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**No. ICC-01/14-01/18  
Date: 3 March 2023**

**TRIAL CHAMBER V**

**Before: Judge Bertram Schmitt, Presiding Judge  
Judge Péter Kovács  
Judge Chang-ho Chung**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

**IN THE CASE OF  
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD  
NGAISSONA***

**Public redacted version of**

**Twentieth Decision on the Prosecution Requests for Formal Submission of Prior  
Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses  
P-1838 and P-2018**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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**TRIAL CHAMBER V** of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2), 67(1) and 69 of the Rome Statute, and Rule 68(1) and (3) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Twentieth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1838 and P-2018’.

## **I. Procedural history**

1. On 17 and 19 May 2022, respectively, the Office of the Prosecutor (the ‘Prosecution’) requested the introduction, under Rule 68(3) of the Rules, of the statements and associated items of P-1838 and P-2018 (the ‘P-1838 Request’ and the ‘P-2018 Request’, respectively).<sup>1</sup>
2. On 6 June 2022,<sup>2</sup> the Yekatom Defence responded to the P-1838 Request.<sup>3</sup> On the same day, the Ngaïssona Defence indicated that it fully joins and supports the Yekatom Defence’s response.<sup>4</sup>
3. On 10 June 2022,<sup>5</sup> the Ngaïssona Defence indicated that it does not intend to respond to the P-2018 Request and defers to the Chamber’s discretion.<sup>6</sup> On 13

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<sup>1</sup> Corrigendum of “Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-1838 pursuant to Rule 68(3)”, 17 May 2022, ICC-01/14-01/18-1412-Conf, ICC-01/14-01/18-1412-Conf-Corr (with confidential Annexes A and B) (corrected version notified on 18 May 2022) (public redacted version notified on 15 June 2022, ICC-01/14-01/18-1412-Red); Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-2018 pursuant to Rule 68(3), 19 May 2022, ICC-01/14-01/18-1416-Conf (with confidential Annexes A and B).

<sup>2</sup> Upon the Yekatom Defence’s request, the Single Judge granted an extension to respond to the P-1838 Request to 6 June 2022 for all participants (email from Yekatom Defence, 18 May 2022, at 11:37; email from the Chamber, 19 May 2022, at 10:20).

<sup>3</sup> Yekatom Defence Response to the “Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-1838 pursuant to Rule 68(3)”, 18 May 2022, ICC-01/14-01/18-1412-Conf-Corr, ICC-01/14-01/18-1447-Conf (public redacted version notified the next day, ICC-01/14-01/18-1447-Red) (the ‘Yekatom Defence Response to the P-1838 Request’).

<sup>4</sup> Email from the Ngaïssona Defence, 6 June 2022, at 16:25.

<sup>5</sup> Upon the Yekatom Defence’s request, the Single Judge granted an extension to respond to the P-2018 Request to 13 June 2022 for all participants (email from the Yekatom Defence, 20 May 2022, at 15:48; email from the Chamber, 24 May 2022, at 09:48).

<sup>6</sup> Email from the Ngaïssona Defence, 10 June 2022, at 09:56.

June 2022, the Yekatom Defence responded to the P-2018 Request (the ‘Yekatom Defence Response to the P-2018 Request’).<sup>7</sup>

## II. Analysis

4. The Chamber incorporates by reference the applicable law as previously set out.<sup>8</sup>

### A. P-1838

#### 1. Submissions

5. The Prosecution seeks to introduce the prior recorded testimony of witness P-1838, comprising one statement and three associated items.<sup>9</sup> It submits that the introduction of P-1838’s prior recorded testimony would reduce the presentation of the Prosecution’s examination-in-chief and help to streamline the proceedings, reducing the time for its examination from ‘at least 4 hours’ to approximately two hours.<sup>10</sup> According to the Prosecution, P-1838’s statement is highly relevant and probative, and corroborated by other evidence to be tested at trial.<sup>11</sup>
6. The Yekatom Defence opposes the P-1838 Request.<sup>12</sup> It submits that the witness’s statement contains ‘extensive, highly prejudicial’ allegations with regard to the alleged acts and conduct of Mr Yekatom and his elements. It further contends that these allegations cannot be considered mere background or contextual information, given that they touch upon core issues underlying the PK9-Mbaïki axis charged crimes. In particular, the Yekatom Defence argues that P-1838 makes ‘strong, speculative claims’ regarding the targeting of Muslims,

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<sup>7</sup> Yekatom Defence Response to the ‘Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-2018 pursuant to Rule 68(3)’, (ICC-01/14-01/18-1416-Conf), ICC-01/14-01/18-1456-Conf.

<sup>8</sup> Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1962, P-0925, P-2193, P-2926, P-2927, P-1577 and P 0287, and the Ngaïssona Defence Motion to Limit the Scope of P-2926’s Evidence, 10 March 2021, ICC-01/14-01/18-907-Conf (public redacted version notified on 1 April 2021, ICC-01/14-01/18-907-Red), paras 8-16. *See also* Decision on the Yekatom Defence Request for Leave to Appeal the Twelfth Rule 68(3) Decision regarding P-1704, 29 April 2022, ICC-01/14-01/18-1383, paras 4-17.

<sup>9</sup> P-1838 Request, ICC-01/14-01/18-1412-Red, paras 1, 13-14, 20; Annex A to the P-1838 Request, ICC-01/14-01/18-1412-Conf-AnxA.

<sup>10</sup> P-1838 Request, ICC-01/14-01/18-1412-Red, paras 1, 3, 15-18.

<sup>11</sup> P-1838 Request, ICC-01/14-01/18-1412-Conf-Corr, paras 9, 11-12.

<sup>12</sup> Yekatom Defence Response to the P-1838 Request, ICC-01/14-01/18-1447-Red, paras 1-2, 34.

and that the part of the statement referring to the killing of Djido Saleh ‘could be read as a “confession” made by Mr Yekatom to P-1838, and would be sufficient, on its own, to [hear the witness fully live]’.<sup>13</sup>

7. In addition, the Yekatom Defence submits that P-1838’s statement contains ‘important contradictions’ with regard to other evidence, exhibits a lack of coherence and unreliability in the chronology of the events, as well as ‘strong signs’ of bias and a ‘personal animosity’ against Mr Yekatom.<sup>14</sup> Furthermore, the Yekatom Defence contends that it is in the interests of justice to hear P-1838 fully live due to his alleged role and position of influence during the events and his knowledge of the town of Mbaïki, which is ‘highly relevant’ to the case. It also states that P-1838 is ‘one of the most important witnesses’ for the PK9-Mbaïki axis charged crimes, noting that only one witness is currently scheduled to testify fully live.<sup>15</sup>

## *2. The Chamber’s determination*

8. In his statement,<sup>16</sup> P-1838 discusses, *inter alia*, (i) the situation of Mbaïki before the arrival of the Seleka in 2012; (ii) the Seleka taking over Bangui and Mbaïki, the exactions allegedly committed by them against the local population, and the distribution of weapons to selected Muslim influential traders in Mbaïki; (iii) the Muslim population of Mbaïki leaving the town, once the Seleka left, out of fear for their lives because of the Anti-Balaka; (iv) Anti-Balaka elements allegedly killing a Muslim man in Bangui-Bouchia, which led to reprisals from armed Muslim traders from Mbaïki against the Christian population of Bangui-Bouchia; (v) the Anti-Balaka allegedly burning and destroying mosques and Muslim houses as they advanced along the PK9-Mbaïki axis, and thousands of Muslims from the villages seeking refuge in Mbaïki as they feared for their lives; (vi) the arrival of the Anti-Balaka in Mbaïki; (vii) Mr Yekatom being called to a meeting in around December 2013, to discuss the fate of the Muslims; (viii) the evacuation of Muslims from Mbaïki, and the situation in the town thereafter; (ix) the killing

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<sup>13</sup> Yekatom Defence Response to the P-1838 Request, ICC-01/14-01/18-1447-Red, paras 13-20.

<sup>14</sup> Yekatom Defence Response to the P-1838 Request, ICC-01/14-01/18-1447-Conf, paras 21-32.

<sup>15</sup> Yekatom Defence Response to the P-1838 Request, ICC-01/14-01/18-1447-Red, paras 10-12, 32.

<sup>16</sup> CAR-OTP-2100-0252.

of Djido Saleh; (x) the setting up of roadblocks by the Anti-Balaka, such as in Pissa and Sekia; and (xi) ‘YEKATOM’s Anti-Balaka [causing] many problems at the barriers, such as regular cases of rape of young girls and looting, stealing goats or killing them’.

9. In addition, the witness makes a number of references to Mr Yekatom, including (i) Mr Yekatom allegedly sending Anti-Balaka elements to kill a Muslim man in Bangui-Bouchia; (ii) Mr Yekatom allegedly visiting the villages surrounding Pissa, where the Anti-Balaka established a base; (iii) the Muslims who sought refuge in Mbaïki hearing that the Anti-Balaka under Mr Yekatom’s leadership were allegedly responsible for attacking a family in Bangui-Bouchia; (iv) Mr Yekatom wanting to take control of Mbaïki because ‘there were many wealthy traders there’ and wanting ‘the heads of Muslims’; (v) Mr Yekatom travelling back and forth throughout the Lobaye region; (vi) Mr Yekatom allegedly speaking in favour of peace during a meeting, but the witness not believing that he was being truthful; (vii) Mr Yekatom accompanying his elements around Mbaïki and allegedly installing them in the abandoned houses of the Muslims; (viii) Mr Yekatom allegedly being in control of many localities and his men collecting money to pay him, and Mr Yekatom patrolling the barricades before collecting the extorted money and properties; and (ix) Mr Yekatom allegedly sending his elements to kill Djido Saleh, although stating to the witness that it was an ‘accident’ and [REDACTED].<sup>17</sup>
  
10. The Chamber notes that the witness makes numerous references to the alleged acts and conduct of Mr Yekatom, and that his statement touches upon core issues of the case, namely the PK9-Mbaïki axis charged crimes. However, the Chamber also recalls in this context that references to the accused’s acts and conduct do not *per se* constitute an obstacle to the introduction of a prior recorded testimony pursuant to Rule 68(3) of the Rules, and that this provision also does not preclude the introduction of evidence that is central to core issues of the case.<sup>18</sup>

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<sup>17</sup> CAR-OTP-2100-0252, at 0260-0266, paras 47-49, 54, 60, 66, 72, 79, at 0268-0272, paras 91, 95-96, 99, 104, 109-110.

<sup>18</sup> See *e.g.* Fourteenth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-2556 and P-1077, 14 June 2022,

11. As to the Yekatom Defence's submissions that P-1838's statement is uncorroborated, unreliable and biased, the Chamber recalls that while corroboration may be among the factors to be considered when assessing whether to allow the introduction of a prior recorded testimony, it is not a requirement under Rule 68(3) of the Rules.<sup>19</sup> Similarly, there is no requirement that the prior recorded testimony have sufficient indicia of reliability, contrary to other sub-rules of the said provision.<sup>20</sup> Moreover, with regard to the alleged animosity of the witness towards Mr Yekatom,<sup>21</sup> the Chamber is not persuaded that this factor precludes hearing the witness under Rule 68(3) of the Rules. The Chamber will ultimately assess and weigh the probative value of P-1838's evidence in the context of its judgment deliberation.
12. Furthermore, while the Chamber takes into account the Yekatom Defence's submission with regard to the prejudicial nature of the 'confession' made by Mr Yekatom to the witness regarding the killing of Djido Saleh, it sees no reason why the Yekatom Defence would not be able to confront the witness on this issue during its examination. By the same token, the Chamber also does not consider that this alleged 'confession', in this instance, suffices on its own to warrant hearing the witness fully live.
13. The Chamber stresses that the Yekatom Defence will have the opportunity to fully examine P-1838 in court concerning the allegations made against Mr Yekatom, including his basis of knowledge, and confront him about the alleged confession. The Yekatom Defence can also clarify discrepancies regarding dates, his alleged bias, and regarding the alleged exaggeration of power and influence of Mr Yekatom.

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ICC-01/14-01/18-1457-Conf (the 'Fourteenth Rule 68(3) Decision'), para. 11 and the references cited therein.

<sup>19</sup> See e.g. Fourteenth Rule 68(3) Decision, ICC-01/14-01/18-1457-Conf, para. 12 and the references cited therein.

<sup>20</sup> See e.g. Fifteenth Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony under Rule 68(3) of the Rules concerning Witness P-2353, 24 June 2022, ICC-01/14-01/18-1480-Conf (public redacted version notified the same day, ICC-01/14-01/18-1480-Red), para. 16.

<sup>21</sup> Yekatom Defence Response to the P-1838 Request, ICC-01/14-01/18-1447-Conf, paras 28-31.

14. As to the ‘importance’ of P-1838 as a witness to the alleged crimes on the PK9-Mbaïki axis, his position and knowledge of the town of Mbaïki, the Chamber does not consider either of these points determinative factors barring the introduction of the witness’s statement under Rule 68(3) of the Rules in this instance. It further observes that other witnesses have already testified or are expected to provide evidence concerning alleged crimes committed at the PK9-Mbaïki axis and/or Mr Yekatom’s and/or his group’s alleged involvement in these crimes, either fully *viva voce* or under Rule 68(3) of the Rules.<sup>22</sup> In any event, the Chamber does not find the number of witnesses testifying under either modality to be a determining factor in this instance.<sup>23</sup>
15. Lastly, the Chamber observes that the introduction of P-1838’s statement would cut the time for the Prosecution’s examination of the witness at least by half, thereby promoting the expeditiousness of the proceedings.
16. In light of the above, the Chamber considers that the introduction of P-1838’s prior recorded testimony is not prejudicial to or inconsistent with the rights of the accused.

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<sup>22</sup> See **P-1595**: transcripts of hearings, 7 March 2022, ICC-01/14-01/18-T-106-CONF-ENG; 8 March 2022, ICC-01/14-01/18-T-107-ENG; **P-2353**: transcripts of hearings, 19 September 2022, ICC-01/14-01/18-T-161-CONF-ENG; 20 September 2022, ICC-01/14-01/18-T-162-CONF-ENG; **P-1839**: transcripts of hearings, 27 October 2022, ICC-01/14-01/18-T-170-CONF-ENG; 28 October 2022, ICC-01/14-01/18-T-171-CONF-ENG; 31 October 2022, ICC-01/14-01/18-T-172-CONF-ENG; 1 November 2022, ICC-01/14-01/18-T-173-CONF-ENG; 2 November 2022, ICC-01/14-01/18-T-174-CONF-ENG; 3 November 2022, ICC-01/14-01/18-T-175-CONF-ENG; **P-2419**: transcripts of hearings, 21 November 2022, ICC-01/14-01/18-T-176-CONF-ENG; 22 November 2022, ICC-01/14-01/18-T-177-CONF-ENG; **P-1813**: transcripts of hearings, 28 November 2022, ICC-01/14-01/18-T-180-CONF-ENG; 30 November 2022, ICC-01/14-01/18-T-181-CONF-ENG; 1 December 2022, ICC-01/14-01/18-T-182-CONF-ENG; **P-1823**: transcript of hearing, 2 December 2022, ICC-01/14-01/18-T-183-CONF-ENG; **P-1647**: transcripts of hearings, 25 January 2023, ICC-01/14-01/18-T-194-CONF-ENG; 26 January 2023, ICC-01/14-01/18-T-195-CONF-ENG; 27 January 2023, ICC-01/14-01/18-T-196-CONF-ENG; **P-1786**: transcripts of hearings, 31 January 2023, ICC-01/14-01/18-T-197-CONF-ENG; 1 February 2023, ICC-01/14-01/18-T-198-CONF-ENG; **P-2476**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 33, entry 53; **P-1666**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, pp. 36-37, entry 60; **P-2041**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 36, entry 62.

<sup>23</sup> See also Corrected version of ‘Eighteenth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1858, P-1823, P-1819, P-1813, P-2476, P-1786, P-2587 and P-0487’, 11 November 2022, ICC-01/14-01/18-1661-Conf-Corr (corrected version notified on 18 November 2022), para. 51.



17. Accordingly, the Chamber grants the Prosecution's request to introduce P-1838's statement<sup>24</sup> and associated items<sup>25</sup> under Rule 68(3) of the Rules.

## **B. P-2018**

### *1. Submissions*

18. The Prosecution seeks to introduce the prior recorded testimony of witness P-2018, comprising one statement and thirteen associated items.<sup>26</sup> It submits that the introduction of P-2018's prior recorded testimony would reduce the presentation of the Prosecution's examination-in-chief and help to streamline the proceedings, reducing the time for its examination from approximately six to two hours.<sup>27</sup> According to the Prosecution, P-2018's statement is relevant and probative, and corroborated by other evidence to be tested at trial.<sup>28</sup>
19. The Yekatom Defence opposes the P-2018 Request. It submits that the [REDACTED], were not part of Mr Yekatom's group [REDACTED]. It argues that P-2018 [REDACTED] 'has a compelling personal motivation to provide false evidence to maintain an appearance of validity [REDACTED]. Moreover, the Yekatom Defence submits that 'the "corroborative" evidence cited by the Prosecution does not support the Request in any meaningful sense'.<sup>29</sup>
20. Lastly, the Yekatom Defence states that in these circumstances 'given that the evidence of P-2018 goes directly to the material elements [REDACTED], including the acts and conduct of Mr Yekatom as charged, the interests of justice would require that P-2018's statement and associated exhibits not be admitted via Rule 68(3), and instead, that he be called to testify *viva voce* in full.'<sup>30</sup>

### *2. The Chamber's determination*

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<sup>24</sup> CAR-OTP-2100-0252; CAR-OTP-2107-6303 (French translation).

<sup>25</sup> CAR-OTP-2100-0277; CAR-OTP-2100-0278; CAR-OTP-2100-0279.

<sup>26</sup> P-2018 Request, ICC-01/14-01/18-1416-Conf, paras 1, 13-14, 20; Annex A to the P-2018 Request, ICC-01/14-01/18-1416-Conf-AnxA.

<sup>27</sup> P-2018 Request, ICC-01/14-01/18-1416-Conf, paras 1, 3, 16-19.

<sup>28</sup> P-2018 Request, ICC-01/14-01/18-1416-Conf, paras 9, 12, 19.

<sup>29</sup> Yekatom Defence Response to the P-2018 Request, ICC-01/14-01/18-1456-Conf, para. 4.

<sup>30</sup> Yekatom Defence Response to the P-2018 Request, ICC-01/14-01/18-1456-Conf, para. 5.

21. In his statement,<sup>31</sup> P-2018 discusses, *inter alia*, (i) his [REDACTED]; (ii) the looting committed by the Seleka in Mbata; (iii) the activities of [REDACTED] during the period when the Seleka were in power; (iv) P-2018's [REDACTED]; (v) seeing 'children wearing uniforms and gris-gris at the Anti Balaka checkpoints' and 'carrying out checks on vehicles, assisting in stopping the vehicles and questioning the occupants'; (vi) meeting the alleged Anti-Balaka leader [REDACTED]; (vii) [REDACTED] negotiating with Anti-Balaka chiefs from Pissa, Mbata, Mongoumba, Boda, Lesse, Bossongo, and Bagandou; (viii) the [REDACTED] in [REDACTED], with '[REDACTED]'; (ix) a [REDACTED]; (x) the [REDACTED]; (xi) carrying out [REDACTED]; (xii) the [REDACTED]; and (xiii) a [REDACTED] local authorities.
22. In addition, P-2018 makes several references to Mr Yekatom, including (i) [REDACTED] saying that 'he had to inform RAMBHOT' [REDACTED], and that 'Alfred YEKATOM, aka RAMBHOT, was the leader of the Anti-Balaka in LOBAYE';<sup>32</sup> (ii) [REDACTED] being '[REDACTED] RAMBHOT'; (iii) P-2018 approaching 'RAMBHOT' and [REDACTED], and 'RAMBHOT' asking P-2018 [REDACTED]; (iv) 'RHAMBOT' [REDACTED]; (v) 'RHAMBOT' not [REDACTED]; but (vi) 'RAMBHOT' [REDACTED]. The witness also recognises 'RAMBHOT [of] YEKATOM Alfred' on a video shown to him.<sup>33</sup> Moreover, the witness further makes references to [REDACTED] while discussing a document shown to him.<sup>34</sup>
23. The Chamber takes note of the Yekatom Defence's submissions.<sup>35</sup>
24. In light of the above, and taking into account the prospective content of P-2018's testimony in relation to certain matters concerning [REDACTED], combined with his position, particular role and concrete activities [REDACTED] at the time, the Chamber is of the view that these specific circumstances warrant hearing P-2018's testimony *viva voce* in its entirety.

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<sup>31</sup> CAR-OTP-2071-0259; CAR-OTP-2118-0945 (French translation).

<sup>32</sup> CAR-OTP-2071-0259, at 0263-64, paras 28-29, 32-34, at 0267-69, paras 55, 57.

<sup>33</sup> CAR-OTP-2071-0259, at 0269, para. 63.

<sup>34</sup> CAR-OTP-2071-0259, at 0274, paras 105-106.

<sup>35</sup> Yekatom Defence Response to the P-2018 Request, ICC-01/14-01/18-1456-Conf, paras 3, 5, 10-21.

25. While noting that introducing P-2018's prior recorded testimony under Rule 68(3) of the Rules would reduce the time for the Prosecution's examination of the witness from at least six to two hours, it finds that the advantage of the time saved is outweighed by the abovementioned considerations.
26. In light of the above, the Chamber rejects the Prosecution's request to introduce the prior recorded testimony of P-2018 under Rule 68(3) of the Rules.




**FOR THESE REASONS, THE CHAMBER HEREBY**

**DECIDES** that, subject to the fulfilment of the legal requirements of Rule 68(3) of the Rules, the prior recorded testimony of **P-1838** (CAR-OTP-2100-0252; CAR-OTP-2107-6303 [French translation]) is introduced into evidence, together with its associated items (CAR-OTP-2100-0277; CAR-OTP-2100-0278; CAR-OTP-2100-0279);

**REJECTS** the P-2018 Request; and

**ORDERS** the Prosecution and the Yekatom Defence to file public redacted versions of the P-2018 Request and the Yekatom Defence Response to the P-2018 Request, respectively, within one week of notification of the present decision.

Done in both English and French, the English version being authoritative.

 <hr style="width: 25%; margin: 0 auto;"/> <p><b>Judge Péter Kovács</b></p>	 <hr style="width: 25%; margin: 0 auto;"/> <p><b>Judge Bertram Schmitt</b>  <b>Presiding Judge</b></p>	 <hr style="width: 25%; margin: 0 auto;"/> <p><b>Judge Chang-ho Chung</b></p>
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Dated 3 March 2023

At The Hague, The Netherlands