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Comparative constitutional law

Basic principles influencing governmental system

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ÁLLAM- ÉS JOGTUDOMÁNYI KAR

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)

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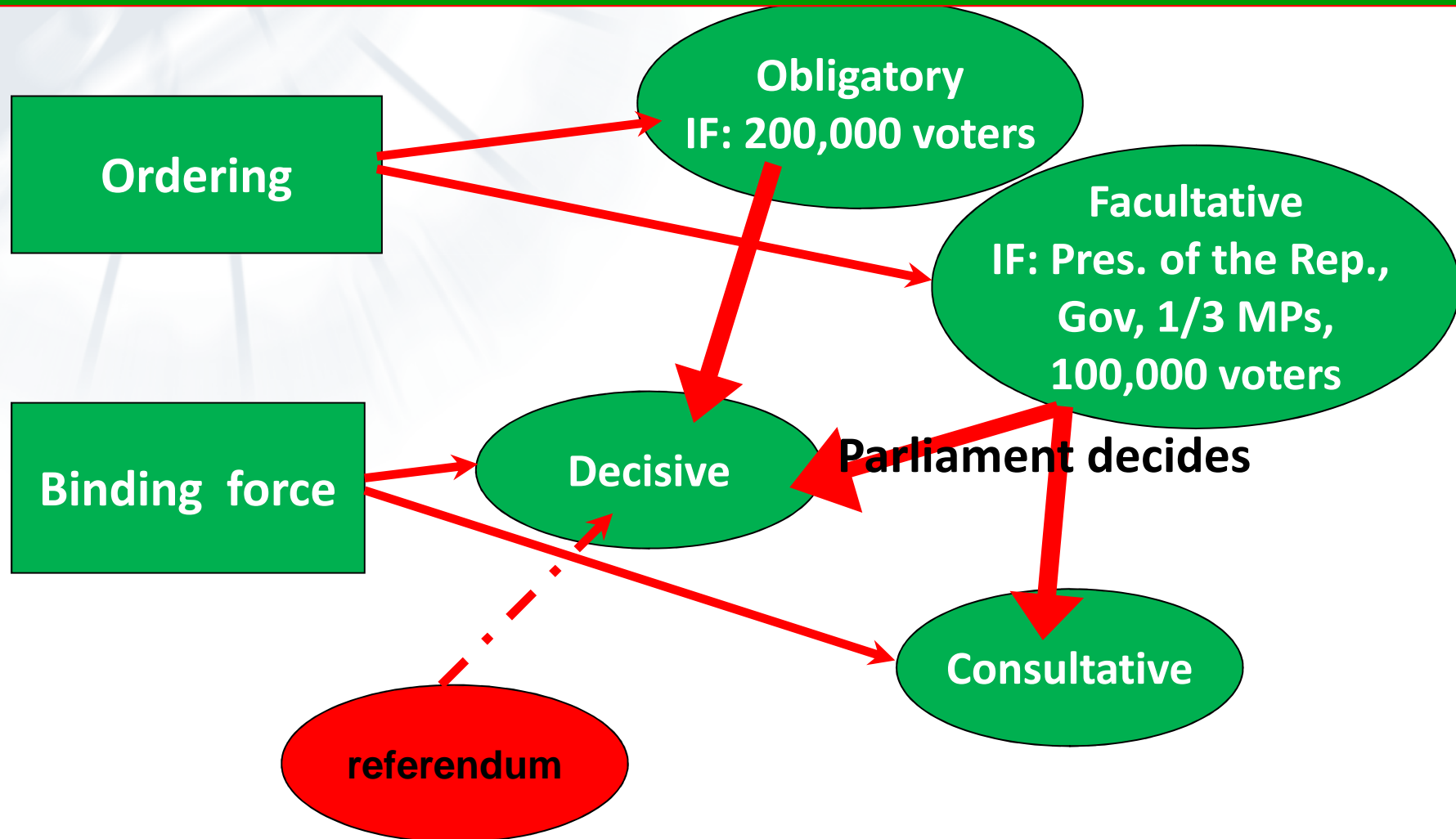
Hungary – popular sovereignty (Const, FundLaw)

- All power is vested to the people (pouvoir constituant)
- Exercising sovereignty – indirectly (through elected representatives); directly (exceptional), in the EU (special)

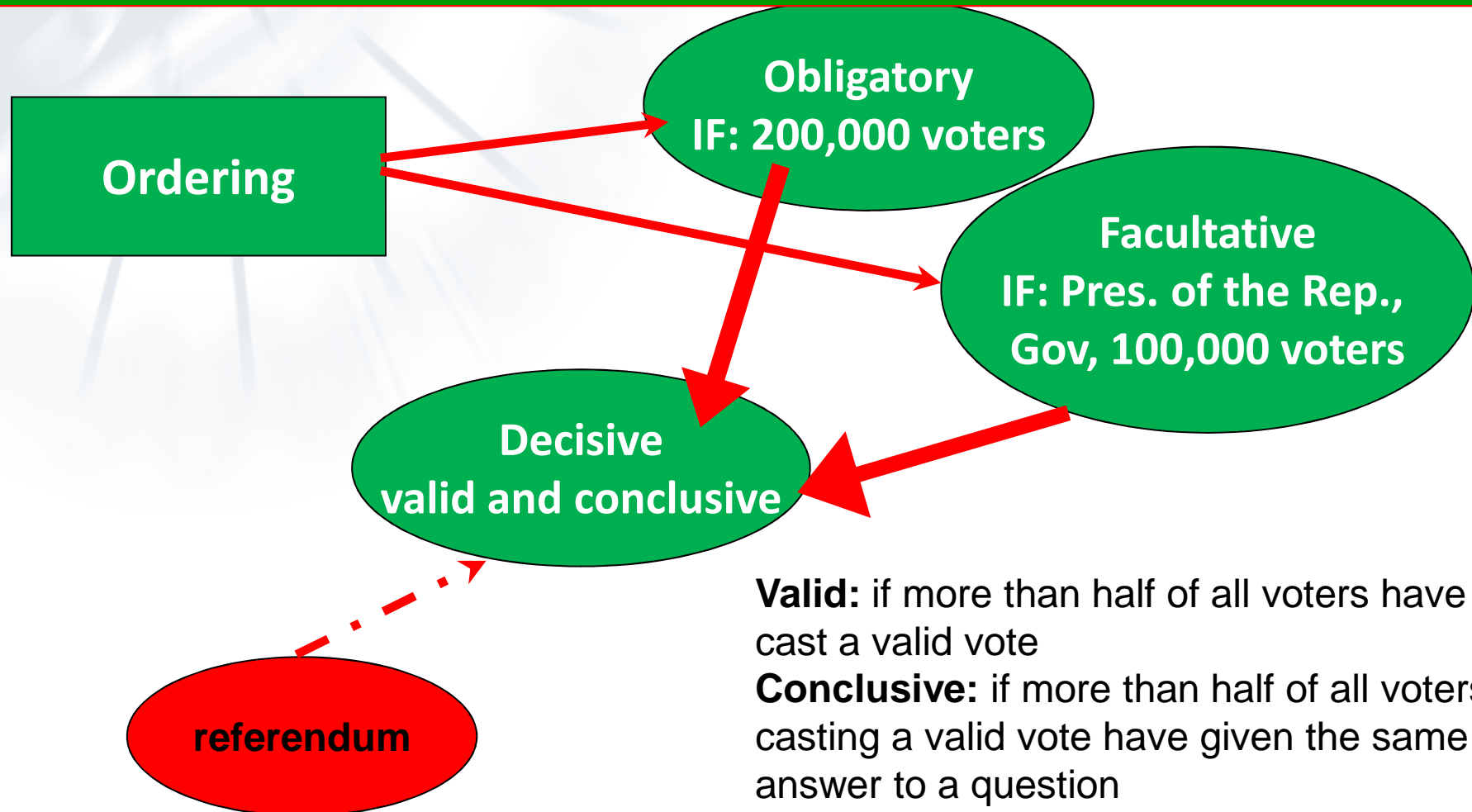
Croatia – popular sovereignty

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

Hungary – plebiscite (Const)



Hungary – plebiscite (FundLaw)



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Croatia – plebiscite and referenda

- Amendment of the Constitution by the Parl. and Pres. of the Rep (Art 87) - 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

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Hungary – state sovereignty (Const, FundLaw)

- autonomy; it is touched upon by the EU membership
- independency; scopes of foreign affairs (rejection of war/force; co-operation; responsibility; active part in EU unity)
- coat-of arms, flag, national anthem, **language (sign), official currency (HUF), citizenship, national and official state holidays**

Citizenship
„lus sanguinis”

National holidays
15 March (1948)
20 August (+ state holiday)
23 October (1956)

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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

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Legal sovereignty

- rule of law
- 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 **BUT! HU 2010 Const**
- 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 (Const.)

- 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

Hungary – implied market economy (FundLaw)

- „The economy of Hungary shall be based on work which creates value and freedom of enterprise”; right to property
- State ensures: fair competition, rights of consumers
- Non-discrimination

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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 135)
- Principle of closeness
- Principle of proportionality

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Hungary – principles of interpretation (FundLaw)

Article N)

(1) Hungary shall enforce the principle of **balanced, transparent and sustainable budget management.**

(2) Parliament and the Government shall have primary responsibility for the enforcement of the principle set out in Paragraph (1).

(3) **In the course of performing their duties, the Constitutional Court, courts, local governments and other state organs shall be obliged to respect the principle set out in Paragraph (1).**

Article O)

Every person shall be responsible for his or herself, and **shall be obliged to contribute to the performance of state and community tasks to the best of his or her abilities and potential.**

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Hungary – principles of interpretation (FundLaw)

Article R)

(3) The provisions of the Fundamental Law **shall be interpreted** in accordance with their **purposes, the National Avowal** and the **achievements of our historical constitution.**

Article 28

In applying laws, **courts** shall primarily interpret the text of any law in accordance with its goals and the Fundamental Law. The **interpretation of the Fundamental Law and other laws shall be based on the assumption that they serve a moral and economical purpose corresponding to common sense and the public benefit.**



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Thank you for your attention!