

Dobar dan! It is a real pleasure to be here with you today at the Croatian Bar Association. We are grateful for the expertise and partnership we have with the Croatian Bar Association and with many of the private attorneys here today. I would particularly like to thank to the President of the Bar Association Josip Surjak [Yo-seep Shoo-ree-ak] for his warm welcome.

I was a business man and a lawyer before I became Ambassador to Croatia and I am honored to have an opportunity to talk with you today about one of my favorite things: leveraging my business background to support Croatia's efforts to attract American business and increase economic growth. Improving the business and investment climate is critical to this goal. You may wonder why I am coming to speak with you about this topic. The reason is simple: I see Croatia's judicial sector as an essential component in a well-functioning business climate and all of you play an important role in the judicial sector. As Croatia's business

climate improves, there will be more economic activity, more court cases, and you will have more business.

When I first arrived in Croatia I was impressed by the gorgeous scenery, the delicious food, and the great people. I think many Americans share this impression. However, business is not flourishing here in the way that it could. When the World Bank *Doing Business* report ranked Croatia 51st this year, seven places higher than in 2018, my first thought was that it's good to see improvement, but Croatia could do better. Croatia shouldn't just try to improve by a few places. Why not try to be number one? I hope Croatia actually finishes second, behind the United States, but I am biased.

The World Bank *Doing Business* report ranks the 190 global economies in their performance in 11 categories. Croatia does well in a few categories such as trading across borders, and very poorly in others such as obtaining construction permits and starting a business. I know a

lot of work is being done to correct some of these deficiencies, and I expect the rankings to continue to improve in the next report.

However, being number one on an international ranking isn't the ultimate goal. There are many people leaving Croatia each year either to find higher paying jobs in other EU countries or because they are seeking a better functioning "system." Bringing them back or keeping them here, and bringing more prosperity to Croatia, is the real goal.

To do this, Croatia needs significant changes that will attract quality companies, and bring high-paying jobs. How do you create these jobs? By improving the business climate and making Croatia the next hot destination for companies looking to open a European office. There are roughly 115 U.S companies working in Croatia today, and it's been about the same number for many years. That number should be much higher.

All companies are looking for the same basic things: a business-friendly, transparent, predictable system. First, they need to know what investment opportunities exist. They need to be able to operate in a predictable investment environment without significant impediments. The rules and procedures should not change frequently. Most importantly, companies need to know that if something goes wrong, they can expect an efficient process and fair decision, no matter where they are, or who they know, in Croatia.

Unfortunately, it sometimes takes a lot of work, patience, and effort to invest here. Changes are needed and fast. Today I would like to talk about judicial efficiency.

Having confidence in the judicial process is an important factor in deciding where to invest. Let's say you've gone through all of the work to establish your company but you encounter a problem and think one of your partners is in breach of contract. Lawsuits are awful, but a

necessary evil. We need to know we can obtain what we are due, but certainty of an effective judicial remedy is uncertain in Croatia. Let's talk about the scale of the issue. The number of pending cases and the disposition time for civil and commercial cases in Croatia remains one of the highest in the European Union. I understand that Croatia has managed to reduce its case back-log, which in the past had reached up to 1.6 million, but system-wide, there remain over 500,500 cases officially backlogged. This means some cases have been pending for more than three years. Who has years to wait for a decision? Certainly not a growing company.

In its 2019 justice scoreboard, the EU Commission reported that Croatia has the highest number of judges per capita of any EU country. I don't say this to place the blame on judges, the majority of whom must be just as frustrated by the backlog. However, it is clear that the system is not working as efficiently as it could and something needs to be done to improve it.

As you know, court delays often benefit the wrongdoer. That's because the wrongdoer goes unpunished and the victims uncompensated until the court at last makes a decision. As we say in the US, "justice delayed is justice denied".

Especially troubling is the significant number of criminal prosecutions of influential individuals and companies that have lingered for years in the Croatian courts without resolution and continue to do so. When the wealthy and powerful are not rapidly, impartially, and publicly held to account, the average citizen will doubt the fairness of the legal system. When even the average person has doubts about getting a fair, efficient judgement, large businesses are going to be very hesitant to take risks to enter the local business climate.

There is a persistent public perception that the judicial system is unfair. 59 percent of respondents to an EU survey conducted in 2016 said they could not expect a fair trial in Croatian courts. Now, I do not know whether this perception is accurate. I've met a number of

excellent judges but it's important to get to the root of the perception.

Because this is such an important topic to me, I've done some research to learn more about how courts operate in Croatia and would like to make a few general **recommendations**. Many of Croatia's judges are fantastic, they remain efficient despite being completely overwhelmed with work. For a country with a population of just around four million, it is incredible that your courts receive around 1.5 million new cases filed every year. If a single case involves at least two different people, this involves a huge proportion of your adult population. I urge you as lawyers to advise your clients to look at ways to reserve the court as the final option exercised, after every possible remedy including mediation, has been explored. Filing frivolous appeals and endlessly delaying cases feeds a vicious cycle which clogs the system, gives Croatia and everyone in the judicial system a bad reputation. This huge case load cannot be sustainable in the long term.

Beyond the volume, I'd like to talk a little bit about the technical details of how your cases are handled.

In the United States, there is a court reporter in every courtroom transcribing notes of every single word spoken. This official record is essential because nothing "off-the-record" can ever occur. I learned that in Croatian court rooms, the judge takes notes of the proceedings and then dictates - after the fact - what occurred to a court clerk. This becomes the official record and both sides of the case sometimes object to parts of the record. This practice is very time-consuming. My second recommendation is that Croatia change this and make sure judges always have court recorders present, transcribing the record as the facts are being collected, not afterwards.

Croatian courts do not handle cases sequentially. A judge may hear from five different witnesses, testifying facts related to five different cases, all on the same day. While this makes taking testimony more flexible, it also means that an extraordinary amount of time can pass

from the date a case is opened until the date a decision is rendered. I strongly recommend that Croatia follows through on statutory time limits for handling cases and strictly adheres to them.

An efficient and transparent judicial system is also an important check on corruption. Court delays could enable dishonest judicial officers to provide the service of corruptly expediting cases. A judicial backlog can provide cover for someone corruptly slowing cases down. Judges need to make timely rulings against corrupt officials and practices in order to deter future corruption, and citizens must have trust that the judges themselves make decisions based on sound legal principles and not based on outside influence. Judges need to make full, complete financial disclosures to ensure the transparency of the process. The Croatian public should not question the impartiality of its judiciary. Transparency will go a long way to turning public opinion.

Responding to recent accusations that some judges are corrupt, Justice Minister Bosnjakovic told reporters in July that he didn't think everything was clean in the judiciary and that some people in the judicial system don't belong there. Corruption exists in every country, including in the United States, so I welcome the Minister's acknowledgment of the problem and encouragement for the State Judiciary Council to remove judges when necessary. Acknowledging that a problem exists is an essential first step in solving it.

I was pleased to see news that the State Judicial Council relieved a High Misdemeanor Court judge for inefficiency and negligence in August. I understand that this judge's negligence led to the dismissal of hundreds of cases for exceeding the maximum time allowed in the statute of limitations. The Croatian court system should adhere to strict monitoring to ensure judges are carrying out their duties in all courts.

Business leaders and investors are looking for fair, timely decisions. If Croatia is viewed as a place with a slow-moving, unfair judicial system it will be seen as a risky investment destination. With its small market, Croatia cannot afford to be labeled, even in private circles, as risky. While businesses may be willing to take the risk of corruption or government interference in large markets, they won't do it in small ones.

Croatia has all of the components to be the next economic powerhouse in Europe. However, the types of investments that Croatia needs will not materialize until it significantly improves the quality and efficiency of the judiciary at all levels.

Croatia can do a lot to improve overall court efficiency. For example, Croatia may want to consider amending the law to eliminate or reduce unnecessary hearings, require strict enforcement of rules prohibiting delaying tactics (like not showing up for hearings), shorten legal deadlines for drafting judicial decisions, increase the number of court advisors who can prepare drafts or outlines of written decisions,

streamline the role of all parties involved, identify ways to disincentivize frivolous lawsuits, and reward individuals within the court system who come forward with innovative ideas to increase efficiency. Court presidents have the responsibility to monitor the efficiency of judges and must have the ability to take a proactive role to periodically measure performance and discipline those who are ineffective.

The OECD recently recommended Croatia appoint a business ombudsman to facilitate out-of-court settlement or dispute mediation to avoid so many cases going through the full formal court procedure. This is a great idea. I also recommend that Croatia increase attention to the existing case backlog, respect statutory time limits for all steps of the legal process, and consider implementing a performance metric system for judges so they are accountable for the time a case is pending.

There is no reason for Croatia to be behind the rest of the EU in anything, but particularly not in this area.

I am hopeful that the government will take the opportunity of the EU Presidency to showcase Croatia as the next, up-and-coming investment destination for innovative companies. When Croatia does this, it would be great to also unveil an initiative to modernize and improve the judicial system. We would like to help by sharing best practices, or to support in any way that we can.

I am very happy to have had the chance to speak to all of you today. Each of you can make a difference. High ethical standards and professionalism matters in all different professions, especially in the judicial sector.

Now, let's turn to your questions. Thank you again for inviting me here today and for your very kind attention.