An aerial photograph of a coastal area. The top part of the image shows a deep blue sea. Below the sea is a wide, light-colored sandy beach. In the middle ground, there is a long, narrow building with a red-tiled roof, possibly a hotel or a resort. The bottom part of the image shows a darker, more textured area, possibly a parking lot or a paved area. The overall scene is a typical coastal resort area.

Privatization of enforcement services

A way forward for Croatia and the region?



Not if, but how, where and when!

Court-based system is outdated

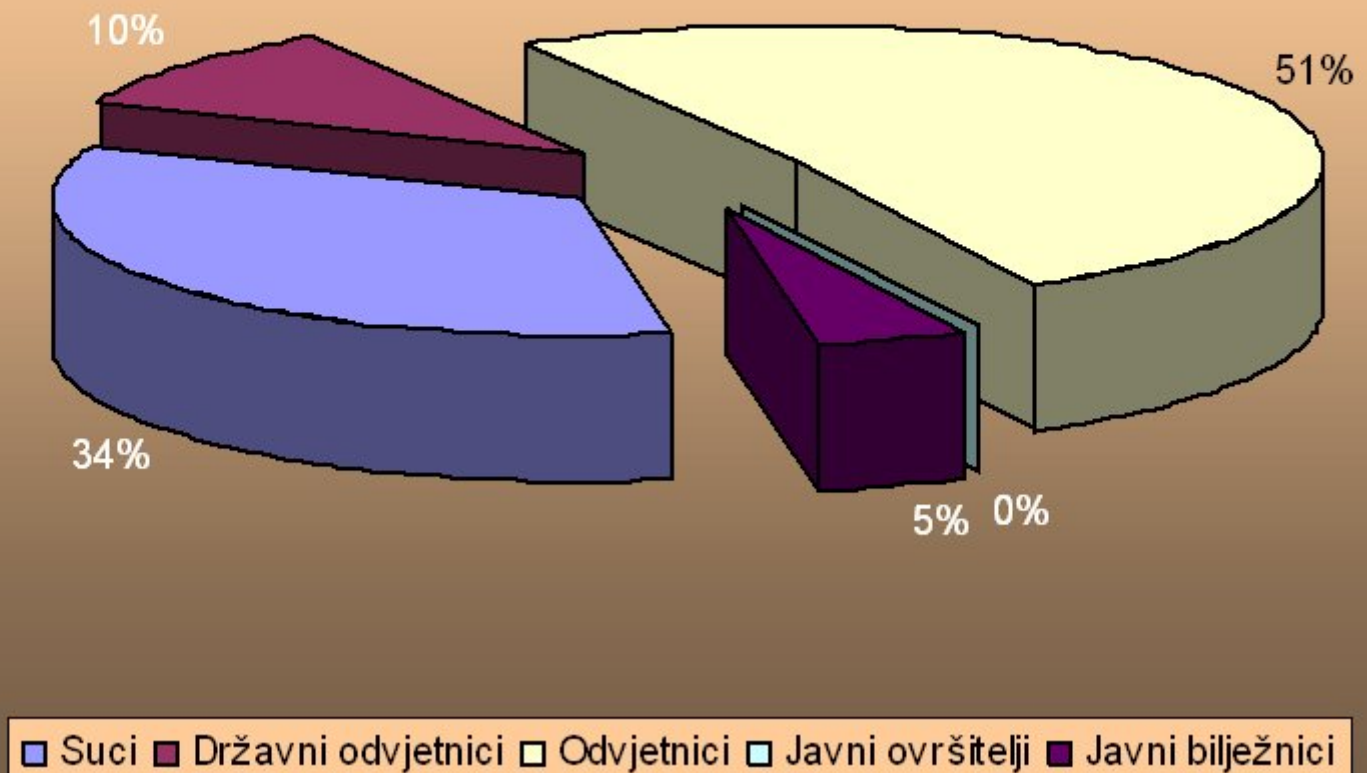
- Ex-Yugoslavia: tentative reception of the Austrian model
 - ZPO and EO
 - Less precise following of the model in the enforcement than in the litigation legislation.
 - Court-based administrative process
 - Massive involvement of judicial work;
 - Austria: mass claims, automated processes.
 - Reformed in Austria.
- Croatia: one of the very rare remaining countries in Europe that have a court-based system.
 - Facit: as an inefficient and non-standard system, it has to be abandoned.

Organization, not procedure

- The way forward is in the change of organization, not in the change of procedural legislation
 - 6 amendments of the Croatian Enforcement Code, little substantive change;
 - Tradition of the past (federate origins)
- Necessary changes
 - Organization of services;
 - Automatization;
 - Creation of the specialists – professional enforcement agents;

Bailiff – a missing profession

Hrvatska



Public or private bailiffs?

- Wrong question: it depends on the needs, aims and perspectives
 - Some types of enforcement better for privatization than the other;
 - Social needs can be different;
 - Mixed systems are also an option.
- Model solutions have to be clear and consistent
 - Slovenian failure due to a half-way solutions.
 - Good lesson for prospective reformers!

What should NOT be done

1. Privatization of current assisting personnel in the courts (" bailiffs")
2. Leaving decision-making authorities and extensive supervision powers in the courts
3. Identifying bailiffs with the interests of creditors
4. Giving bailiffs the same right of access to information.

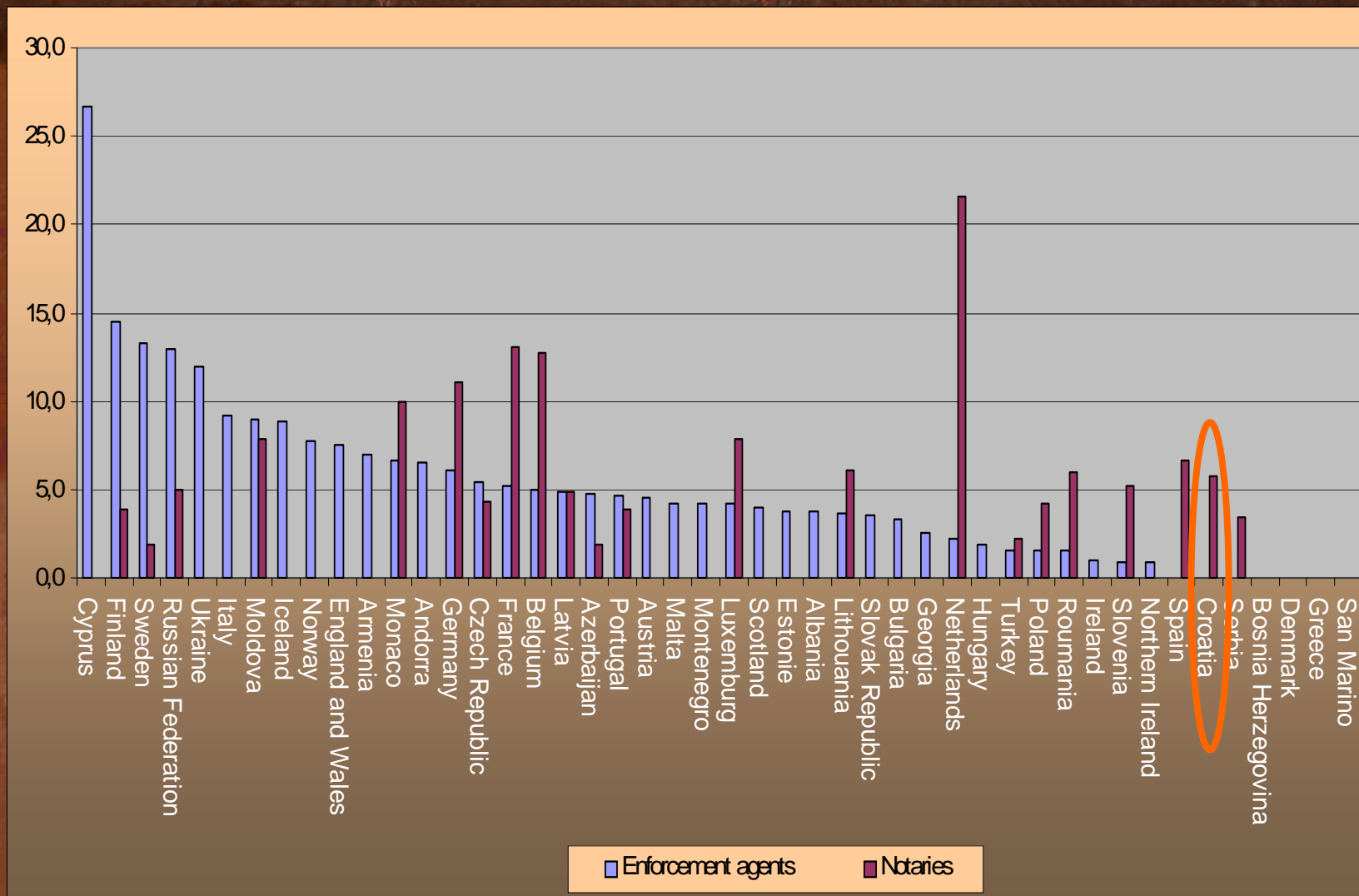
Who should become a bailiff?

- Bailiffs need to be among the most elite legal professionals
 - Training is not enough!
- Most respected legal professionals have to be motivated to become bailiffs
- Necessary requirements: cumulative
 - Law degree
 - Professional school
 - Specialist exam
 - Personal reputation and moral qualities.

Who should NOT be an enforcement agent

- Can enforcement be successfully outsourced to present private legal professionals?
 - Lawyers as enforcement agents
 - Public notaries as enforcement agents
- Systemic difficulties
 - Lawyers: one-sided approach, lack of checks
 - Notaries: different aim and profile of the job.
- Comparative disparity: lawyers, bailiffs and notaries are distinct professions in Europe

Enforcement agents and notaries



Risks in the privatization process

- Poor implementation
 - Typical South-European issues:
 - Half-way solutions
 - Lack of systematic approach and expert support in design and monitoring of the system
 - Oscillations due to changes in political elites
 - Examples of Slovenia, Croatia
- Corruption and nepotism
 - Weaknesses in the selection and appointment process
- Irreversibility (?)

Aborting failed experiments

- Croatia: need to change the direction of current developments
 - Two most significant experiments of Yugoslav and post-Yugoslav enforcement reforms have to be gradually scaled down and abandoned:

“Authentic instruments” enforcement writs

**Outsourcing of enforcement to notaries
 (“notarial enforcement”)**

An aerial photograph of a coastal landscape. The top portion of the image shows a deep blue sea. Below the sea is a wide, light-colored sandy beach. Further inland, there is a distinct reddish-brown area, possibly a wetland or a specific type of vegetation. The bottom portion of the image shows a lighter, sandy area. The text "Thank you for your attention!" is overlaid in white, semi-transparent font across the middle of the image.

Thank you for your attention!