

The Year in Review

Volume 54 *International Legal Developments*
Year in Review: 2019

Article 32

February 2024

European Law

James Henry Bergeron

Serj Kiyasov

Matthew Soper

Konstantinos Tsimaras

Harry Stamelos

See next page for additional authors

Recommended Citation

James Henry Bergeron et al., *European Law*, 54 ABA/SIL YIR 527 (2024)

This Regional and Comparative Law is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in The Year in Review by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

European Law

Authors

James Henry Bergeron, Serj Kiyasov, Matthew Soper, Konstantinos Tsimaras, Harry Stamelos, Valeria Camboni Miller, and Willem den Hertog

European Law

JAMES HENRY BERGERON, SERJ KIYASOV, MATTHEW SOPER,
KONSTANTINOS TSIMARAS, HARRY STAMELOS,
VALERIA CAMBONI MILLER, AND WILLEM DEN HERTO^{*}

This Article updates selected international legal developments in 2019 European Law.

I. Major Changes in EU Copyright Law in 2019

One of the most significant changes to EU law in 2019 affects intellectual property rights internationally. This change was the EU Directive on Copyright in the Digital Single Market.¹ The Directive was issued May 17, 2019, and Member States have until June 7, 2021, to bring the provisions into force.²

Two articles in the new Directive drew significant attention and discussion in the intellectual property community. Article 15 (Article 11 of the old Directive) “sometimes known as the ‘link tax’ provision . . . would create a new set of exclusive rights for EU press publishers to control online reproductions and distributions of more than a few words from the contents of their sites.”³ Article 17 (Article 13 of the old Directive), “sometimes known as the ‘upload filter’ provision . . . would impose new obligations on Internet content sharing sites (such as YouTube) to block uploads of digital content unless the upload files were either licensed or otherwise known to be non-infringing.”⁴

A. ARTICLE 15

Article 15 of the new Directive, as with any new amendment, will require the Member States to “provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the online use of their press publications by information society service

^{*} James Henry Bergeron, Serj Kiyasov (Major Changes to EU Copyright Law in 2019), Matthew Soper (BREXIT Legal Developments in 2019), Konstantinos Tsimaras and Harry Stamelos (Greece and Cyprus), Valeria Camboni Miller (Italy), Willem den Hertog (Netherlands).

1. See Directive 2019/790, of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market and Amending Directives 96/9/EC and 2001/29/EC, 2019 O.J. (L 130) 92.

2. *Id.*

3. Pamela Samuelson & Kathryn Hashimoto, *The Enigma of Digitized Property: A Tribute to John Perry Barlow*, 18 DUKE L. & TECH. REV. 103, 106 (2019).

4. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

528 THE YEAR IN REVIEW

[VOL. 54

providers.”⁵ This language of Article 15 in the new Directive is almost identical to the language of Article 11 in the old Directive. But, it adjusts the prior Directive by adding that those protections are granted, not to all press publishers, but only to those “established in a Member State.”⁶ Further, Article 15 changes the language of the old Directive by adding that the publishers’ rights provided by Article 2 and Article 3(2) of Directive 2001/29/EC are provided “for the online use of [the publishers’] press publications by information society service providers.”⁷ The old Directive stated that these rights were provided for “digital use.”⁸ Article 15 additionally states that “[these rights] . . . shall not apply to private or non-commercial uses of press publications by individual users; [t]he protection granted [by the rights] shall not apply to acts of hyperlinking; [these rights] shall not apply in respect of the use of individual words or very short extracts of a press publication.”⁹

The reasoning behind such a change was that the “use of insubstantial parts [of press publications] should not fall within the scope of the rights provided for in the Directive” because “insubstantial parts of press publications are not usually the expression of the intellectual creation of their authors.”¹⁰ Also, Article 15 significantly reduces the term of protection for press publications from twenty to two years.¹¹ Finally, Article 15 requires press publishers to share revenues received from the use of the publications by information society service providers with the authors.¹²

B. ARTICLE 17

Article 17 of the new Directive (formerly Article 13) holds an online content-sharing provider (i.e. YouTube) responsible “when it gives the public access to copyright-protected works or other protected subject matter uploaded by its users.”¹³ Specifically, Article 17 requires “[a]n online content-sharing service provider [to] obtain an authorisation from the rightholders . . . by concluding a licensing agreement in order to communicate to the public or make available to the public works or other subject matter.”¹⁴ Article 17 further states that “[i]f no authorization is

5. Council Directive 2019/790, art. 15, 2019 O.J. (L 130) 92, 118 (quoting in reference to Council Directive 2001/29 of May 22, 2001, art. 2–3, 2001 O.J. (L 167) 10, 10–19 (EC)).

6. *Id.*

7. *Id.*

8. *Commission Proposal for a Directive of the European Parliament and of the Council on Copyright in the Digital Single Market*, at 29, COM (2016) 593 final (Sept. 9, 2016).

9. Council Directive 2019/790, art. 15, 2019 O.J. (L 130) 92, 118.

10. Giuseppe Colangelo, *Copyright, Online News Publishing and Aggregators: A Law and Economics Analysis of the EU Reform*, INT’L J. L. INFO. TECH. *1, *13 (2019).

11. Council Directive 2019/790, art. 15, 2019 O.J. (L 130) 92, 119; see also *Commission Proposal for a Directive of the European Parliament and of the Council on Copyright in the Digital Single Market*, at 29, COM (2016) 593 final (Sept. 9, 2016).

12. *Id.*

13. Council Directive 2019/790, art. 17, 2019 O.J. (L 130) 92, 119.

14. *Id.*

granted, online content-sharing service providers shall be liable for unauthorised acts of communication to the public, including making available to the public, of copyright-protected works and other subject matter”¹⁵ Thus, Article 17 will essentially require online content-sharing providers to adopt automated filtering systems, which will identify copyrighted material even before it is uploaded to the platform.¹⁶

II. BREXIT Legal Developments in 2019

A. CHRONOLOGY OF THE “MEANINGFUL VOTE”

The UK House of Commons was expected to hold its “meaningful vote” on the EU Bill (the Withdrawal Agreement) on December 11, 2018.¹⁷ The agreement had been endorsed by EU leaders and needed UK approval to proceed with a negotiated soft Brexit.¹⁸ On December 5, 2018, the Members of Parliament found the Cabinet in contempt of Parliament for issuing a summary of the Attorney General’s legal advice to the Cabinet on the Protocol on Ireland and Northern Ireland and not providing the Members of Parliament with the full report.¹⁹ On December 10, 2018, the Prime Minister announced during a Commons speech that the meaningful vote would be delayed.²⁰ Prime Minister May reminded members that on March 30, 2019, Northern Ireland would become the European frontier.²¹ On December 12, Prime Minister May won a confidence vote, which was triggered by the Government’s handling of the meaningful vote debate.²²

On January 15, 2019, after five days of debate, the meaningful vote took place, and the Withdrawal Agreement was defeated by 202 votes in favor to 432 votes against.²³ The following day, the Prime Minister survived a confidence division of the House by 306 to 325 votes.²⁴ On January 21, 2019, the Prime Minister presented the “Plan B” Brexit Deal and laid out a plan for a meaningful vote *bis*.²⁵ The Prime Minister commenced a Commons debate on her “Plan B” deal. Seven amendments were debated,

15. *Id.* at 120.

16. See Benjamin Austin, *Proposed EU Copyright Directive Poses Risks to Free Expression, Consumer Privacy, and Competition*, PUB. KNOWLEDGE (June 12, 2018), <https://www.publicknowledge.org/news-blog/blogs/proposed-eu-copyright-directive-poses-risks-to-free-expression-consumer-pri>.

17. See James Henry Bergeron, et al., *European Law Committee*, 53 INT’L LAW. 517, 517 (2019).

18. *Id.*

19. 650 Parl Deb HC (6th ser.) (2018) col. 669 (UK); see *Theresa May Suffers Three Brexit Defeats in Commons*, BBC (Dec. 5, 2018), <https://www.bbc.com/news/uk-politics-46446694>.

20. 651 Parl Deb HC (6th ser.) (2018) col. 23-34 (UK).

21. *Id.* at col. 23.

22. *Theresa May Survives Confidence Vote of Tory MPs*, BBC (Dec. 12, 2018), <https://www.bbc.com/news/uk-politics-46547246>.

23. 652 Parl Deb HC (6th ser.) (2019) col. 1122-25 (UK).

24. 652 Parl Deb HC (6th ser.) (2019) col. 1264 (UK).

25. 652 Parl Deb HC (6th ser.) (2019) col. 779-783 (UK).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

530 THE YEAR IN REVIEW

[VOL. 54

and all were moved.²⁶ Two amendments were approved, indicating a majority of the Members of Parliament were against exiting the European Union without a deal and against the Northern Ireland backstop in its current form.²⁷

Lords' opposition leader, Baroness Smith, proposed a motion calling for (1) the Government to take all necessary steps to ensure the United Kingdom did not leave the European Union on March 29 without an agreement ratified by the Lords and Commons, and (2) before the end of February 2019, the provisions under sections 13(1)(b) and (c) of the Withdrawal Agreement be honored.²⁸ The motion passed the Lords by 155 to 69 votes.²⁹

The "meaningful vote two" on March 12, 2019, was the Government's largest defeat: 242 votes for, and 391 votes against.³⁰ The next day, Dame Caroline Spelman's Amendment, ruling out a "no-deal Brexit" at any time was passed by the Commons 312 to 308.³¹ By March 14, the Members of Parliament voted to ask the European Union for a time extension of the period specified in Article 50(3) of the Treaty on the European Union, the motion passed 412 to 202.³² The European Council agreed to extend the deadline to April 12, 2019.³³

After a series of failed amendments, "meaningful vote three" was put before the Commons on March 29, 2019 and defeated by a vote of 286 to 344.³⁴ On April 10, the Government asked for a further extension, until October 31, and the European Council agreed.³⁵

**B. SCOTLAND: WIGHTMAN V. SECRETARY OF STATE FOR EXITING
THE EUROPEAN UNION**

Petitioners, who were members of the Scottish, UK, and EU Parliaments, asked Scotland's highest court, the Inner House of the Court of Session, whether the United Kingdom could unilaterally revoke its Article 50 of the Treaty on the European Union notification to withdraw from the EU.³⁶ The Court made a preliminary reference³⁷ to the Court of Justice of the

26. *Id.*

27. 652 Parl Deb HC (6th ser.) (2019) col. 779–783 (UK).

28. 795 Parl Deb HL (6th ser.) (2019) col. 1937–38 (UK).

29. *Id.* at col. 1937.

30. 656 Parl Deb HC (6th ser.) (2019) col. 291–295 (UK).

31. 656 Parl Deb HC (6th ser.) (2019) col. 451–455 (UK).

32. 656 Parl Deb HC (6th ser.) (2019) col. 647–651 (UK).

33. *Special Meeting of the European Council (Art. 50) (21 March 2019) – Conclusions*, No. EUCO XT 20004/19 (Mar. 21, 2019).

34. 657 Parl Deb HC (6th ser.) (2019) col. 771–775 (UK).

35. *Special Meeting of the European Council (Art. 50) (10 April 2019)*, EUCO XT 20015/19 (Apr. 10, 2019).

36. Case C-621/18, *Wightman v. Sec'y of State for Exiting the EU*, 2018 ECLI:EU:C:2018:999 ¶ 76.

37. *Wightman v. Secretary of State for Exiting the EU* (2018) CSOH 61 (Scot.).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2020]

EUROPEAN LAW 531

European Union, which held that Article 50 can be unilaterally revoked.³⁸ This opinion came during the first debate on the “meaningful vote.”

The Scottish Parliament used the European Court ruling as grounds to adopt a motion, eighty-nine to twenty-eight, in favor of revoking Article 50, thereby halting Brexit, unless a second referendum on leaving the EU is held.³⁹ The vote, which has no binding effect on Westminster, set the stage for the Scottish Government’s plan for a second independence referendum.⁴⁰

C. LEADERSHIP CHANGES AND CHALLENGES

Prime Minister Theresa May informed the Conservative Party’s governing 1922 Committee that she would be departing as Prime Minister following a vote on her Brexit bill in early June.⁴¹ On May 21, the Prime Minister gave a speech in which she outlined her ten-point plan called the “new Brexit deal.”⁴² The number one point was “to seek to conclude Alternative Arrangements by December 2020 so that we can avoid any need for the backstop coming into force.”⁴³

On July 23, Boris Johnson won the Conservative Party leadership race, securing 92,153 votes to Jeremy Hunt’s 46,656.⁴⁴ Following a formal audience with The Queen, the Prime Minister announced his intention to take the United Kingdom out of the European Union by the October 31 deadline.⁴⁵ Mr. Johnson’s Cabinet announced steps to implement the repeal of the European Communities Act 1972 (EC Act) when Britain formally left the European Union.⁴⁶ The EC Act is the legal vehicle that gives European Union law force in the UK legal framework.⁴⁷ The EC Act was repealed in 2018 and received Royal Assent on June 26, 2018.⁴⁸

38. Case C-621/18, *Wightman v. Sec’y of State for Exiting the EU*, 2018 ECLI:EU:C:2018:999 ¶ 76.

39. *Fifth Session Meeting of the Parliament*, SCOT. PARL. DOC. cols. 95–96 (Mar. 27, 2019), <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12025&mode=pdf>.

40. Scott Macnab, *Nicola Sturgeon Warns of ‘Years of Brexit Chaos’ as She Lays out Independence Case*, SCOTSMAN (Nov. 20, 2019), <https://www.scotsman.com/news/politics/nicola-sturgeon-warns-of-years-of-brexite-chaos-as-she-lays-out-independence-case-1-5049056>.

41. Prime Minister Theresa May, Public Address (May 21, 2019) (transcript available at <https://www.gov.uk/government/speeches/pms-speech-on-new-brexite-deal-21-may-2019>).

42. *Id.*

43. *Id.*

44. Heather Stewart, *Boris Johnson Elected New Tory Leader*, GUARDIAN (Jul. 23, 2019), <https://www.theguardian.com/politics/2019/jul/23/boris-johnson-elected-new-tory-leader-prime-minister>.

45. Prime Minister Boris Johnson, First Speech as Prime Minister (July 24, 2019) (transcript available at <https://www.gov.uk/government/speeches/boris-johnsons-first-speech-as-prime-minister-24-july-2019>).

46. Department for Exiting the European Union, *Brexit Secretary Signs Order to Scrap 1972 Brussels Act - Ending All EU Law in the UK*, GOV.UK, <https://www.gov.uk/government/news/brexit-secretary-signs-order-to-scrap-1972-brussels-act-ending-all-eu-law-in-the-uk>.

47. *Id.*

48. European Union (Withdrawal) Act 2018, c.16. (U.K.).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

532 THE YEAR IN REVIEW

[VOL. 54]

At the close of business on September 9, the Prime Minister, having advised The Queen, announced Parliament would be prorogued until October 14.⁴⁹ Parliament was already due to be prorogued from October 8 to October 14, bringing the 2019 parliamentary session to an end.⁵⁰ This planned prorogation followed a purported prorogation in September.⁵¹

D. LEGALITY OF PROROGUE: R (MILLER) V. THE PRIME MINISTER

A full bench of the UK Supreme Court joined a Scottish case and English and Wales case and addressed whether advice given by the Prime Minister to Her Majesty the Queen, to the effect that Parliament should be prorogued between September until October 14, was lawful.⁵² The Court also addressed what the legal consequences would be if the advice was unlawful.⁵³ An unanimous Court held, “the decision to advise Her Majesty to prorogue Parliament was unlawful because it had the effect of frustrating or preventing the ability of Parliament to carry out its constitutional functions without reasonable justification.”⁵⁴ The Court determined that the order to prorogue had no meaning.⁵⁵

E. THE LONG ROAD TO BREXIT

On October 22, the Withdrawal Agreement passed its Second Reading in the House of Commons, 329 to 299.⁵⁶ But, the subsequent motion setting out a timetable was defeated.⁵⁷ At a meeting of EU leadership on October 28, the Council agreed to extend the deadline until January 31, 2020.⁵⁸ The following day, the Prime Minister moved for an early election.⁵⁹ While the motion garnered a majority of the Members of Parliament—299 to 70—it failed because the motion did not receive the 434 votes required under the 2011 Fixed Term Parliaments Act.⁶⁰ The Government introduced the Early Parliamentary Elections Bill the following day.⁶¹ The Bill received Royal Assent on October 31, 2019.⁶²

49. See R (Miller) v. The Prime Minister [2019] UKSC 41, at 1.

50. *Id.*

51. Paul Craig, *Prorogation: Constitutional Principle and Law, Fact and Causation*, OXFORD HUM. RTS. HUB (Aug. 31, 2019), <https://ohrh.law.ox.ac.uk/prorogation-constitutional-principle-and-law-fact-and-causation/>.

52. R (Miller) UKSC 41, at 1.

53. *Id.* at 18.

54. *Id.*

55. *Id.*

56. 666 Parl Deb HC (6th ser.) (2019) cols. 917–20 (UK).

57. *Id.* at cols. 825, 923–26.

58. Daniel Boffey & Angeliqe Chrisafis, *EU Begins Planning for Trade Negotiations after UK Agrees to Brexit Extension*, GUARDIAN (Oct. 28, 2019, 4:46 PM), <https://www.theguardian.com/politics/2019/oct/28/eu-agrees-brexit-extension-to-31-january-flexextension>.

59. 667 Parl Deb HC (6th ser.) (2019) col. 54 (UK).

60. *Id.* at col. 75.

61. Early Parliamentary General Election Act 2019, c. 29 (UK).

62. *Id.*

The UK General Election took place on December 12, 2019, with Boris Johnson winning the majority vote.⁶³ The European Council met on December 12 and 13 and discussed the future of Brexit and Britain's relationship to the European Union, pledging that the European Union desired a continued close relationship with Britain.⁶⁴

III. Greece and Cyprus

A. CYPRUS: MAIN LEGAL DEVELOPMENTS

Cyprus is a small islandic state in the Southeastern Mediterranean Sea, member state of the European Union since 2004.⁶⁵ Its capital, Nicosia, is the last divided capital in Europe, due to the 1974 invasion of Cyprus by Turkey.⁶⁶ Turkey established The Turkish Republic of Northern Cyprus, covering forty-two percent of the island. It is a state recognized only by Turkey.⁶⁷ UN Resolutions recognize the sovereignty of the Republic of Cyprus on the entire territory of Cyprus.⁶⁸ Cyprus is no longer obligated under any mandatory program of financially-related legal reforms imposed by the EU or the IMF. Cyprus is currently reforming its laws rapidly and maintains a steady rate of economic development.

The international relations of Cyprus have seen significant developments. The signing of tripartite agreements with Greece and Israel and with Greece and Egypt are aimed at energy development.⁶⁹ Cooperation in these endeavors is expected to boost the economy of the island.⁷⁰ In addition,

63. Heather Stewart, *supra* note 44.

64. Special European Council (Art. 5), Brussels European Council (Dec. 16, 2019), <https://www.consilium.europa.eu/en/meetings/european-council/2019/12/12-13/#>.

65. Cyprus, EUROPEAN UNION, https://europa.eu/european-union/about-eu/countries/member-countries/cyprus_en (last updated Feb. 13, 2020).

66. Helena Smith, *In Nicosia, the World's Last Divided Capital, a Spirit of Reconciliation Is Stirring Across the Fence*, GUARDIAN (Jan. 14, 2017), <https://www.theguardian.com/world/2017/jan/15/in-nicosia-cyprus-spirit-of-reconciliation-is-stirring>.

67. John S. Bowman, et al., *The Republic of Cyprus*, ENCYCLOPEDIA BRITANNICA (May 19, 2020), <https://www.britannica.com/place/Cyprus/Efforts-toward-reunification>.

68. S.C. Res. 365, ¶ 1(Dec. 13, 1974).

69. *See generally* Agreement between the Government of the State of Israel and the Government of the Republic of Cyprus on the Delimitation of the Exclusive Economic Zone, Greece-Cyprus, Dec. 17, 2010, 2740 U.N.T.S. 55; *see also* Agreement between the Republic of Cyprus and the Arab Republic of Egypt on the Delimitation of the Exclusive Economic Zone, Cyprus-Egypt, Feb. 17, 2003, 2488 U.N.T.S. 3.

70. Division for Ocean Affairs & the Law of the Sea, Office of Legal Affairs, United Nations, Cyprus, UN, <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/CYP.htm> (last updated May 19, 2020); *Letter from the Permanent Representative of Greece to the United Nations to the Secretary-General*, U.N. Doc. A/70/900-S/2016/474 (June 1, 2016); *Letter dated 1 October 2018 from the Permanent Representative of Cyprus to the United Nations Addressed to the Secretary-General*, U.N. Doc. A/73/406 (Oct. 3, 2018); *see also* Greece, Cyprus, Egypt Agree to Strengthen Multifaceted Cooperation, XINHUA (Oct. 11, 2018), http://www.xinhuanet.com/english/2018-10/11/c_137523922.htm (last visited 12/7/2018); *Israel, Greece, Cyprus Sign Trilateral Agreement for Preparedness and Response to Oil Pollution Events*, ISR. MINISTRY ENVTL.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

534 THE YEAR IN REVIEW

[VOL. 54]

U.S., European, and Israeli companies are ready to start searching and drilling for oil in the sea areas as part of their respective previously agreed upon Exclusive Economic Zones.⁷¹ Turkey, however, has unsuccessfully challenged the legality of these arrangements. Military confrontation has been avoided, and there is still room for peaceful resolution of the disputes so that Cyprus can reap the legal and economic benefits of oil and gas exploration in these areas.⁷²

On February 27, 2019, the European Commission published a Staff Working Document (Country Report for Cyprus) that included an in-depth review on the prevention and correction of macroeconomic imbalances.⁷³ Accompanying this document is the Communication from the Commission to the European Parliament, the Council, the European Central Bank and the Eurogroup under the title, “2018 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011.”⁷⁴

According to the Commission Communication, Cyprus’ robust economic recovery has created favorable conditions to correct excessive macroeconomic imbalances and carry out key structural reforms to sustain growth in the long term.⁷⁵ Cyprus continues to have significant macroeconomic imbalances in several areas, namely high numbers of private, public, and external debt and non-performing loans.⁷⁶ The economy is growing rapidly, creating the right conditions to repay the debt. The economic upswing is also an opportunity to reform key areas, such as the business environment, the public sector, the justice system, education, and the labor market.⁷⁷ The intent of reforms is to attract investments that

PROTECTION (May 13, 2018), <http://www.sviva.gov.il/English/ResourcesandServices/NewsAndEvents/NewsAndMessageDover/Pages/2018/05-May/Israel-Greece-Cyprus-Sign-Agreement-on-Preparedness-and-Response-to-Oil-Pollution-Events.aspx>; Associated Press, *Greek Cyprus, Israel, Greece Vow to Boost Military Ties*, DAILY SABAH (Jun. 22, 2018), <https://www.dailysabah.com/world/2018/06/22/greek-cyprus-israel-greece-vow-to-boost-military-ties>.

71. See generally TNH Staff, *Cyprus, Egypt, Set to Sign Gas Pipeline Deal*, NAT’L HERALD (Sept. 18, 2018), <https://www.thenationalherald.com/213710/cyprus-egypt-set-to-sign-gas-pipeline-deal/>; GCT, *USA Military Might Back Israel, Cyprus, Greece alliance*, GREEK CITY TIMES (Oct. 10, 2018), <https://greekcitytimes.com/2018/10/10/usa-military-might-back-israel-cyprus-greece-alliance>.

72. GCT, *supra* note 71.

73. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions United in Delivering the Energy Union and Climate Action - Setting the Foundations for a Successful Clean Energy Transition*, at 1, COM (2019) 212 final (Jun. 8, 2019).

74. See generally *2019 European Semester: Assessment of Progress on Structural Reforms, Prevention and Correction of Macroeconomic Imbalances, and Results of In-Depth Reviews under Regulation (EU) No 1176/2011*, COM (2019) 150 final (Feb. 27, 2019) [hereinafter *2019 European Semester*].

75. *Id.*

76. *Id.* at 20.

77. *Id.* at 6.

**PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW**

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2020]

EUROPEAN LAW 535

increase productivity, diversify the economy, and help to sustain robust and inclusive growth in the long term.⁷⁸

Overall, Cyprus has made some progress in addressing the 2018 country-specific recommendations. It has made substantial progress on non-performing loans, creating a comprehensive strategy to address the issue. This strategy includes adopting strengthened legal frameworks on insolvency, foreclosure, and the sale of loans. Cyprus has also made some progress on access to finance for small and medium-sized enterprises; financial instruments supported by EU funds are expected to be launched soon. There have been advancements made on health standards given that work for the first phase of the National Health System implementation have advanced (e.g. the reform of the outpatient services has begun).⁷⁹

Cyprus has made only limited progress in various areas. These include reforming the public sector. Key legislation related to laws for public administration, the local government, and the governance of State-owned enterprises has been delayed. There has also been limited progress on laws related to privatization; only a few privatization projects are underway and progressing slowly. Legislation on reforms in the justice system has progressed little; specialization of courts is only at an initial stage. Although some efforts are being made to revise the civil procedures and introduce e-justice, progress is slow.

Progress has also been slow in setting up a reliable system to issue and transfer immovable property (e.g. buildings and land) rights. There still exists a large backlog in cases of buyers who paid the full amount for a property and have yet to receive their legal ownership documents. Reforms in how local government operates, which could have simplified the procedures, have not yet been adopted.

Finally, Cyprus has also been slow in efforts to strengthen the effectiveness of the public employment services and increasing outreach to young people who are not in jobs, school, or training. The effectiveness of the public employment services is still weak, despite increases in staff. Additionally, the evaluation of the active labor market policies is still pending and implementation of the action plan to get young people into employment, school, or training is slow. On a related topic—education—a concrete proposal to improve the evaluation system of teachers has not yet been announced.⁸⁰

B. GREECE: MAIN LEGAL DEVELOPMENTS

After a severe economic and financial crisis and three major legal reforms, Greece now seems to be recovering and on a track towards improved economic development. Parliamentary elections were held in 2019; the

⁷⁸. *Id.*

⁷⁹. *Id.* at 9

⁸⁰. See 2019 *European Semester*, *supra* note 74, at 11.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

536 THE YEAR IN REVIEW

[VOL. 54

center-right party (New Democracy) won the elections, which offer the prospect of four years of political stability to underpin recovery.⁸¹

Several pieces of legislation were also enacted. Law 4623/2019 (Regulations of the Ministry of Internal Affairs, provisions on digital governance, pension arrangements and other urgent matters), was adopted by the Greek Parliament on August 8, 2019, and includes significant changes to the labor legislation.⁸² Law 4621/2019 was approved by the Greek Parliament on July 31, 2019, and significantly reduces the Annual Real Estate Ownership Tax (ENFIA) paid by individuals.⁸³ Law of November 28, 2019 imposes the obligatory attempt of mediation before the stage of litigation for civil cases, i.e., family law cases, and commercial law cases. Disputes against the Government are not subject to mediation.⁸⁴

In addition, on November 25, 2019, the voting for the new articles of the Constitution was completed resulting in several changes. Greeks who live abroad may have the right to vote in parliamentary elections.⁸⁵ The election of the President of the Hellenic Republic cannot stop the governance of the elected Government (a relative majority of 151 Members of Parliament, or even less, is now sufficient for the President to be elected).⁸⁶ The criminal prosecutions of Ministers and Deputy Ministers are not subject to any time limit.⁸⁷ A minimum guaranteed revenue was established.⁸⁸ Five hundred thousand citizens may initiate a procedure for the voting of a new law proposal.⁸⁹ The parliamentary minority has the power to convene two examining committees per year for serious political or criminal offences of political personalities.⁹⁰ Military judges (judges of military courts) will have the full powers and rights of ordinary judges.⁹¹

81. Helena Smith, *Greek Elections: Landslide Victory for Centre-Right New Democracy Party*, GUARDIAN (July 7, 2019), <https://www.theguardian.com/world/2019/jul/07/greeks-choose-between-beach-and-ballot-in-first-post-debt-bailout-poll>.

82. Alexandros G. Doschoris, *New Law 4623/2019*, DELOITTE (Sept. 10, 2019), https://www2.deloitte.com/content/dam/Deloitte/gr/Documents/tax/gr_tax_alert_Greece_Employment_Law_Alert_New_Law_46232019_%20en_noexp.pdf.

83. Nikolaos Theodorou, *Greece—On the Road to Recovery?*, BLOOMBERG TAX (Oct. 10, 2019), https://www.bloomberglaw.com/product/tax/document/X8R2TH6C000000?bna_news_filter=daily-tax-report-international&jcsearch=BNA%25200000016daead14ca3edaeb716b0001#jcite.

84. Nikos Anastopoulos, *Mandatory Mediation in Civil and Commercial Disputes By Virtue of Law 4640/2019*, POLITIS & PARTNERS L. FIRM, <https://politispartners.gr/mandatory-mediation-in-civil-and-commercial-disputes-by-virtue-of-law-4640-2019/>.

85. Nick Kampouris, *Greek Parliament Concludes Constitutional Revision with Nine Articles Amended*, GREEK REP. (Nov. 25, 2019), <https://greece.greekreporter.com/2019/11/25/parliament-concludes-constitutional-revision-with-nine-articles-amended/>.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2020]

EUROPEAN LAW 537

Article 3 of the Greek Constitution, covering the special relation of the State and the Greek Orthodox Church (including provisions on the Patriarchate of Constantinople), was not amended (190 Members of Parliament voted against out of 300 MPs).

Parliament enacted Law 4637/2019 amending the Criminal Law Code and the Criminal Procedure Code.⁹² The amended articles of the Criminal Law Code are: 57, 80, 94, 99, 104Á, 110Á, 137Á, 142, 142Á, 159, 159Á, 168, 169Á, 173, 187, 187Á, 187Á, 213, 235, 236, 237, new article 237Á, 272, 290, 290Á, 291, 308, 374 & 465.⁹³ In the field of legal education, Parliament amended the protocol for obtaining a law degree.⁹⁴ Article 16 of the Greek Constitution forbids private universities.⁹⁵ But, law students who receive their law degree from the private Cypriot European University Cyprus (EUC) Law School now have equal rights with the students who get their law degree from the public Athens, Thessaloniki, or Thrace University Law Schools.⁹⁶ The legal basis for this is that law students in EUC Law School pass all the exams for all courses which are the same as the law system and the law program of Greece (direction for Greek law studies).⁹⁷ The decision was delivered in the judgment of the Greek Council of State (Supreme Administrative Court) 1755/2017 and a follow-on judgment in 2018 through 2019.⁹⁸ After these two judgments, the Greek authorities now fully recognize the law degrees of EUC Law School as equal to the Greek law degrees of public universities and the Bars accept the registration of those law degree holders to their registries to make their practice and become lawyers in Greece.⁹⁹

IV. Italy

In 2019, the Italian Parliament passed several new laws, some of which are of international interest and importance. The Parliament ratified several international agreements with foreign countries, including Japan, Bosnia Herzegovina, Macedonia, France, Principality of Monaco, Laos, Montenegro, Kenya, Kazakhstan, Serbia, Niger, Lebanon, Cuba, and Nagoya-Kuala Lumpur. The Italian Parliament also passed laws for an urgent layout of guaranteed minimum income and pensions,¹⁰⁰ measures to

92. Dimitrios Papadimoulis, *Unfreezing the Proceeds of Economic Crime After 18 Months*, EUR. PARLIAMENT (Nov. 19, 2019), https://www.europarl.europa.eu/doceo/document/E-9-2019-003883_EN.html.

93. *Id.*

94. Symboulion Epikrateias [S.E.] [Supreme Administrative Court] 1755/2017, (Greece).

95. 2001, SYNTAGMA [SYN.] [CONSTITUTION] 16 (Greece).

96. Symboulion Epikrateias [S.E.] [Supreme Administrative Court] 1755/2017, (Greece).

97. *Id.*

98. *Id.*

99. *Id.*

100. Decreto Legge 28 gennaio 2019, n. 4, in G.U. Jan. 28, 2019, n. 23 (It.); *see also* Dante Figueroa, *Italy: Basic Income and Pension Reforms Take Effect*, LIBR. CONGRESS L. (Mar. 13, 2019),

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

538 THE YEAR IN REVIEW

[VOL. 54

stimulate public contracts to rebuild after earthquakes,¹⁰¹ and modification of the penal code, including a provisions related to self-defense and to protect victims of domestic violence.¹⁰² But, one of the most notable developments was the enactment of a law to ensure freedom of residence of citizens of Italy and the United Kingdom in the event of the withdrawal of the United Kingdom from the European Union.¹⁰³ A second notable development was the enactment of a law relating to urgent disposition of matters of public order and safety for the investigation of crimes connected to illegal immigration.¹⁰⁴

A. BREXIT DEVELOPMENTS IN ITALIAN LAW

The “Law to Ensure Security, Financial Stability and Integration of the Stock Markets and the Protection of Health and Freedom of Residence of Citizens of Italy and the United Kingdom in the Event of the Withdrawal of the United Kingdom from the European Union” was passed as Law number 22 of March 25, 2019. The Law protects Italian banks operating in the United Kingdom and British banks operating in Italy, as well as Italian citizens living in the United Kingdom and British citizens living in Italy.¹⁰⁵ The UK banks that have branches in Italy will be allowed to continue to operate in Italy during the transition period,¹⁰⁶ and Italian banks having legal residence in Italy, but operating in the United Kingdom, may continue to operate there during the transition period with prior notification to the competent authorities.¹⁰⁷ Notification must be made within three business

<http://www.loc.gov/law/foreign-news/article/italy-basic-income-and-pension-reforms-take-effect/>.

101. Decreto Legge 18 aprile 2019, n. 32, in G.U. June 17, 2019, n. 140 (It.); *see also* Dante Figueroa, *Italy: New Law Aiding Reconstruction Following Earthquakes Takes Effect*, LIBR. CONGRESS L. (May 10, 2019), <http://www.loc.gov/law/foreign-news/article/italy-new-law-aiding-reconstruction-following-earthquakes-takes-effect/>.

102. Legge 19 luglio 2019, n. 69, in G.U. July 25, 2019, n. 173 (It.); Legge 20 maggio 2019, n. 41, in G.U. May 24, 2019, n. 120 (It.); *see* Dante Figueroa, *Italy: New Law Enters into Force to Protect Victims of Domestic Violence and Gender Violence*, LIBR. CONGRESS L. (Sept. 9, 2019), <https://www.loc.gov/law/foreign-news/article/italy-new-law-enters-into-force-to-protect-victims-of-domestic-and-gender-violence/>.

103. Claudia Delpero, *Italian Parliament Passes Brexit Law on British Residents, Italians in the UK*, EUR. STREET NEWS (Apr. 18, 2019), <https://europestreet.news/british-in-italy-call-for-changes-to-brexit-bill/>; Decreto Legge 25 marzo 2019, n. 22, in G.U. Mar. 25, 2019, n. 71 (It.); *see* Dante Figueroa, *Italy: Legislation in the Event of Brexit Takes Effect*, LIBR. CONGRESS L. (May 21, 2019), <https://www.loc.gov/law/foreign-news/article/italy-legislation-in-the-event-of-brexit-takes-effect/>.

104. *See* Decreto Legge 14 giugno 2019, n. 53, G.U. Jun. 14, 2019, n. 138 (It.).

105. Decreto Legge 25 marzo 2019, n. 22, in G.U. Mar. 25, 2019, n. 71 (It.); *see* Dante Figueroa, *Italy: Legislation in the Event of Brexit Takes Effect*, LIBR. CONGRESS L. (May 21, 2019), <https://www.loc.gov/law/foreign-news/article/italy-legislation-in-the-event-of-brexit-takes-effect/>.

106. D.L. n. 22/2019 (It.); *see* Figueroa, *supra* note 105.

107. D.L. n. 22/2019 (It.).

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2020]

EUROPEAN LAW 539

days prior to the date of withdrawal from the European Union.¹⁰⁸ The tax provisions based on the membership of the United Kingdom to the European Union will continue to apply until the end of the transition period.¹⁰⁹

Under Article 14, citizens of the United Kingdom and their families that reside in Italy may request a residency permit at the Police Headquarters in the city in which they reside by December 31, 2020.¹¹⁰ The permit will be given to those UK citizens who have lived in Italy continuously for five years prior to the date of withdrawal from the EU.¹¹¹ To protect Italian citizens living in the United Kingdom, Italy will invest €2.5 million in 2019, and €1 million in 2020 to purchase and renovate Italian embassies in the United Kingdom, and €1.5 million annually from 2019 to increase speed and efficacy of consular services.¹¹² Under Article 17, Italy has pledged to abide by Regulation (CE) number 883/2004 of the European Parliament and the European Council of April 29, 2004, conditional to reciprocity, until December 31, 2020.¹¹³ This move will protect the health of United Kingdom's citizens in Italy should the withdrawal agreement not include a clause for doing so.¹¹⁴

B. URGENT DISPOSITION OF MATTERS OF PUBLIC ORDER AND SAFETY

This Law was passed initially as a legislative decree (having the same force and effect of law) as Law number fifty-three of June 14, 2019 (published in the *Gazzetta Ufficiale* number 138 of June 14, 2019).¹¹⁵ It was slightly amended when it became permanent law in August of 2019, as Law number seventy-seven of August 8, 2019 (published in the *Gazzetta Ufficiale* number 186 of August 9, 2019).¹¹⁶ The Law strengthens the coordination of investigation of crimes connected to illegal immigration.¹¹⁷ To implement the use of investigative tools by undercover police to discover illegal immigrants and those aiding and abetting illegal immigrants, the Italian Parliament set a budget of €500,000 for 2019, of €1,000,000 for 2020, and of €1,500,000 for 2021.¹¹⁸

Law number 152 of May 22, 1975 protects law and order. To neutralize a potential threat to national security, Article 6 of Law number fifty-three of June 14, 2019, modified Article 5 of Law number 152 of May 22, 1975 by

108. *Id.*

109. *Id.*

110. L. n. 41/2019 (It.); see Delpero, *supra* note 103.

111. L. n. 41/2019 (It.).

112. *Id.* at art. 16 ¶ 1(a).

113. *Id.* at art. 17 ¶ 1.

114. See Delpero, *supra* note 103.

115. Decreto Legge 14 giugno 2019, n. 53, G.U. Jun. 14, 2019, n. 138 (It.).

116. See *generally* Legge 8 agosto 2019, n. 77, G.U. Aug. 9, 2019, n. 186 (It.).

117. *Id.* at art. 4 ¶ 2(h).

118. *Id.* at art. 4 (amend).

raising the penalty for violating the provisions that prohibit the use of helmets or other gear that cover a person's face, making it difficult to identify that person in public gatherings.¹¹⁹ The penalty was raised from a prison sentence of one to six months in the old Law,¹²⁰ to a prison sentence of two to three years in the new Law.¹²¹ The new Law also raises the fine from 50–200,000 lire,¹²² to 2,000–6,000 euros.¹²³

Article 7 amends, slightly, Articles 339, 340, 419, and 635 of the Italian Penal Code in relation to safety in public gatherings.¹²⁴ Articles 13 through 18 modify prior laws that punish those who commit a crime of violence during a sporting event by, among other penalties, denying access to future sporting events to those persons.¹²⁵

V. Netherlands

A. THE “BURKA PROHIBITION”

On August 1, 2019, the “Partial prohibition of face-covering clothing act” went into force (*Wet gedeeltelijk verbod gezichtsbedekkende kleding*¹²⁶ enacted on June 27, 2018). Even according to the official Dutch government announcement, this act is more commonly known as the “burka prohibition” or “niqab prohibition.”¹²⁷

The act makes it a criminal offense to wear clothing, in public transport and in buildings and surroundings of educational, governmental, and health care institutions, that fully covers the face, or leaves only the eyes uncovered, or makes a face unrecognizable.¹²⁸ It is a misdemeanor,¹²⁹ punishable by a fine of the first category.¹³⁰

Although the law equally applies to wearing a balaclava (ski mask) or a full-face helmet, it is (as shown by its nickname) generally interpreted as

119. *Id.* at art. 6 ¶ 1(a).

120. *Id.* at art. 6 ¶ 1(b).

121. L. n. 77/2019 (It.) at art. 6 ¶ 1(a)(2).

122. *Id.*

123. *Id.*; *Italy and the Euro*, EUR. COMMISSION, https://ec.europa.eu/info/business-economy-euro/euro-area/euro/eu-countries-and-euro/italy-and-euro_en (noting that Italy changed its currency from Lira to Euro on January 1, 2002) (last visited May 28, 2020).

124. L. n. 77/2019 (It.) at art. 7 ¶.

125. L. n. 77/2019 (It.) at 13–18.

126. *Ban on Face Coverings: Questions and Answers About the Ban on Face Coverings*, GOV'T NETH. (Aug. 1, 2019), <https://www.government.nl/topics/ban-on-face-coverings-referred-to-in-the-media-as-the-'burka-ban'/question-and-answer/what-does-the-partial-ban-on-face-coverings-entail>.

127. *Id.*

128. Wet van 27 juni 2018, Stb. 222 (Neth.) (The Dutch wording is as puzzling as the translation.).

129. *Id.* at art. 2.

130. *Id.* at art. 2; *Fines and Damages*, GOV'T NETH., <https://www.government.nl/topics/sentences-and-non-punitive-orders/fines-and-damages> (last visited May 28, 2020) (The first category of fines has a maximum of € 410.).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2020]

EUROPEAN LAW 541

being mainly aimed at Muslim women.¹³¹ As such it was, and still is, controversial and seen by its detractors as another chink in the image of the Netherlands as a progressive, tolerant country.

Enforcement has not been high on the list of state priorities. Mayors of large cities, universities and public transport companies have announced that they will not to actively enforce the law.¹³² Around August 1, extreme-right individuals pointed out on social media that they could make citizen's arrests, but no incidents of that sort have been reported.¹³³ It appears that the people who described the act as a solution in search of a problem were correct. There are reputedly a few hundred women who wear burkas in the Netherlands,¹³⁴ which had a population of 17.3 million as of January 1, 2019.¹³⁵

B. A CENTENARY OF JUDICIAL POWER

On January 31, 1919, the Dutch Supreme Court (Hoge Raad) gave its landmark decision on the Dutch law of torts (onrechtmatige daad)¹³⁶ in the *Lindenbaum/Coben* case.¹³⁷ Previously, Hoge Raad decisions narrowly interpreted the law as meaning that there could only be an onrechtmatige daad (wrongful action, tort) if the action was in violation of a deed expressly forbidden by law.¹³⁸ This led to a string of very controversial decisions, the most telling example being that of the "Zutphen spinster."¹³⁹

In *Lindenbaum Cohen*, it was decided that an action was not only wrongful in the meaning of (then) article 1401 BW if it was against the law, but also if it was "in violation of, either public decency and morality, or against the care that should in social intercourse be observed with respect to another's person or goods."¹⁴⁰ The introduction of such a general duty of care into the law of torts is still seen as a watershed in Dutch legal history.

131. *Ban on Face Coverings: Questions and Answers About the Ban on Face Coverings*, *supra* note 126.

132. *Dutch Ban on Burqas in Public Places Takes Effect*, LIVE MINT (Aug. 2, 2019), <https://www.livemint.com/news/world/dutch-ban-on-burqas-in-public-places-takes-effect-1564687620744.html>.

133. *Id.*

134. *Boerkaverbod ingegaan, maar hoe zit het nou? 5 vragen en antwoorden [Burqa Ban Entered, but What About It? 5 Questions and Answers]*, RTL NIEUWS (Aug. 1, 2019), <https://www.rtlnieuws.nl/nieuws/nederland/artikel/4799396/boerkaverbod-boerka-burka-nikab-boete-openbare-plekken>.

135. *Trends in the Netherlands 2019*, CBS (2019), <https://longreads.cbs.nl/trends19-eng/society/figures/population/>.

136. Art. 6:162 BW (Neth.).

137. HR 31 januari 1919, NJ 1919, 161, 635 m.nt. W.L.P.A. (Molengraaff/Limburg) (Neth.).

138. *Id.*

139. HR 10 juni 1919, W 9038 (Neth.) (The spinster refused access to the main water valve in her apartment over a warehouse where a water main had burst, spoiling the furs stored there. The Hoge Raad judged that she was well within her rights to demand not to be woken up over such matters, because there was no legal duty to open her door.)

140. *See, e.g.*, HR 23 november 2018, LJN 2160 (Nederlanden/Verweerder) (Neth.).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

542 THE YEAR IN REVIEW

[VOL. 54]

The decision remained leading until its wording was codified in article 6:162 of the “New” BW in 1992.

On January 31, 2019, the centenary of this decision (which usually is the only decision the average Dutch civil lawyer knows by name) was properly celebrated in a symposium in the Hague campus of Leiden University. This was followed by an opera, specially composed by the President of the Hoge Raad based on the wording of the decision and sung by its justices. That was followed by a celebratory dinner in the splendid 19th Century Hôtel des Indes.

One of the speakers described it as a coup d'état by the judiciary. It was no longer Parliament that decided what was acceptable behavior, but it was the judges, who have, for the past 100 years, interpreted the “duty of care” in ever widening circles. This was not only done between private parties, but also between private parties and the Dutch State.¹⁴¹

This latter application became very clear in the recent “Urgenda” case.¹⁴² Urgenda is an “organisation for innovation and sustainability.”¹⁴³ In 2013, Urgenda started a case against the Dutch government alleging that The Netherlands did not do enough to fulfill its treaty obligations to reduce emissions. In 2015, the Hague District Court found this to be so and (somewhat to many people’s surprise) ordered the State to “limit the joint volume of Dutch annual greenhouse gas emissions, or have them limited, so that this volume will have reduced by at least [twenty-five percent] at the end of 2020 compared to the level of the year 1990.”¹⁴⁴

After the State appealed, the decision was upheld by the Hague Court of Appeal.¹⁴⁵ In the State’s appeal to the Hoge Raad (“cassation,” only on points of law and insufficient or incomprehensible reasoning), the procureur-generaal (independent advisor to the Hoge Raad) on September 13, 2019 gave as his opinion that the decision of the Court of Appeal should be upheld.¹⁴⁶ The Hoge Raad decision is expected on December 20, 2019.

141. HR 23 november 2018, LJN 2160 (Nederlanden/Verweerder) (Neth.) at ¶ 4 (“lying judge”).

142. *See generally* HA ZA (Hague) 25 juni 2015, NL 7196 (Urgenda Foundation/Nederlander) (Neth.).

143. *Id.*

144. *Id.* at ¶ 5.1.

145. HR 23 november 2018, LJN 2160 (Nederlanden/Verweerder) (Neth.) at ¶ 76.

146. HR 13 september 2019, LJN 887 (Nederlander/Urgenda Foundation) (Neth.).