



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

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

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

Registrar: Fidelma Donlon

Date: 9 March 2023

Language: English

Classification: Public

**Decision on Thaçi Defence Request for Leave to Reply to Prosecution Response to
Thaçi Notice of Defence**

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Counsel for Rexhep Selimi
David Young

Counsel for Jakup Krasniqi
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TRIAL PANEL II (“Panel”), pursuant to Article 40(6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 76 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 25 January 2023, the Panel ordered the Defence teams to provide notice of any defence not expressly provided for in Rule 95(5), where that defence had not already been outlined in their respective pre-trial briefs by 20 February 2023.¹
2. On 20 February 2023, the Defence for Mr Hashim Thaçi (“Defence”) filed a notice of defence (“Notice”).²
3. On 2 March 2023, the Specialist Prosecutor’s Office (“SPO”) responded to the Notice (“Response”).³
4. On 6 March 2023, the Defence requested leave to reply to the Response (“Request”).⁴

II. SUBMISSIONS

5. In the Notice, the Defence states its intent to raise the defence of self-defence.⁵

¹ F01226/A01, Panel, *Order on the Conduct of Proceedings* (“Order on the Conduct of Proceedings”), 25 January 2023, para. 45.

² F01306, Specialist Counsel, *Thaçi Notice of Defence*, 20 February 2023.

³ F01338, Specialist Prosecutor, *Prosecution Response to Thaçi Notice of Defence (F01306)*, 2 March 2023.

⁴ F01344, Specialist Counsel, *Thaçi Defence Request for Leave to Reply to Prosecution Response to Thaçi Notice of Defence*, 6 March 2023.

⁵ Notice, para. 2.

6. In the Response, the SPO submits that self-defence is not a valid defence, is irrelevant to the charges, and evidence advanced on this basis should therefore not be permitted.⁶

7. In the Request, the Defence requests leave to reply to the Response.⁷ The Defence submits that, if the Panel grants the Request, it will move to strike the Response on the basis that the SPO had no legal basis to respond to the Notice.⁸ The Defence avers that the appropriate time to discuss the relevance of the defence of self-defence is at the conclusion of the trial, having heard all the evidence in the case.⁹

IV. DISCUSSION

8. The Panel observes that the SPO based its Response upon paragraphs 45 and 104 of the Order on the Conduct of Proceedings and Rule 95(5) of the Rules.¹⁰

9. The purpose of a notice of alibi or of other grounds excluding criminal responsibility is to put the SPO on notice of the Defence's intention to raise such a defence and to prepare accordingly.¹¹ Procedurally, such notice is therefore not an occasion to initiate a dispute regarding the merit of the defence being advanced. This is reflected in the Rules, which do not offer a right to respond to such notice.

⁶ Response, para. 2.

⁷ Request, paras 1, 13.

⁸ Request, paras 1, 5-8, 13.

⁹ Request, paras 11-12.

¹⁰ Response, para. 1 *referring to* Order on the Conduct of Proceedings, paras 45, 104.

¹¹ Rule 104(1)(a) ("to enable the Specialist Prosecutor to respond"). *See also* ICTR, *Prosecutor v. Bizimungu*, ICTR-99-50-T, Trial Chamber II, [Decision on Jérôme Bicomumpaka's Notice of Alibi](#), 7 July 2005, paras 3-5; *Prosecutor v. Rutaganda*, ICTR-96-3-A, Appeals Chamber, [Judgement](#), 26 May 2003, para. 241; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-A, Appeal Chambers, [Judgement](#), 1 June 2001, para. 111; ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-T, Trial Chamber II, [Decision on Prosecution Motion for Order Requiring Particulars of Accused's Alibi Defence](#) ("Tolimir Decision"), 1 December 2010, para. 22; *Prosecutor v. Limaj et al*, IT-03-66-T, Trial Chamber II, [Decision on Prosecution's Motion Pursuant to Rule 67\(A\)\(1\)\(a\)](#), 16 February 2005.

Where a notice of a defence is thought to fall short of the relevant requirements, the proper avenue for the prosecution is to seek further particulars of the notice.¹² It follows that the Response and the Request were filed without valid legal basis, and neither is properly before the Panel. The Panel will consequently deny the Request.

10. The Panel is satisfied that no prejudice arises for either Party. The Parties will have the opportunity to state their position, if they choose to do so, regarding the relevance and requirements of the defence of self-defence later in the proceedings, including in respect of the joint Defence motion for judicial notice on adjudicated facts (“Defence Motion on Adjudicated Facts”).¹³ In addition, the Panel will invite the Defence during the status conference of 20 March 2023 to clarify how – in respect of charges focusing largely on allegations of abuse and killing of persons taking place during or after those persons were allegedly arrested and/or detained by Kosovo Liberation Army members – the argument that the Accused or others were acting “in response to imminent and unlawful use of force” by Serbian forces or “in defence of protected persons and property, including the civilian population of Kosovo”¹⁴ is to be fully understood.

11. The Panel observes that the Defence sought leave to reply in order to strike the Response “unless the Trial Panel has already done so *proprio motu*”.¹⁵ By finding the Response not to have a valid legal basis and not to be properly before the Panel, the relief sought is moot.

¹² See e.g. [Tolimir Decision](#).


¹³ F01331, Specialist Counsel, *Joint Defence Motion for Judicial Notice on Adjudicated Facts*, 1 March 2023, para. 9, with Annex A (wherein the Defence argues that certain facts are “relevant to the defence of self-defence that Mr Thaçi gave notice of on 20 February 2023”).

¹⁴ Notice, para. 2.

¹⁵ Request, para. 13.

VI. DISPOSITION

12. For these reasons, the Panel hereby **DENIES** the Request.

A handwritten signature in black ink, reading "Charles L. Smith, III". The signature is written in a cursive style and is positioned above a horizontal line.

Judge Charles L. Smith, III

Presiding Judge

Dated this Thursday, 9 March 2023

At The Hague, the Netherlands.