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Court-based system is outdated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.

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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;
  - Automation;
  - Creation of the specialists – professional enforcement agents;
Bailiff – a missing profession

European average

- Judge: 60%
- Prosecutor: 13%
- Lawyer (ex. Advisor): 15%
- Enforcement agent: 6%
- Notary: 6%

Hrvatska

- Suci: 34%
- Državni odvjetnici: 10%
- Odvjetnici: 51%
- Javni ovršitelji: 5%
- Javni bilježnici: 0%

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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”)
Thank you for your attention!