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International  
Criminal Tribunal  
for the former  
Yugoslavia

Tribunal Pénal  
International pour  
l'ex-Yougoslavie



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CHAMBERS

The Hague, 16 November 2005

JP/MO/1021e

## JUDGEMENT IN THE CASE THE PROSECUTOR V. SEFER HALILOVIĆ

- TRIAL CHAMBER ACQUITS SEFER HALILOVIĆ
- HALILOVIĆ TO BE RELEASED IMMEDIATELY

*Please find below the summary of the Judgement delivered by Trial Chamber I, Section A, composed of Judge Liu (Presiding), Judge El Mahdi, and Judge Mumba, as read out by the Presiding Judge.*

### Summary in the case Prosecutor v. Sefer Halilović

Trial Chamber I, Section A is sitting today to render the Judgement in the case of the Prosecutor v. Sefer Halilović.

For the purposes of this hearing, the Trial Chamber will summarise briefly its findings, emphasising that this is a summary only, and that the only authoritative account of the Trial Chamber's findings, and of its reasons for those findings, is to be found in the written judgement, copies of which will be made available to the parties and to the public at the conclusion of this hearing.

### Procedural History

The trial against the Accused, Sefer Halilović, started on the 31<sup>st</sup> of January 2005 and closed on the 31<sup>st</sup> of August 2005. During that time the Trial Chamber heard the evidence of 41 live witnesses and admitted the testimony of another 14 witnesses pursuant to Rule 92**bis**. The Trial Chamber admitted approximately 500 exhibits during trial.

### The Alleged Case

The indictment against Sefer Halilović concerns murders alleged to have been committed by troops belonging to the Army of the Republic of Bosnia and Herzegovina ("ABiH") in the villages of Grabovica and Uzdol in the Jablanica and Prozor areas in Herzegovina in September 1993 during a military operation allegedly called "Operation Neretva". The Prosecution alleges that Sefer Halilović was the commander of this operation and as such the troops involved in the "Operation Neretva" were under his command and control.

The Prosecution alleges that "the Operation" was commanded and co-ordinated from a Forward Command Post or "IKM" in Jablanica. One axis of attack, which was in the area where Grabovica is situated, was commanded by Zulfikar Ališpago and involved parts of units from the ABiH 1<sup>st</sup> Corps. These units came from the 9<sup>th</sup> Motorised Brigade, the 10<sup>th</sup> Mountain Brigade and the 2<sup>nd</sup> Independent Battalion. Another axis of attack, which was in the area where Uzdol is situated, involved the Prozor Independent Battalion and was commanded by Enver Buza.

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It is alleged that Sefer Halilović, knowing of the 9<sup>th</sup> and the 10<sup>th</sup> Brigades' "notorious reputations for being criminal and uncontrolled in behaviour", ordered the deployment of parts of units of these brigades to Herzegovina. It is further alleged that between the 7<sup>th</sup> and 8<sup>th</sup> of September 1993 the unit of the 9<sup>th</sup> Brigade and a part of the unit of the 10<sup>th</sup> Brigade as well as the 2<sup>nd</sup> Independent Battalion were billeted in the village of Grabovica.

The indictment alleges that between the 8<sup>th</sup> and 9<sup>th</sup> of September 1993 thirty-three Bosnian Croat civilians were killed in Grabovica. The indictment further alleges that Sefer Halilović had knowledge of the criminal reputation of the 9<sup>th</sup> and 10<sup>th</sup> Brigades and had been present on 8 September when Vehbija Karić, a member of the Inspection Team, told the troops that they should try those Bosnian Croat civilians summarily and throw them into the Neretva River if the villagers did not allow the soldiers to be billeted in their houses. In light of this, the indictment alleges that Sefer Halilović once notified during the night of the 8<sup>th</sup> of September about the killing of civilians, was duty bound to act urgently to prevent the commission of any further crimes.

According to the Prosecution, Sefer Halilović was ordered on the 12<sup>th</sup> of September by Rasim Delić "to reconsider the scope of the "Neretva-93" Operation, to isolate the perpetrators of the crimes in Grabovica, and to take active measures and to immediately report on the measures he had taken." It is alleged that Sefer Halilović failed to implement the order of Rasim Delić resulting in a failure to punish the perpetrators of the crime.

The indictment also alleges that on the 14<sup>th</sup> of September 1993 in the course of the Operation, the Prozor Independent Battalion attacked the village of Uzdol and killed twenty-nine Bosnian Croat civilians and one HVO prisoner of war.

The Prosecution alleges that Sefer Halilović, by virtue of his position and authority as Commander of "Operation Neretva", had effective control over the units subordinated to him, including the 9<sup>th</sup> Brigade, the 10<sup>th</sup> Brigade, the 2<sup>nd</sup> Independent Battalion and the Prozor Independent Battalion.

In view of these alleged facts, Sefer Halilović is charged with murder, punishable under Article 3 of the Statute as recognised by Article 3 (1) (a) of the Geneva Conventions. The indictment alleges that Sefer Halilović incurs criminal responsibility under Article 7(3) of the Statute since, notwithstanding his duties as a commander, Sefer Halilović did not take effective measures to prevent the killings of civilians in Grabovica and did not take steps to carry out a proper investigation to identify the perpetrators of the killings in both Grabovica and Uzdol and as commander of the Operation to punish them accordingly.

### The Accused

On the 25<sup>th</sup> of May 1992, Sefer Halilović was appointed by the Presidency of the Republic of Bosnia and Herzegovina as Commander of the Territorial Defence (TO). After July 1992, he was "Chief of the General Staff" of the ABiH until 18 August 1992 when the RBiH Presidency formed five corps of the ABiH with Sefer Halilović as "Chief of the Main Staff" of the ABiH. Sefer Halilović served as the supreme ABiH commander until 8 June 1993 when the President of the Republic of Bosnia and Herzegovina issued a decision restructuring the ABiH supreme command headquarters and creating a new position of "Commander of the Main Staff", which was filled by Rasim Delić, while Sefer Halilović retained the position of "Chief of the Main Staff" of the ABiH. On 18 July 1993, Alija Izetbegović issued a further decision making the "Chief of the Main Staff" a Deputy Commander, thus increasing the number of Deputy Commanders to three. According to the decision, the Deputy Commanders would assume the duties of the "Chief of the Main Staff" on rotational basis.

### Facts in relation to Grabovica

The Trial Chamber finds that in order to conduct combat operations in Herzegovina to lift the HVO blockade of Mostar at the time relevant to the indictment, units of the 9<sup>th</sup> Brigade, the 10<sup>th</sup> Brigade and the 2<sup>nd</sup> Independent Battalion, all subordinated to the ABiH 1<sup>st</sup> Corps, were sent from Sarajevo to the Jablanica sector. This was the area where Grabovica was situated and it was at the time the area of responsibility of the 6<sup>th</sup> Corps. The Trial Chamber finds that those units were deployed to Herzegovina following an order issued by Sefer Halilović.

Grabovica was a village inhabited by Bosnian Croats. The Trial Chamber notes that Grabovica had been under ABiH control since May 1993 and the relationship between the residents of Grabovica and the ABiH soldiers who were stationed there was good and, as there was no other accommodation available for the arriving troops, they were supposed to be billeted with the inhabitants of the village.

The Trial Chamber has been provided with evidence concerning the nature of the 9<sup>th</sup> and 10<sup>th</sup> Brigades, referred to in the indictment as having “notorious reputations for being criminal and uncontrolled”. The evidence shows that members of both brigades not only demonstrated a lack of discipline, but also took civilians to dig trenches at the front line and committed thefts or other forms of misappropriation. However, the Trial Chamber finds that this misconduct was not comparable to the crimes committed in Grabovica. The Trial Chamber notes in this respect the testimony of the 1<sup>st</sup> Corps Commander Vahid Karavelić who, while knowing of breaches of discipline and previous behaviour of members of these brigades, said that it never occurred to him that they might commit atrocities against civilians in Grabovica.

The Trial has also been provided with evidence as to problems encountered by the troops when trying to accommodate themselves with the inhabitants of Grabovica. The Trial Chamber has found the evidence inconsistent as to the circumstances of the alleged statement of Vehbija Karić, in particular when and where it took place and whether Sefer Halilović was present, and moreover does not find the witnesses reliable in this respect. The Trial Chamber has therefore found that it has not been proven that Vehbija Karić made the alleged comments or that Sefer Halilović was present at the time.

The Trial Chamber has been presented with evidence that with the arrival of the unit of the 9<sup>th</sup> Brigade the atmosphere in the village of Grabovica changed and acts of violence started occurring. Throughout the night of the 8<sup>th</sup> of September shooting was heard in the village. One witness testified that she heard women wailing and crying and that she was “just quiet sitting on the floor and awaiting her fate”. The Trial Chamber has established that by the early afternoon of the 9<sup>th</sup> of September a number of inhabitants had been murdered by members of the ABiH units present in Grabovica at the time. The Trial Chamber takes particular note of the callous way in which a member of the 9<sup>th</sup> Brigade shot Pero Marić while sitting at a table, facing his victim. The Trial Chamber further notes the brutal way with which Ljubica Zadro and Mladenka Zadro were killed. Ljubica Zadro was carrying her four year old daughter Mladenka, when both were shot at short distance by members of the 9<sup>th</sup> Brigade.

### **Facts in relation to Uzdol**

In 1993 Uzdol was a Bosnian Croat village, comprised of several hamlets and with a total population of about one hundred inhabitants. In September 1993 the HVO had several positions in and around Uzdol. The Trial Chamber finds that in the early morning hours of the 14<sup>th</sup> of September, the Prozor Independent Battalion together with some members of the civilian police force of the Ministry of Interior attacked the headquarters of the HVO located in the school building of one of the hamlets of Uzdol. Shortly after the attack began, the HVO started shelling Uzdol. The Trial Chamber has found that during the attack a number of inhabitants were killed by troops under ABiH command.

The Trial Chamber notes that some of the killings committed in Uzdol were particularly cruel in nature. The Trial Chamber notes in this respect the killing of Anica Stojanović who was half-seated on the ground next to her house when a soldier, who was standing three metres away from her, killed her by a shot to the head. The testimony showed that she cried out the name of her son before she was shot. The Trial Chamber also notes the direct evidence concerning the manner of the killings of Ruža Zelić and her two children, who were 13 and 10 years old at the time of their deaths. The three had tried to flee from the soldiers, but the soldiers caught up with them. Ruža Zelić begged the soldiers not to kill them, but the three of them were shot.

### **Findings on the crimes charged**

As to the crimes committed in Grabovica, the Trial Chambers has found that the fact that the ABiH soldiers were billeted in Grabovica in preparation for combat operations in Herzegovina, played a substantial part in the soldiers' ability to commit the crimes. As for the crimes in Uzdol, the Trial Chamber has found that the crimes were committed during an attack on Uzdol, which was part of military combat operations. The Trial Chamber has therefore found that there was a nexus between the crimes committed in Grabovica and Uzdol and the armed conflict in the area.

**With regards to the crimes committed in Grabovica**, the Trial Chamber has found that it has been established beyond reasonable doubt that 13 inhabitants, taking no active part in the hostilities, were murdered by members of the 9<sup>th</sup> Brigade and unidentified members of the ABiH on the 8<sup>th</sup> or the 9<sup>th</sup> of September 1993 (Pero Marić, Dragica Marić, Ivan Zadro, Matija Zadro, Mladen Zadro, Ljubica Zadro and Mladenka Zadro, Josip Brekalo, Martin Marić, Živko Drežnjak, Ljuba Drežnjak, Ivan Mandić and Ilka Miletić).

The Trial Chamber has found that the Prosecution failed to prove beyond reasonable doubt that 14 persons listed in the indictment were killed by members of the ABiH in Grabovica at the time relevant to the indictment.

The Trial Chamber notes that during trial, six of the alleged victims listed in the indictment were withdrawn.

**With regards to the crimes committed in Uzdol**, the Trial Chamber has found that 25 inhabitants were killed by members of units under ABiH command in Uzdol on the 14<sup>th</sup> of September 1993, and were persons taking no active part in the hostilities (Ruža Zelić, Marija Zelić, Stjepan Zelić, Anica Stojanović, Ivan Zelenika, Jadranka Zelenika, Ruža Zelenika, Luca Zelenika, Janja Zelenika, Dragica Zelenika, Kata Perković, Martin Ratkić, Kata Ratkić, Anto Stojanović, Franjo Stojanović, Serafina Stojanović, Stanko Rajić, Lucija Rajić, Šima Rajić, Mara Rajić, Ivka Rajić (born in 1921), Mijo Rajić, Ivka Rajić (born in 1934), Zorka Glibo, and Mato Ljubić).

The Trial Chamber has found that the Prosecution failed to prove beyond reasonable doubt that two persons listed in the indictment were taking no active part in the hostilities at the time of their deaths on the 14<sup>th</sup> of September 1993. Moreover, the Trial Chamber has found that the Prosecution failed to prove beyond reasonable doubt that two other persons listed in the indictment were killed by members of units under ABiH command, who attacked Uzdol on the 14<sup>th</sup> of September 1993.

The Trial Chamber notes that at the end of the trial, one of the alleged victims listed in the indictment was withdrawn.

The Defence has submitted that the cause of death of the victims in Uzdol was either shelling by the HVO or that they were caught in the crossfire between the ABiH and the HVO during the ABiH attack on Uzdol on the 14<sup>th</sup> of September 1993. The Trial Chamber has found that the HVO shelled the hamlets comprising Uzdol intensively; however, the autopsy report

of the victims does not contain any evidence that the victims were killed, or even injured, by shrapnel from falling shells. Therefore, the Trial Chamber has found that the evidence does not support the Defence submission in this respect.

In relation to the Defence submission that the victims were caught in crossfire, the Trial Chamber notes that the evidence shows that there was heavy fighting between the units under ABiH command and the HVO in the Uzdol area during the attack. The evidence also shows that the inhabitants of the area tried to save themselves by leaving their homes and running for their lives. Contrary to the Defence submission, the Trial Chamber has found that the victims were killed intentionally and notes, in particular, that several victims were shot at close range; that two victims were killed in their beds, one of whom was bedridden; that one victim had been mutilated prior to being killed; that one victim was killed by being brutally beaten to death over the head after having been first shot in the chest and leg; that another victim was killed by being beaten over the head with an implement with both sharp and blunt edges, and finally the Trial Chamber notes that even children were killed.

### **Findings in Relation to the Individual Criminal Responsibility of the Accused**

Having found that murders were committed both in Grabovica and Uzdol, the Trial Chamber recalls that the purpose of a trial is not solely to determine whether serious violations of international humanitarian law were committed, but ultimately is to determine whether the Accused bears individual criminal responsibility for those crimes.

The Trial Chamber has assessed the individual criminal responsibility of Sefer Halilović based on all the evidence presented to it during the trial.

As a preliminary matter, the Trial Chamber notes that it is not convinced that the combat operations carried out in Herzegovina at the time relevant to the indictment were called "Operation Neretva". Except for a map, no other exhibit presented to the Trial Chamber refers to the combat operations as "Operation Neretva". Moreover, the Trial Chamber notes that several of the witnesses involved with the ABiH at the time, including two Corps Commander, did not hear the use of this name during the combat operations. However, for the purposes of this judgement the Trial Chamber used the term "Operation Neretva" to refer to the combat operations which took place in Herzegovina at the time relevant to the indictment.

The Trial Chamber has found that the participants of a meeting held in Zenica on the 21<sup>st</sup> and 22<sup>nd</sup> August 1993 and chaired by the Commander of the Main Staff, Rasim Delić, did not discuss "Operation Neretva". It was a briefing by the Corps Commanders on their areas of responsibility at which they expressed their concerns on the direction the conflict had taken and the future direction of the conflict. The Trial Chamber has further found that neither Sefer Halilović nor anyone else was appointed commander of an "Operation Neretva" or any other operation at this meeting. Furthermore, the Trial Chamber has found that subsequent to the Zenica meeting, Sefer Halilović among others carried out tasks of reorganisation and re-subordination of units, and that was done pursuant to an order issued by Rasim Delić on the 1<sup>st</sup> of September.

The Trial Chamber has found that the Prosecution failed to establish that Sefer Halilović was appointed as commander of "Operation Neretva" by virtue of an order issued by Rasim Delić on 30 August, as alleged in the indictment. Rather, by this order Rasim Delić appointed Sefer Halilović as Team Leader of an Inspection Team not entrusted with command authority, but with co-ordinating and monitoring functions in the areas of responsibility of the 4<sup>th</sup> and the 6<sup>th</sup> Corps, which were the Corps that carried out military operations in the areas mentioned above, where Grabovica and Uzdol were situated. Furthermore, the Trial Chamber has found that the role of Sefer Halilović, in the implementation of orders issued by Rasim Delić concerning the reorganisation and re-

subordination was consistent with his role as Team Leader of an Inspection Team charged with monitoring and co-ordinating functions.

The Trial Chamber has also found that the evidence presented by the Prosecution is insufficient to support a finding that the location where the Inspection Team was accommodated in Jablanica was an IKM from which an “operation” in Herzegovina was commanded, as alleged in the indictment. The Trial Chamber notes that the term IKM was used as “jargon” to denote the location of senior officers.

The Trial Chamber considers the evidence presented to it as to Sefer Halilović’s alleged position as commander of “Operation Neretva” to be inconsistent. The Trial Chamber notes in particular that some of the lower-ranking soldiers who testified before the Trial Chamber considered Sefer Halilović to be commander of “Operation Neretva”. However, the Trial Chamber has found that testimony of some lower-ranking soldiers to that effect is only indicative of the respect which Sefer Halilović enjoyed as a senior officer and one of the founders of the ABiH. The Trial Chamber cannot find that this evidence *per se* is sufficient to support the Prosecution’s allegation that Sefer Halilović was commander of “Operation Neretva”.

The evidence provided by higher-ranking ABiH officers is more consistent in showing that Sefer Halilović was not a commander of “Operation Neretva”, but rather was tasked with co-ordinating combat activities.

The Trial Chamber also notes that at a meeting on the 4<sup>th</sup> of September in Donja Jablanica, Rasim Delić signed and approved the documents for the “Operation”. Rasim Delić’s signature can be seen on a map entitled “Operation Neretva”. The Prosecution alleges that the signatures on this map, Rasim Delić’s on the top-left and Sefer Halilović’s on the bottom-right, indicates that “Halilović was the commander responsible for the Operation”. The Trial Chamber has found, however, that contrary to the Prosecution allegation, the signatures on this map are inconclusive as to who was commander of the “Operation”.

Having examined the evidence presented as to the role of Sefer Halilović in the field in Herzegovina in September 1993, the Trial Chamber has found that Sefer Halilović carried out tasks consistent with his role as Team Leader of an Inspection Team tasked with reviewing combat readiness and co-ordinating combat operations, as set out in the order issued by Rasim Delić on 30 August 1993. The Trial Chamber notes that the authority of Sefer Halilović to issue orders was limited in two ways by the 30 August order: first in that for any “drastic proposals” Sefer Halilović had to consult with Rasim Delić, and secondly, by this order Sefer Halilović only had the power to issue orders “in keeping with his authority”. The Trial Chamber notes, in this regard, that the position of Sefer Halilović within the structure of the Main Staff was circumscribed as a result of the orders of 8 June and 18 July issued by Alija Izetbegović. The Trial Chamber also notes that the evidence does not contain a prior order from Sefer Halilović ordering the start of combat operations on the axes of attack. Furthermore, an analysis of the evidence concerning orders issued by Sefer Halilović and information sent to him from the field indicates that the orders issued by Sefer Halilović were issued under the overall authority of Rasim Delić as Commander of the ABiH, and that orders by Sefer Halilović were, in general, implementing the instructions of Rasim Delić.

The Trial Chamber notes that the evidence only contains one order concerning combat operations issued by Sefer Halilović after the establishment of the Inspection Team, namely that of 15<sup>th</sup> of September 1993. The Trial Chamber has found that this evidence is in itself insufficient to support a finding that Sefer Halilović was in command of combat operations in Herzegovina. Moreover, the Trial Chamber is of the opinion that this order can be seen as part of the Inspection Team’s coordination function.

In conclusion, the Trial Chamber has found that the Prosecution failed to prove beyond reasonable doubt that Sefer Halilović was either *de jure* or *de facto* commander of the alleged operation called "Operation Neretva".

Moreover the Trial Chamber has found the following:

**Concerning Grabovica**, the Trial Chamber notes that the combat order for the start of combat operations in the axis in that area was issued by Zulfikar Ališpago, as commander of the axis. The Trial Chamber notes in particular that the unit of the 9<sup>th</sup> Brigade was under the command of Zulfikar Ališpago at the time the crimes were committed. The Trial Chamber has found that the evidence presented is insufficient to establish that Zulfikar Ališpago was subordinated to Sefer Halilović.

The Trial Chamber has further found that Sefer Halilović knew of the crimes committed in Grabovica in the evening of the 9<sup>th</sup> of September, when the last proven crime had already been committed. The Trial Chamber notes that, in relation to the investigation of the crimes in Grabovica, Sefer Halilović, in the evening of the 9<sup>th</sup> of September, instructed Namik Džanković, a member of the Inspection Team and of the ABiH Main Staff Security Service, to work together with the MUP, as well as with other members of the SVB, in order to investigate the crimes and to keep "Sarajevo", rather than himself, informed. The evidence shows that at this point in time investigations were already under way. The evidence does not show that Sefer Halilović initiated the investigations or that the investigations were in any way carried forward through his actions. The evidence also shows that the 6<sup>th</sup> Corps Security Service, the Military Police Battalion of the 6<sup>th</sup> Corps and the Military Police of the 44<sup>th</sup> Brigade, which was located in Jablanica, were involved in the investigation into the events in Grabovica. The Chief of Security of the ABiH Main Staff Jusuf Jašarević was informed of the results of their investigations. The Trial Chamber has found that based on the evidence, it can not be concluded that Sefer Halilović had the material ability to punish the perpetrators of the crimes committed in Grabovica.

Having examined all the evidence presented to it and in light of its factual findings, the Trial Chamber has found that the Prosecution did not prove beyond reasonable doubt that Sefer Halilović had effective control over the troops in Grabovica on the 8<sup>th</sup> and 9<sup>th</sup> of September 1993, who the Trial Chamber has found committed the crimes.

**Concerning Uzdol**, the Trial Chamber has found that the crimes were committed by members of units under ABiH command taking part in the attack on HVO positions in and around Uzdol. The Trial Chamber has found that these units were the Prozor Independent Battalion and members of the civilian police forces of the MUP, both under the command of the Prozor Independent Battalion Commander, Enver Buza. The Trial Chamber has found that the evidence presented is insufficient to establish that Enver Buza was subordinated to Sefer Halilović.

Furthermore, the Trial Chamber considered that the evidence presented to it did not show that Sefer Halilović had any role in the investigations concerning the crimes committed in Uzdol. These investigations were conducted by the Security Services of the 6<sup>th</sup> Corps and the Prozor Independent Battalion. Once again, the Chief of Security of the Main Staff Jusuf Jašarević was informed of the results of the investigations. The Trial Chamber has found that based on the evidence presented, it can not be concluded that that Sefer Halilović had the material ability to punish the perpetrators of the crimes committed in Uzdol.

Having examined all the evidence presented to it and in light of its factual findings, the Trial Chamber has found that the Prosecution has not proven beyond reasonable doubt that Sefer Halilović had effective control over the units under ABiH command, which the Trial Chamber has found committed the crimes in Uzdol.

Finally, the Trial Chamber has found that Sefer Halilović possessed a degree of influence as a high ranking member of the ABiH and as one of its founders. However, the Trial Chamber considers that Sefer Halilović's influence falls short of the standard required to establish effective control. It is a principle of international criminal law that a commander cannot be held responsible for the crimes of persons who were not under his command at the time the crimes were committed. The Trial Chamber has found that the Prosecution failed to prove beyond reasonable doubt that Sefer Halilović was either *de jure* or *de facto* commander of an operation called "Operation Neretva", which the Prosecution alleges was carried out in Herzegovina. The Trial Chamber has also found that the Prosecution has failed to establish that Sefer Halilović had effective control over the troops which committed the crimes in the areas of Grabovica and Uzdol at the time the crimes were committed. The Trial Chamber has therefore found that the Prosecution failed to establish that Sefer Halilović was responsible under Article 7(3) of the Statute for the murders committed in Grabovica and Uzdol.

### Disposition

For the foregoing reasons, the Trial Chamber has decided that:

The Accused **SEFER HALILOVIĆ** is found **NOT GUILTY** and therefore acquitted of Murder, a Violation of the Laws or Customs of War as charged in the indictment.

Pursuant to Rule 99 of the Rules, the Trial Chamber orders that Sefer Halilović be released immediately from the United Nations Detention Unit after the necessary practical arrangements are made.

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