

In: KSC-BC-2020-06
The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: **Trial Panel II**
Judge Charles L. Smith, III, Presiding
Judge Christoph Barthe
Judge Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hashim Thaçi

Date: 20 February 2023

Language: English

Classification: Public

Thaçi Notice of Defence

Specialist Prosecutor's Office

Alex Whiting

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

David Young

Counsel for Jakup Krasniqi

Venkateswari Alagendra

1. In the ‘Order on the Conduct of Proceedings’, the Trial Panel ordered the Defence for Mr. Hashim Thaçi (“Defence”) to provide notice of any defence not expressly provided for in Rule 95(5) of the Rules,¹ where that defence had not already been outlined in the pre-trial brief, by 20 February 2023.²

2. Mr. Hashim Thaçi hereby gives notice to the Specialist Prosecutor’s Office (“SPO”), Victims’ Counsel and the Trial Panel that he intends to raise the defence of self-defence. At all times relevant to the indictment period, Mr. Thaçi undertook actions (1) in response to imminent and unlawful use of force by forces associated with the Federal Republic of Yugoslavia and the Republic of Serbia (“Serbian Forces”); and (2) in defence of protected persons and property, including the civilian population of Kosovo. Mr. Thaçi’s actions were proportionate to the degree of danger posed by Serbian Forces.

3. Customary international law provides the legal basis for invocation of self-defence, as reflected in Articles 31(1)(c) and (d) of the Statute of the International Criminal Court, and confirmed by the International Criminal Tribunal for the former Yugoslavia (“ICTY”) in the *Kordic and Cerkez* Trial Judgement.³

4. The legal effect of self-defence is to exclude the criminal responsibility of Mr. Thaçi for the crimes alleged in the Indictment, including (but not limited to) the allegations related to unlawful detention in Count 3;⁴ the allegations contained in

¹ KSC-BD-03/Rev3/2020, Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, 2 June 2020 (“Rules”).

² KSC-BC-2020-06/F01226/A01, Annex 1 – Order on the Conduct of Proceedings, 25 January 2023, para. 45.

³ ICTY, *Prosecutor v. Kordic & Cerkez*, IT-95-14/2-T, Trial Chamber, Judgment, 26 February 2001, paras. 450-451.

⁴ For the most recent version of the indictment, see KSC-BC-2020-06/F00999/A01, Annex 1 – Amended Indictment, 30 September 2022. For public redacted version, see KSC-BC-2020-06/F01296/A03 – Annex 3, Public Lesser Redacted Version of Amended Indictment, 15 February 2023.

paragraph 12 of the (redacted) SPO Pre-Trial Brief,⁵ and the allegations related to an alleged common criminal purpose of a Joint Criminal Enterprise (“JCE”), and for actions taken by others in self-defence for which the SPO charges Mr. Taçi with criminal liability as an aider and abettor, as a superior, or through JCE III. Mr. Taçi requests a judgment of acquittal on all counts of the Indictment as a result of his invocation of the defence of self-defence.

[Word count: 412 words]

Respectfully submitted,



Gregory W. Kehoe

Counsel for Hashim Taçi

Monday, 20 February 2023

At The Hague, The Netherlands

⁵ KSC-BC-2020-06/F01296/A01, Annex 1 – Lesser Redacted Version of ‘Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief’, 15 February 2023, para. 12.