

IT-01-48-PT
D 5639-D 5638
12 FEBRUARY 2004

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UNITED
NATIONS



International Tribunal for the
Prosecution of Persons Responsible
for Serious Violations of International
Humanitarian Law Committed in the
Territory of the Former Yugoslavia
Since 1991

Case: IT-01-48-PT
Date: 12 February 2004
Original: English

THE PRESIDENT OF THE TRIBUNAL

Before: Judge Theodor Meron, President
Registrar: Mr Hans Holthuis
Decision of: 12 February 2004

THE PROSECUTOR

v.

Sefer HALILOVIĆ

DECISION ON DEFENCE MOTION CONCERNING CONDITIONS OF DETENTION

Counsel for the Prosecution

Mr Ekkehard Withopf
Mr Vladimir Tochilovsky
Ms Marie Tuma
Mr Manoj Sachdeva

Counsel for the Defence

Mr Stefan Kirsch
Mr Guénaél Mettraux

1. Sefer Halilović ("Accused") filed a motion¹ before Trial Chamber III requesting that the conditions of his detention be modified during trial to permit the Accused to reside in a "safe-house" or apartment in The Hague under conditions set by the Trial Chamber. The Accused is currently on provisional release.² The Trial Chamber made it a condition of the release that the Accused return to the Detention Unit at the commencement of his trial.³ The Trial Chamber has referred the Motion to me as the proper authority to consider the Motion pursuant to Rule 64 of the Rules of Procedure and Evidence.

2. Rule 64 is titled "Detention on Remand" and provides as follows:

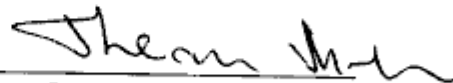
Upon being transferred to the seat of the Tribunal, the accused shall be detained in facilities provided by the host country, or by another country. In exceptional circumstances, the accused may be held in facilities outside of the host country. The President may, on the application of a party, request modification of the conditions of detention of an accused.

4. Rule 64 assumes that an accused is in fact in detention. The trial of the Accused, however, has not yet commenced and the Accused is still on provisional release. Accordingly, the Accused is requesting that I authorise a modification of the conditions of detention of the Accused in circumstances where the Accused is not yet detained. In my view it is not appropriate under Rule 64 to make any orders in relation to the detention of an accused until the time and conditions of his detention are fixed.

5. For the above reasons the Motion of the Defence is dismissed as premature.

Done in English and French, the English text being authoritative.

Dated this 12th day of February 2004,
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Tribunal]

¹ Partly Confidential, Defence Motion Concerning Conditions of Detention During Trial, 15 December 2003 ("Motion").
² Decision on Request for Pre-Trial Provisional Release, 13 December 2001.
³ *Ibid*, pg 4.