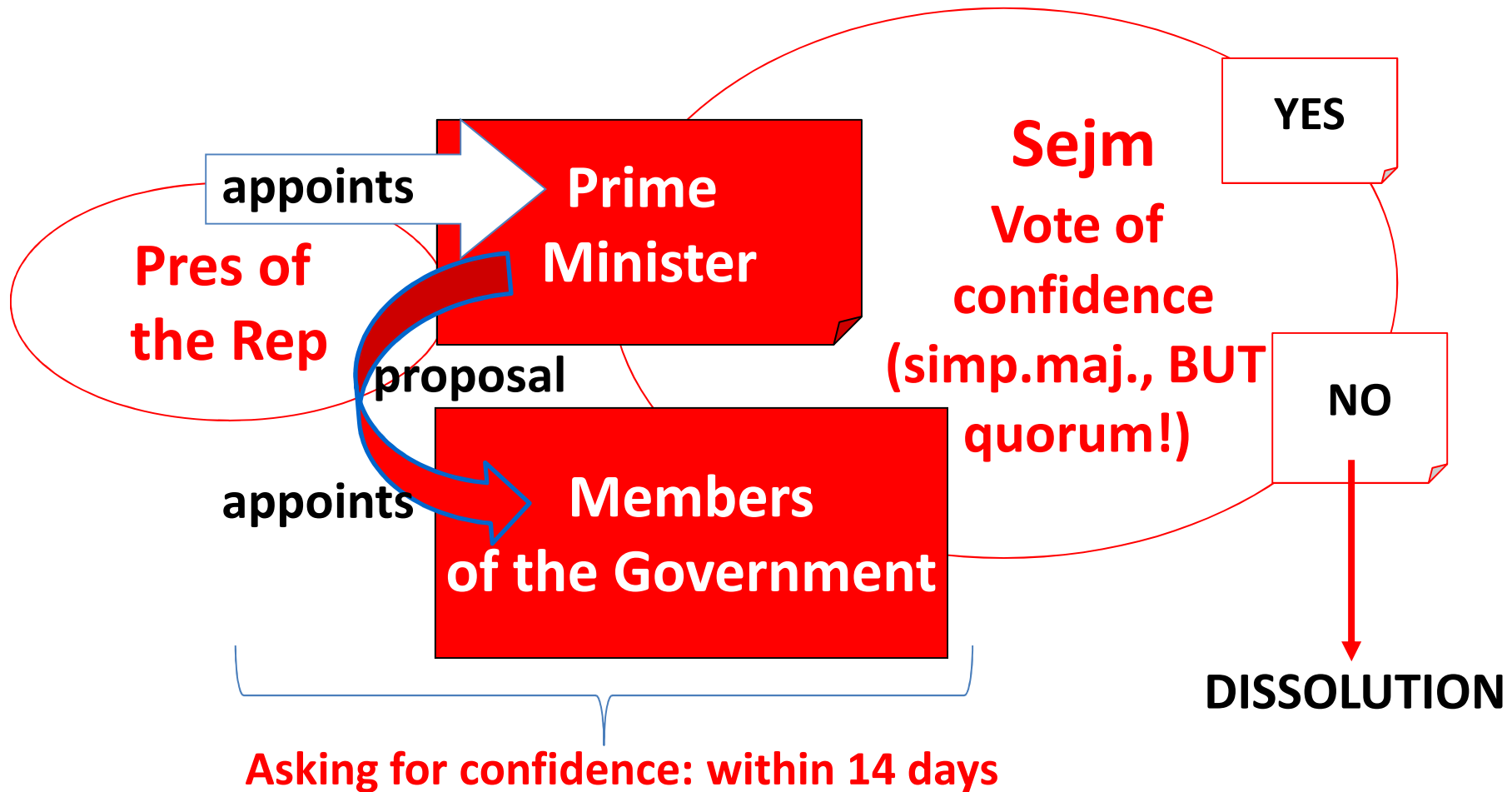
- adoption of budget
- if not adopted (4 months) – Parl may be dissolved

Formation of the Gov., version 2



NO SUCCESS – version 3
Starting within 14 days

Formation of the Gov., version 3



Poland



**Bronisław
Komorowski**



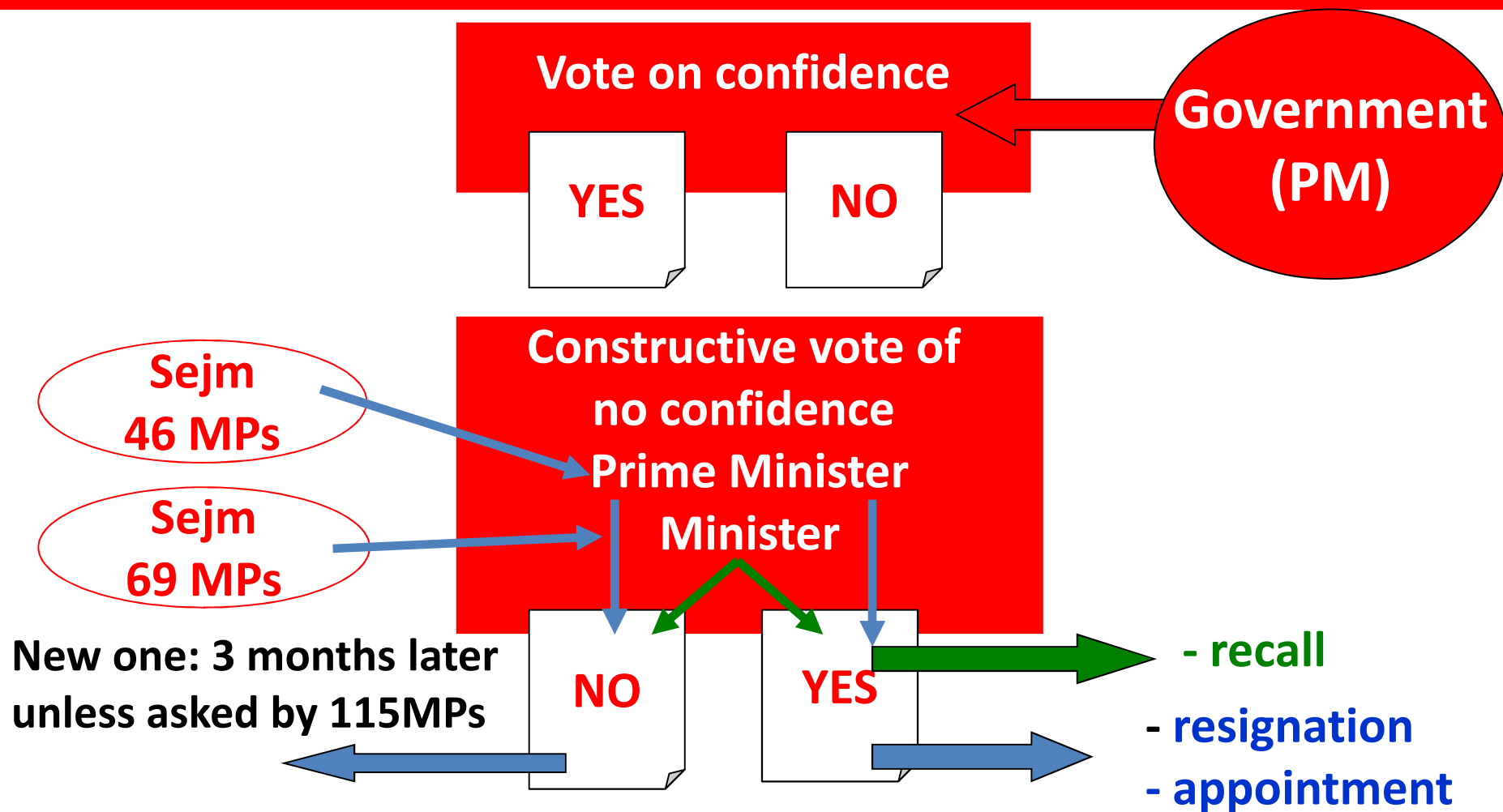
Donald Tusk

Termination of the mandate

Resignation – by the Prime Minister

- at the first sitting of a newly elected Sejm
- YES: constructive vote of no confidence
 - NO: vote of confidence
- Resignation of the Prime Minister

Trust and responsibility



Constitutional Tribunal - competences

- the conformity of **statutes and international agreements to the Constitution**
- the conformity of a **statute to ratified international agreements** whose ratification required prior consent granted by statute
- the conformity of legal provisions issued by central state organs to the Constitution, ratified international agreements and statutes
- the conformity to the Constitution of the purposes or activities of **political parties**
- **complaints** concerning constitutional infringements (Article 79.1.)
- **conflict of interests** bw central constitutional organs

Constitutional complaints

complaints concerning constitutional infringements, as specified in Article 79.1.

- in accordance with principles specified by statute,
- everyone whose constitutional freedoms or rights have been infringed
- asking for a decision on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution
- these provisions shall not relate to the rights specified in Article 56.

↓
Right of asylum

Thank you for your attention!