



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

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

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

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Acting Specialist Prosecutor

**Date:** 2 March 2023

**Language:** English

**Classification:** Public

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**Prosecution response to Thaçi notice of defence (F01306)**

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1. Pursuant to the Conduct of Proceedings Order<sup>1</sup> and Rule 95(5) of the Rules,<sup>2</sup> the Specialist Prosecutor's Office hereby responds to the Notice.<sup>3</sup>
2. Self-defence, as set out in the Notice and in the circumstances of this case, is not a valid defence. The charges in this case concern grave, international crimes, namely, crimes against humanity and war crimes. Thus, under international law, the justness or legitimacy of the war (including whether an attack was pre-emptive, defensive or offensive) is, from a legal point of view, irrelevant to the charges.<sup>4</sup> As the self-defence

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<sup>1</sup> Annex 1 to Order on the Conduct of Proceedings, KSC-BC-2020-06/F012226/A01, 25 January 2023 ('Order on the Conduct of Proceedings'), paras 45, 104 ('Parties and participants shall refrain from asking questions, or tendering exhibits, intended to advance a *tu quoque* defence or any other defence that has been ruled by the Trial Panel to be invalid. Similarly, questions regarding the justness or legitimacy of the war are not matters relevant to these proceedings and will not be permitted, unless it is clearly established to be pertinent to a fact relevant to the case').

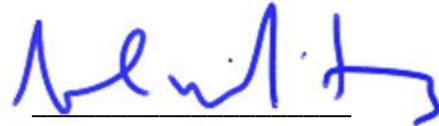
<sup>2</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

<sup>3</sup> Thaçi Notice of Defence, KSC-BC-2020-06/F01306, 20 February 2023 ('Notice').

<sup>4</sup> See, for example, ICTY, *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-A, Judgement, 19 May 2010, paras 31-32 (finding, *inter alia*, (i) that resort to force in self-defence in an internal armed conflict does not, in and of itself, prevent the qualification of crimes committed therein as serious violations of international humanitarian law and (ii) that crimes concerned were serious violations of international humanitarian law, irrespective of the question of whether the forces to which the accused belonged were conducting a lawful operation in self-defence); ICTY, *Prosecutor v. Martić*, IT-95-11-A, Judgement, 8 October 2008, para.28 (noting that in light of the fact that the prohibition against attacking civilians is absolute, the accused's action could not be justified by any argument that the military action was in self-defence); ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, para.42 ('a use of force that is proportionate under the law of self-defence, must, in order to be lawful, also meet the requirements of the laws applicable in armed conflict which comprise in particular the principles and rules of humanitarian law'); ICRC, *Commentary on Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3, para.1927 ('the right of self-defence does not include the use of measures which would be contrary to international humanitarian law, even in a case where aggression has been established and recognized as such by the Security Council. The Geneva Conventions of 1949 and this Protocol must be applied in accordance with their Article 1 "in all circumstances"; the Preamble of the Protocol reaffirms that their application must be "without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict"'). Similar considerations apply where military necessity is invoked as a defence. See ICTY, *Prosecutor v. Galić*, IT-98-29-A, Judgement, 30 November 2006, para.130; ICTY, *Prosecutor v. Strugar*, IT-01-42-A, Judgement, 17 July 2008, para.275; ICTY, *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, Judgement, 17 December 2004, para.54; ICTY, *Prosecutor v. Blaškić*, IT-95-14-A, Judgement, 29 July 2004, para.109.

raised in the Notice revolves around such irrelevant matters,<sup>5</sup> it is invalid and evidence advanced on this basis<sup>6</sup> should not be permitted.<sup>7</sup>

**Word count: 685**



**Alex Whiting**

**Acting Specialist Prosecutor**

Thursday, 2 March 2023

At The Hague, the Netherlands.

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<sup>5</sup> See Notice, KSC-BC-2020-06/F01306, para.2 ('At all times relevant to the indictment period, Mr. Taçi undertook actions (1) in response to imminent and unlawful use of force by [Serbian forces]; and (2) in defence of protected persons and property, including the civilian population of Kosovo').

<sup>6</sup> The Defence previously indicated its intention to advance evidence of crimes committed by Serbian forces on this basis. See Transcript (Specialist Prosecutor's Preparation Conference), 15 February 2023, pp.1978-1980.

<sup>7</sup> Conduct of Proceedings Order, KSC-BC-2020-06/F012226/A01, para.104.