



SUNICOP

Comparative governance in CEE



SUNICOP

Czech Republic

Popular sovereignty

- Art 2 (1) – implicitly (people - the source of all power)
- Art 2 (2) direct exercise – „a constitutional act may define”
- „a constitutional act may define” (Const.Act 2002) – on the accession to the EU; local referenda are more often

Czech Republic – state sovereignty

– sovereign state (Art 1)

Art. 1

(1) The Czech Republic is a sovereign, unitary and democratic, law-abiding State, based on respect for the rights and freedoms of man and citizen.

– transfer of sovereign rights to the EC/EU (Art 10a) – FOLLOWING SLIDE!!!

Art. 10a

(1) An international agreement may provide for a transfer of certain powers of bodies of the Czech Republic to an international organization or institution.

– symbols are not detailed
(Act)

State sovereignty



Bohemia
Moravia
Silesia

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.'

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.'

Constitutional Court



Electoral systems

**200 MPs; 4 years – proportional (D'Hondt),
14 constituencies**

**81 senators – majoritarian; two turns; 6 years;
rotation**

The Czech constitutional order

- the **Constitution** (Dec 1992)
- the **Charter** of Fundamental Rights and Freedoms
- **constitutional acts of the Czech National Council** adopted from 6 June 1992 until the end of 1992
- **constitutional laws** adopted in accordance with this Constitution on
 - establishing the Provisional Senate – NO
 - creating higher territorial self-governing units
 - changing the borders
 - referendum – accession to the EU
- **constitutional laws** defining the **state borders** of the Czech Republic (1920-1992)
- **international treaties on HR'S**

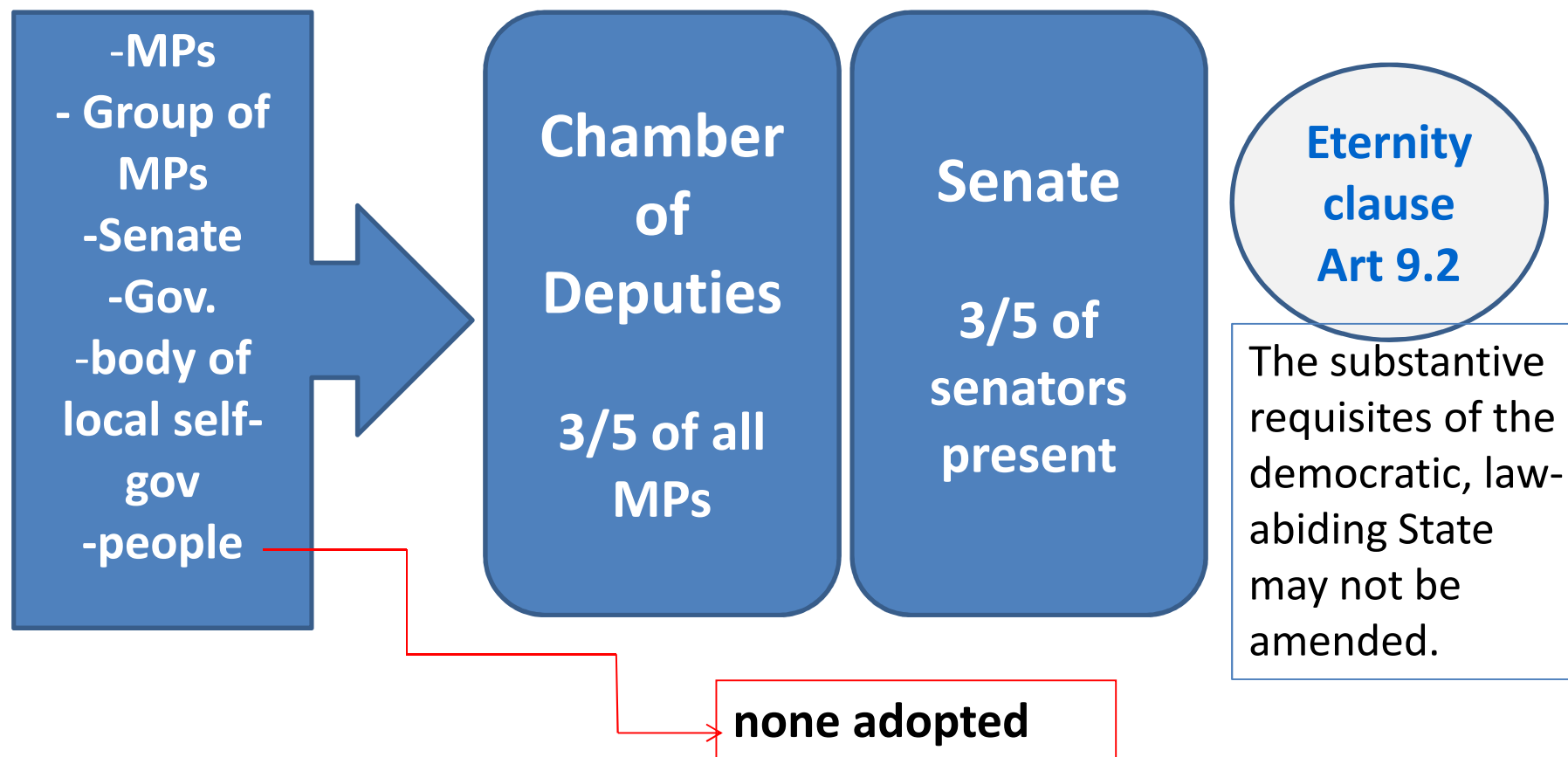
The Czech legal hierarchy

- Constitution
- Acts
- Government decrees
 - for implementation of Acts within their scope
- Orders of ministries, administrative offices, self governments
 - for implementation of Acts within their scope

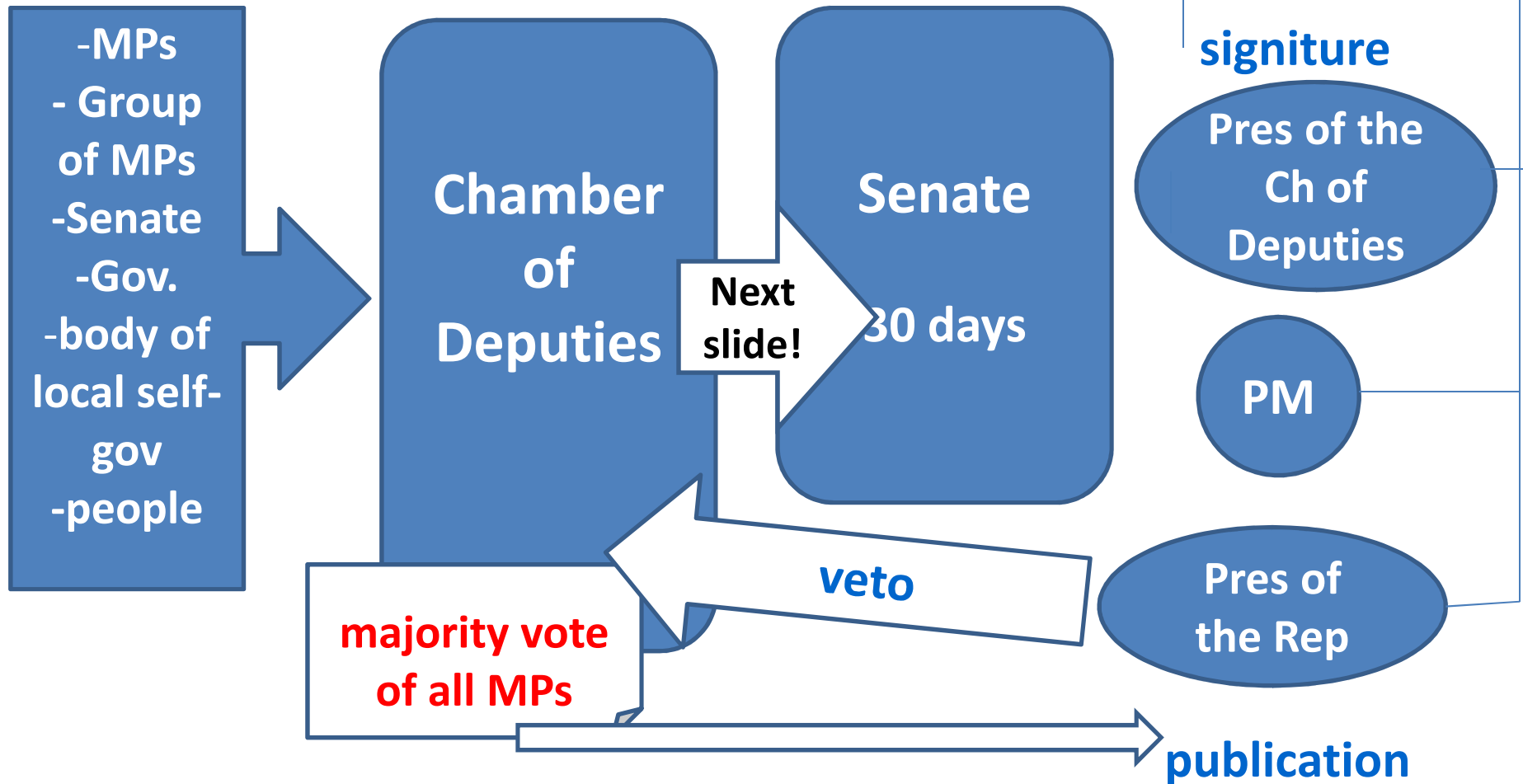
Extraordinary sources of law

- No mention
- State of war
 - Parliament deal with governmental bills in a shortened debate
 - Pres of the Rep cannot return Act adopted in this way

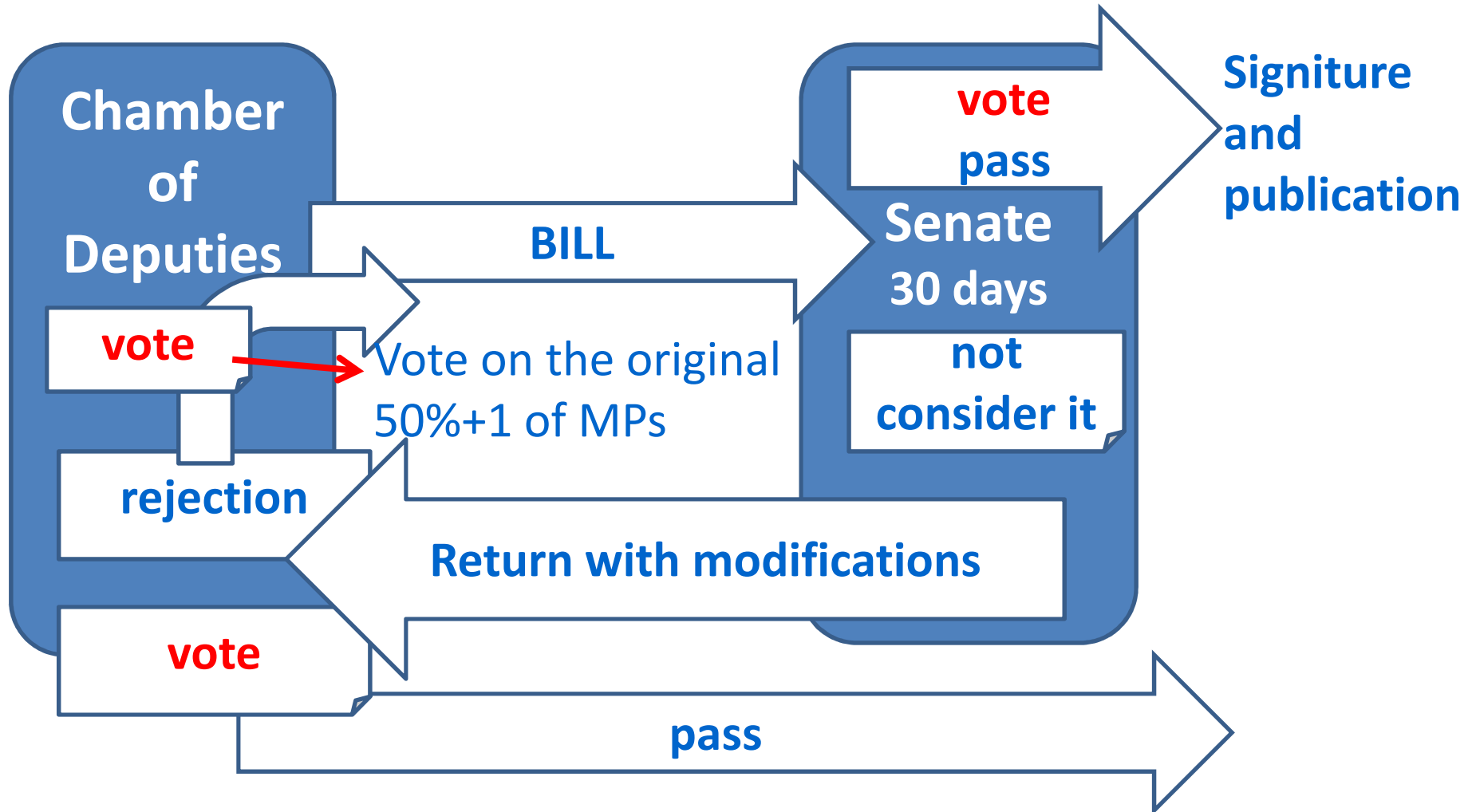
Constitution-making



Legislation



Legislation



Foreign policy

International treaty

- Gov, Pres. of the Rep
- approval of both Chambers, IF it affects HR's, alliances (Art 49 Cost)
- Constitutional Court – a priori norm control
 - ratification of treaty under Art 10a and 49 Cost
 - once: Lisbon Treaty

Foreign policy: Gov, P

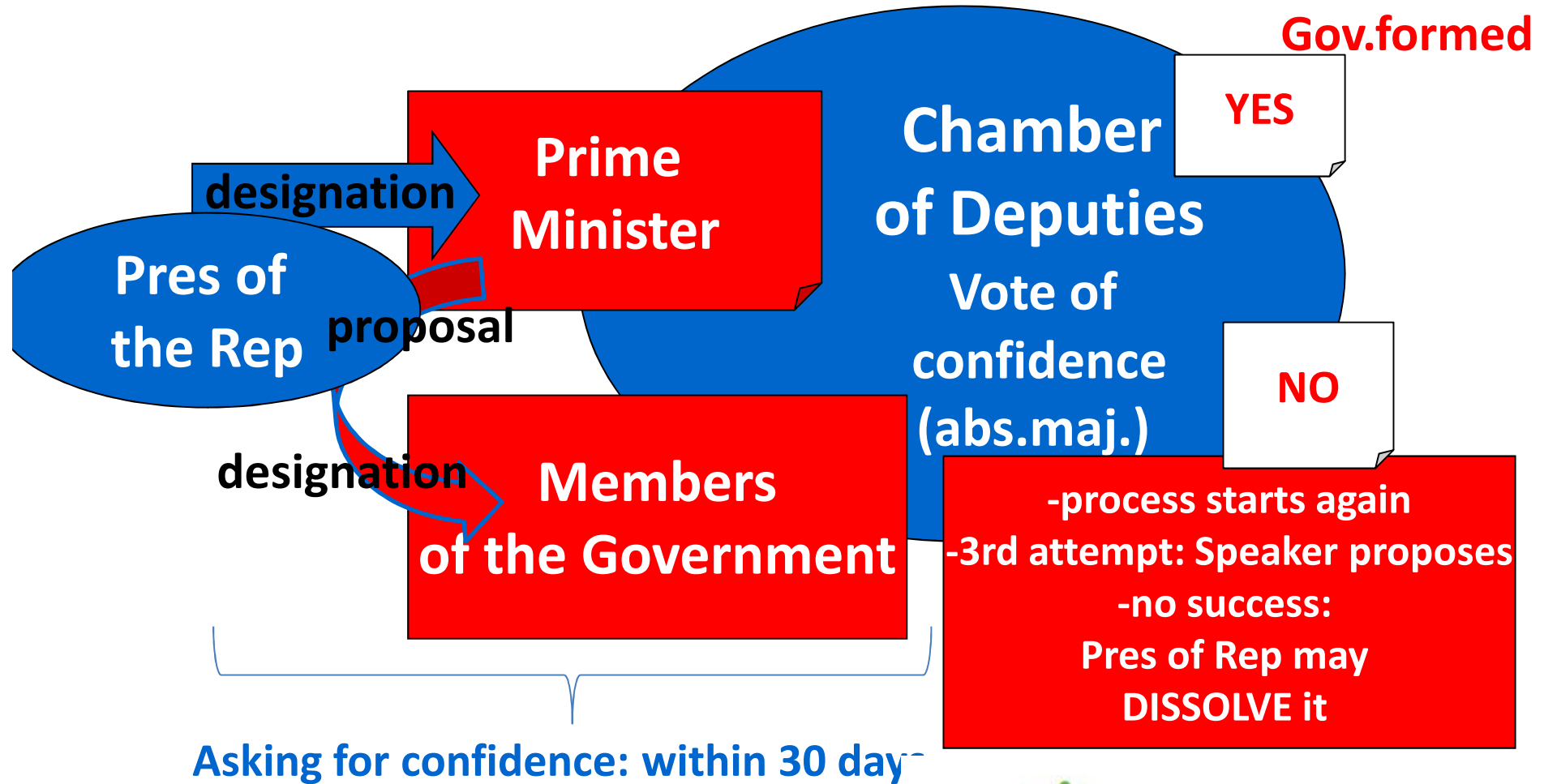
Representation: Pres.of the Rep.

Budgetary issues

P, Gov

- adoption of budget
- procedure is regulated in the Const
- failure (Ch of Deputies) prior to 1st Jan – stop-gap budget (1/12 of the previous calendar year)

Formation of the Government



Czech Republic



Vaclav Klaus



Petr Necas

Termination of the mandate

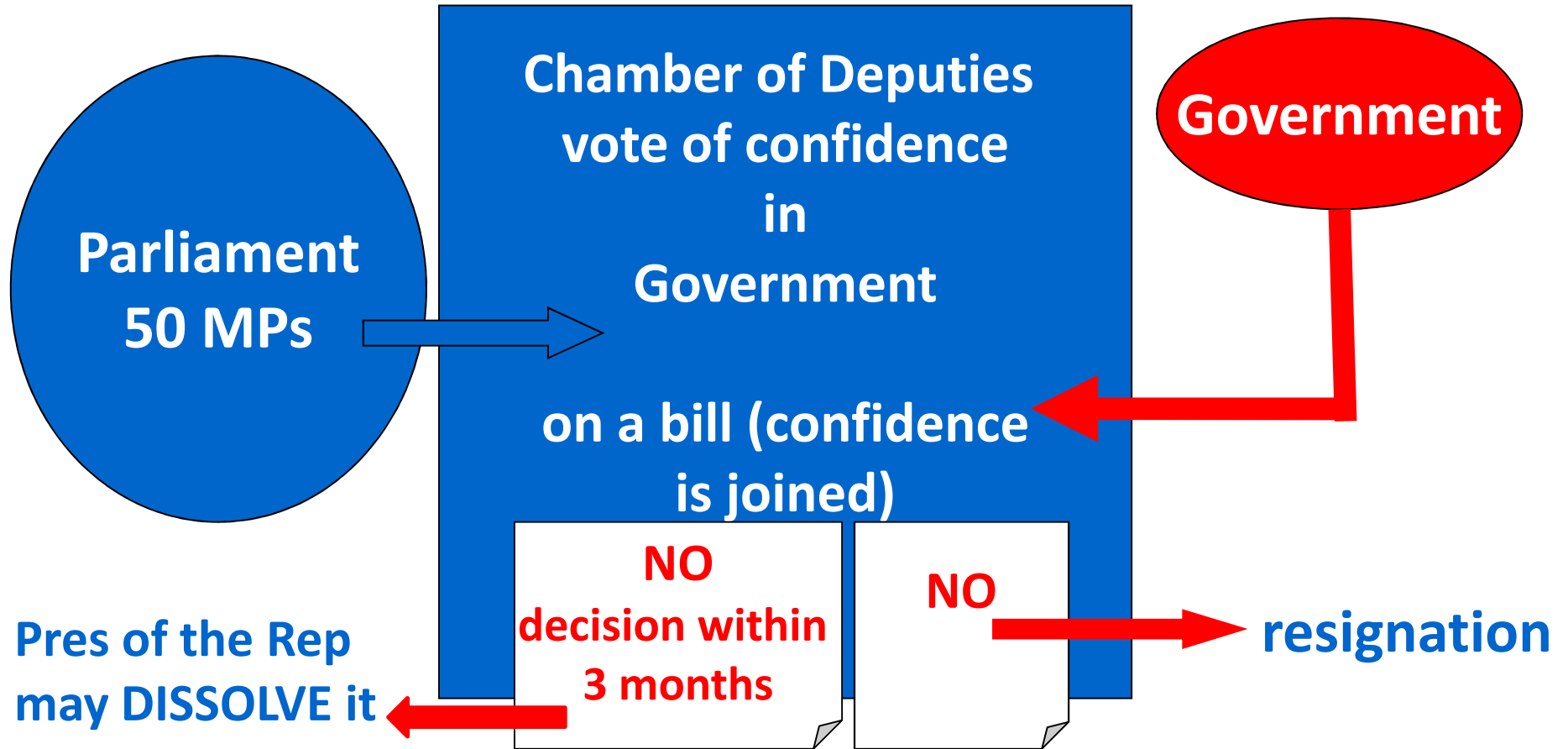
Resignation

- new Chamber of Deputies
- no confidence

Recall – Pres of the Rep

if the Government has not resigned although required to do so

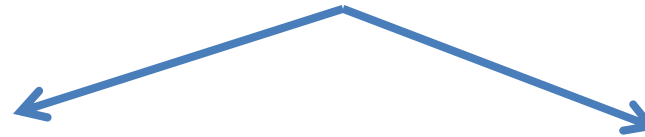
Trust and responsibility



CC - competences

- **review of norms**
 - inconsistency with the constitutional order or an Act
- constitutional **complaints**
- **ex ante review of international treaty**
- dissolution of **political parties**
 - decision on dissolution is constitutional
- **conflict of interests** (bw state organs and local govts)
- **impeachment**
- **electoral disputes**
 - on remedies on the result of the election of an MP or senator
- ‘mandate’ of MPs and senators
- ‘joint resolution’
- ‘implementation – international tribunal’
- ‘EU accession matters’

Constitutional complaints



by the representative
body of a self-governing
unit against an unlawful
encroachment by the
state

against final decisions
or other actions by
public authorities
infringing
constitutionally
guaranteed HRs

Ex ante review of international treaty

to decide jurisdictional disputes concerning the conformity of an international treaty under Article 10a or Article 49 with the constitutional order, prior to its ratification

'transfer of certain powers'

approval of both chambers

Impeachment – ‘Mandate’ of MPs and senators

over a constitutional charge brought by the Senate against the President of the Republic pursuant to Article 65.2

loss of eligibility to hold office or the incompatibility under Article 25 of some other position or activity with holding the office of deputy or senator

loss of office and eligibility to regain it

for high treason

office is terminated

Joint resolution

–

‘Implementation’

to decide on a petition by the President of the Republic seeking the revocation of a joint resolution of the Assembly of Deputies and the Senate pursuant to Art. 66

to decide on the measures necessary to implement a decision of an international tribunal which is binding on the Czech Republic, in the event that it cannot be otherwise implemented

‘Lack’ of the Pres of the Rep.

'EU accession matters'

to review the decision of the President of the Republic, that the referendum about the accession to the European Union will not be held

decide whether the referendum about the accession to the EU was held in a manner consistent with the constitutional act about the referendum and the implementing act related thereto

Thank you for your attention!