

Konteksti: Why we need to stand up to SLAPPs.

[Transcript]

Hello, we have a new episode of Konteksti.

Today we are going to talk about a topic that has been very current, is very current and we will understand a lot of things that maybe up until today we did not know about the SLAPP topic. What are SLAPPs? We will understand more with Flutura Kusari, media lawyer and legal adviser of the European Center for Press and Media Freedom, and with Megi Demolli, director of Levizja FOL. We will have a chance to learn more what this legal threat is, as we have seen in some cases, and how we can protect activists and journalists.

[Spoken intro]

Last month, a vocal activist from Deçan, Shpresa Loshaj, was sued by the hydropower company KelKos. The Austrian company is seeking 100,000 euros in damages from Loshaj for public statements she has made about the company's operations in the Deçan valley.

The case comes less than a year after another activist, Adriatik Gacaferri, was sued for a similar reason. However, both activists' statements are strongly based in fact.

Activists and organizations have labeled these cases as SLAPPs — Strategic Lawsuits Against Public Participation.

This week, 75 organizations and activists signed a letter of support for Loshaj, saying that activists and journalists “should not be discouraged by these lawsuits.”

They warn that SLAPP suits are on the rise in Kosovo and that companies using the justice system in this way have no other goal but to intimidate activists and journalists who speak up against big power.

C: Hello Flutura, I want to start with you. Flutura Kusari is maybe one of the most vocal people on this topic. Flutura, what are SLAPPs, or the Strategic Lawsuits Against Public Participation, what are they and why should we be worried?

F: Thank you Cristine. First of all, thanks a lot to K2.0 for giving space to this topic. Usually the public interest, including media interest comes when these topics become a little larger. We have just started to face SLAPPs so I appreciate your early interest in dealing with this topic. You mentioned that I am one of the more vocal people, it's good that you mentioned that I am one of them because I am not alone. I stand together with, especially Megi. The FOL organization is one of the first in Kosovo that have shown interest and readiness to document SLAPPs. We will hear later from Megi but I appreciate the readiness of FOL because when there is support, especially financial, for different topics and developments that happen in the society then it is easier for organizations to show interests. Meanwhile for SLAPPs, there is still

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no support from donors, etc. how it usually happens, but FOL has intervened to document SLAPPs on a documentary basis and I am very grateful and thankful to Megi and the organization.

SLAPP lawsuits, to start from the acronym, SLAPPs are referred to Strategic Lawsuits Against Public Participation. Even though they are called strategic lawsuits, in fact this notion is wider. It refers to any legal action taken by powerful businesses or people. Powerful people include mainly politicians or powerful businesses or corporations, whose purpose is to scare journalists, activists, NGOs from partaking in public discussion.

What does this mean? This means that if an activist is talking, expressing their concern about a specific cause. We now have the hydropower case, earlier we had the information and privacy commissioner case, notaries etc. Or if we have a journalist reporting on these topics, or if we have an NGO that continually reports and documents about different causes, and if this information that comes from the activists or NGOs bothers the politician, business, etc. What happens? They undertake legal action, be it from legal documents drafted by different lawyers or through lawsuits that are sent to the court, through which they pretend their image has been damaged. And what happens? The individual, in this case the activist or the journalist is sued and then has to deal with the lawsuit which in 100% of the cases has no basis. Forcing one activist or journalist to prepare a lawsuit response, to collect facts, to document them in the court, to hire a lawyer, to prepare defense, you are in fact wasting the time they should have dedicated to contributing to the public discourse. This is the aim of the SLAPP lawsuits, to stop activists, journalists etc. from partaking in public discussions that have to do with public interest topics.

C: Flutura, usually when we hear about SLAPPs, they are about slander. Those who pose those lawsuits claim slander like the case of Adriatik Gacaferri or Shpresa Loshaj about their activism in the Deçan valley. In what moment does a usual slander lawsuit turn into a SLAPP? What is the definition?

F: The lawsuits we have seen up until now, FOL will talk more about the cases of Shpresa and Adriatik, if you read the lawsuit and you see how the KelKos company pretends their reputation has been damaged. Then you see the prima facie, in the first read you see that the lawsuit has no basis in its allegation for reputation damages. Because in this case, both activists have talked based on the documentation they made of the degrading of nature in Deçan. So when a person has documents, evidence and arguments to express their concerns, then it is impossible for these lawsuits to be successful. In the cases when these lawsuits would be successful, it is in the cases when one person organizes a lie against a business, politician, or businessmen to damage them. But such a large number of organizations, activists etc. to be involved in a conspiracy theory to allegedly damage the image of KelKos.

So the concerns expressed by Shpresa and Adriatik have been based on their documentation of the violations and degradation of nature. They have facts, they have evidence, they have videos, they have documents, they have reports. They spent years of their lives documenting this and this is why they are speaking out. This is the difference between SLAPPs, so lawsuits

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with no basis and classic cases of slander when there is a un-based lie in the public domain and of course the person then has the right to seek reputation repairs.

C: Megi, we are talking about the cases that have happened in Kosovo. Especially about last year with Adriatik Gacaferri, KelKos has filed a lawsuit against him in July, and in February, SHpresa Loshaj, another activist has been sued by the same company that operates near Deçan Valley with hydropower. What are the effects of such lawsuits? What can they provoke in the freedom of speech and activism, mobilizing a group of people, or community?

M: Yes, it is true. I said it yesterday as well at the conference of the lawsuit. It is really a great tragedy that during such a short period we have been forced to stand in front of the court in Deçan for a SLAPP lawsuit for two activists from the same company just because the figures have changed. KelKos is doing such a strategy that with every lawsuit they are increasing their figures, while they sought 10,000 euros from Adriatik they are asking 100,000 from Shpresa. As Flutura said, what these activists did has nothing to do with slander but has to do with documentation. We have proof, in fact, that everything that Shpresa talked about is documented and it is not a crime if a Kosovar citizen asks for documents from their institutions. In this case what Shpresa asked from ERO or from the Ministry of Environment were supporting documents concerning KelKos permits. So, Shpresa committed no crime and no slander in this case, the only thing she did was raise her voice.

Of course, we could not stay silent in this case. Always thanking Flutura as well who was the first to create a close group that we became a part of, and we followed what happened with Adriatik months ago and now with Shpresa.

I am very thankful to over 75 organizations and activists who have supported a document we sent to support Shpresa in this case. We asked KelKos to end this lawsuit. Shpresa, Adriatik, but we won't exclude other cases we might have, not only in the environment field, and hydropower, they will not be alone. They will always have FOL behind them but I hope that the cooperation with many organizations, each more credible than the other, will be near these activists and will not allow for a moment KelKos nor no other company to threaten the activists who speak out about the injustices in this country. In this case, for the protection of the environment where these two activists live, and have documented the entire time. But for other cases as well. We could have cases of the journalists or other citizens. I can tell you that FOL will document all the cases from Adriatik and others, we have had no other SLAPP cases. We hope we will have no others but either way FOL will be active in this direction, and will monitor the cases in the courts when there are sessions, at least for Adriatik and Shpresa this far. We will advocate the whole time.

I said it in another discussion as well, I call on all the activists that are targeted by these lawsuits to let us know. What we can do is advocate, raise our voices because the expression "unity is strength" is not just an expression. Only united can we tell not only the companies but the politicians as well that threats cannot stop us from talking about potential injustice.

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C: It is interesting as you said that it is a phenomena that up until now we had not defined, or we did not have such a name as SLAPP. Flutura, when did we start to identify those SLAPPs? Maybe we should expand the Konteksti discussion to a national or EU level? When did we start seeing that we should see it as a specific action unlike the other legal actions or mechanisms?

F: Like Megi said, in Kosovo they are not well-documented and there are two reasons. The main reason is that journalists do not talk about lawsuits against them. It is still perceived as a sort of stigma that is attached to the journalist the moment it is found out that that journalist is being sued or was sued. And after we started talking publicly, I know other cases where the journalists are not coming forward publicly for being sued in lawsuits that are clearly SLAPPs. One of them is publicly known, it is the 2 million euros lawsuit against BIRN for one very good and correct report on the lobbying for border changes case, former President Thaci's idea, through the Ministry of European Integration with public funds. It was a very good report and now as a consequence, there is a 2 million euros lawsuit.

We mentioned earlier the difference between acceptable suits and those that have no basis, another element is the amount requested for compensation. When the compensation is very large, even if the suit has a basis it can be considered a SLAPP, because to ask from an activist, who came to Kosovo and pro bono, voluntarily, with no compensation has documented the degradation for over a year, to ask for 100,000 euros is not proportional, is absurd, is terrorizing. It is a message, it is the best form to tell all the activists in Deçan this is what you should expect if you are active. To tell someone whose income is small, 10,000 euro compensation, is again an intimidation method. And lastly, to ask from a media company or organization for 2 million euros, no matter how many funds they have, it seeks to close that organization, and send a message to all other organization: look what expects you if you talk about PDK, Dhurata Hoxha or whoever else was involved.

Now, when have we heard about SLAPPs as a phenomena? In the US SLAPPs are recognized in many states. At the state level there is legislation that protects journalists and activists from SLAPPs. It has not been a very known concept in Europe, but it became known in 2018 when the Maltese journalist Daphne Caruana Galizia was killed. Her family, after her murder, realized that Daphne had 55 active slander suits against her from different politicians. One of the lawsuits was a businessman who filed 19 lawsuits for one article. He took each sentence of the article and made a separate lawsuit, if nothing else, to damage Daphne financially. When she died, there were a few EU MPs who demanded action in this direction. And to cut it short, because there were a lot of international developments, there is currently a large network of international NGOs. I am one of the leaders of the work group for over 100 organizations through which we have demanded from the European Commission to approve a directive against SLAPP suits. This directive aims to limit the misuse and abuse of slander laws on a national level. The idea is for this directive to be then used by judges, so when these suits reach the court, they are refused in a quick procedure without forcing, in this case lets say Shpresa, to prepare a response, to go to the court sessions, to hire lawyers etc.

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Where are we with this process? Věra Jourová from the European Commission has accepted the proposal and is addressing it to see what is happening. At the same time we are putting positive pressure on the Council of Europe to have a recommendation against SLAPP suits. Recommendations are usually very good because they suggest to countries how to deal with those suits, and we hope that we will succeed. We have convinced the Commissioner for Human Rights, Dunja Mijatović, for the first time through a blog to seek for these lawsuits to be stopped, so to take action against them, and I hope we will have results.

The last one I will mention are two very good platforms: The European Council for the Security of Journalists and Mapping Media Freedom, the platform that we lead as ECPMF that documents these cases. I am very happy hearing Megi say that FOL will document these cases as well because it is extremely necessary.

C: I wanted to ask you, Flutura, on the side of the company, the legal team that decides to follow such strategies or to say strategic lawsuits. Is it not their right as well? To present if they suspect a potential slander case? If they believe it, is there any possibility or right to bring it to the court or to play devil's advocate, to better understand their side.

F: That's a very good question. When Daphne's cases started to become public, her family, after a deep research, noticed that there are 2-3 law firms based in London who have organized all the suits against Daphne. And the largest accusation, at the time and it continues, is against these lawyers who enable companies and politicians to intimidate and stop activists. So, the main blame, after the companies and the politicians, is on the bad lawyers who, using their knowledge, do not use the legal tools, they misuse them. Legal tools like courts are there for people whose reputation has really been damaged and really need to repair the damage through the court. But the court and legal tools are not there to be abused. If a lawyer suggests to the company, or the businessman, or the politician to sue the activist knowing that they will not win the case, but sue them because this is how you scare them, then it is normal that the accusations fall on the lawyer.

Unfortunately, in Kosovo we have a small number of lawyers to have learned these types of lawsuits and are using them against activists. But at the same time we have other lawyers as well, who voluntarily are helping us, to represent these cases pro bono and together with Megi we are helping to create a form of network of these well-meaning people who want to help these activists. It is not a right of the lawyer to misuse and abuse legal tools, they are SLAPPers and they should be named and shamed publicly. I started getting angry just talking about it.

M: Let me intervene a bit. These lawyers who are now living in Kosovo, we know how long a legal procedure lasts here, and they use it. It is difficult for an activist to waste whole years expecting an answer from the courts. Us as FOL, three years ago we got an answer from the Basic Court for access to public documents, the verdict was in our favor. We waited 8 years for an answer, and now for another three other years it is on appeal and we continue not to have an answer. So for a total of 11 years, our right is not realized in the court.

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Now, for an activist, like Flutura mentioned, the case of Shpresa and Adriatik, the idea of being sued is difficult, and you have an open case in the court, and even the difficulties it may cause. This is why they use this method, so when each of the activists tell their difficulties, other activists hesitate before speaking out for a specific case. So, these bad lawyers know all these details and use them.

C: What are the invisible dangers of this mechanism, the SLAPPs? They threaten the safe spaces for freedom of speech. We are at the end of this episode and we have talked shortly maybe, maybe to best understand the SLAPPs aspect but I wanted to wrap up with a question for both: What can the Kosovar government, legislative organs, activists, and journalists do to create a safe space for the freedom of speech and media? What do we legally need to be free in our messages?

M: The legal part I hope will be covered by what Flutura is doing with the commission, will bring it to Kosovo, as well. There will be no lack of advocating from FOL as well, for a EU directive to be applied here as well. Here it has just started, for the cases we know, who knows what we can expect in the future. So, Flutur, I will leave the legal part to you so you can better and more correctly discuss it.

F: Like Megi said, what we can do is to follow the international developments and become a part of them as a country whenever it is possible. We can prepare either through work groups or through a network of people who can undertake policies so that these cases are minimized. So, we should follow international developments and the moment we have directives or recommendations to implement it on a national level. The second, from the civil society, FOL should continue their good part. It is very good that FOL is interested in SLAPPs. And the third, for journalists and activists, report based on information you receive in a factual manner. Only advocating, activism, and reporting based on evidence can protect us from SLAPPs. The less that the other side has the right to sue us, the more informed we are, the more we research, the less basis they have to sue us. There is the informal group that we have created, it's Megi, Taulant from KCSF, Rina Kika, Ardian Ndrecaj, Adriatik Gacaferri, Shpresa Loshaj, who are organizing defense for the people who are sued. We are active and we hope they don't need us, but if they do, we are there. And continue to call out all the bad lawyers who use SLAPPs against all activists and journalists.

C: Thank you Megi and Flutura for this discussion. I hope that those who listen to us understand more about this topic. It is something that we will closely follow, also the activism of a lot of people who are speaking out and do not stop. And we hope Shpresa Loshaj conveys her message until the end with no such stops.

M: Thank you it was a pleasure.

C: Thank you. We'll meet in the next episode.

F: Thank you.

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