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BRIEFLY NOTED
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Judicial and Similar Proceedings

1. Levola Hengelo BV v. Smilde Foods BV (Court of Justice of the European Union – November 13, 2018)
<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1395932669976&uri=CELEX:62017CJ0310>

On November 13, 2018, the Court of Justice of the European Union ruled in *Levola Hengelo BV v. Smilde Foods BV* that the taste of food cannot be classified as a "work" as referred to in Directive 2001/29/EC of the European Parliament in order to be eligible for copyright protection. The case concerns Dutch food retailer Levola, which brought suit against a rival company, Smilde, when they began making a spreadable cream cheese dip with fresh herbs similar to their own and argued that Smilde infringed its copyright in the taste of the dip because the rival dip is a reproduction of their work. The Court noted that to be protected by copyright, the taste must be able to be classified as a "work," which requires that the subject matter is an original intellectual creation and that there be an "expression" of the intellectual creation. The Court stated that "copyright protection may be granted to expressions, but not to ideas, procedures, methods of operation or mathematical concepts as such," and that "the subject matter protected by copyright must be expressed in a manner which makes it identifiable with sufficient precision and objectivity." The Court held that taste cannot be identified with precision and objectivity and "will be identified essentially on the basis of taste sensations and experiences, which are subjective and variable," and so the taste of a food product cannot be classified as a "work" and is consequently not eligible for copyright protection under the Directive.

2. Wightman and Others v. Secretary of State for Exiting the European Union (Court of Justice of the European Union – December 10, 2018)
<http://curia.europa.eu/juris/celex.jsf?celex=62018CJ0621&lang1=en&type=TXT&ancre=>

On December 10, 2018, the Full Court of the Court of Justice of the European Union ruled in *Wightman and Others v. Secretary of State for Exiting the European Union* that the United Kingdom may unilaterally revoke its notification of intention to withdraw from the European Union. The Court stated that such a revocation would also mean that its status as a member state remains unchanged and the withdrawal procedure is closed. This possibility for unilateral revocation is open until a member state and the EU have concluded a withdrawal agreement that enters into force or until the two-year notification period from when the notice of withdrawal was issued, as well as any extension, closes. The Court noted that Article 50 of the Treaty on European Union does not directly address the issue of revocation, but held that "the sovereign nature of the right of withdrawal supports the conclusion that the Member State concerned has a right to revoke the notification of its intention to withdraw from the EU." The Court further determined that a member state's revocation of its withdrawal notice "reflects a sovereign decision to retain its status as a Member State of the European Union, a status which is neither suspended nor altered by that notification." The case was submitted by the Scottish Court of Session and was heard under an expedited procedure to ensure that it would be delivered before the two-year deadline from the U.K.'s notice to withdraw, which will be on March 29, 2019.

3. Law Amending the Law on the Polish Supreme Court (December 17, 2018)
<https://www.president.pl/en/news/art,926,president-signs-bill-amending-law-on-supreme-court.html>

On December 17, 2018, Polish President Andrzej Duda signed into law a bill that reinstates the Supreme Court judges who were removed from office under a prior law that the Court of Justice of the European Union (CJEU) ordered be halted while the case of the European Commission against Poland is decided by the Court. The case concerns domestic Polish legislation that lowered the retirement age for Supreme Court

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Justices to 65 and gives the Polish president discretion in extending the judges' service, resulting in a forced early retirement of 27 of the 72 judges, which the European Commission argued violates principles of the irremovability of judges and judicial independence. On October 19, 2018, the Vice President of the CJEU ordered Poland to suspend the law, and on December 17, the CJEU confirmed the interim measures ordering Poland to halt implementation of the law and allow the judges to continue working.

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Resolution 2438 (2018) (United Nations Security Council – October 11, 2018)

<https://undocs.org/S/RES/2438(2018)>

On October 11, 2018, the UN Security Council passed Resolution 2438 in which it extended modifications to the mandate of the United Nations Interim Security Force for Abyei (UNISFA) until April 15, 2019, stating that this will be the final extension unless the parties reach specified benchmarks regarding border demarcation. The Council noted that the "situation in Abyei and along the border between the Sudan and South Sudan continues to constitute a serious threat to international peace and security," but also welcomed the progress that had been made towards implementing the Joint Border Verification and Monitoring Mechanism (JBVMM) and called on Sudan and South Sudan to fully implement the JBVMM. The modifications being extended "include the Force's support for the Joint Border Verification and Monitoring Mechanism in the Abyei border region." The Council also determined that it would "maintain UNISFA's authorized troop ceiling of 4,500 until 15 November 2018; and further decides that as of 15 April 2019, the authorized troop ceiling shall decrease by 541 troops, unless it decides to extend the mandate modification."

2. Iran Sanctions (U.S. Department of the Treasury – November 5, 2018)

<https://www.treasury.gov/resource-center/sanctions/Programs/Pages/iran.aspx>

On November 5, 2018, the United States re-imposed all sanctions on Iran that had been lifted or waived under the Joint Comprehensive Plan of Action (JCPOA). The Treasury Department stated that November 4 marked the last day of the 180-day wind-down period after the president announced the U.S. withdrawal from the JCPOA on May 8, 2018. The Treasury Department noted that the sanctions "will target critical sectors of Iran's economy, such as the energy, shipping and shipbuilding, and financial sectors" and that as part of the re-imposition "OFAC sanctioned more than 700 individuals, entities, aircraft, and vessels." The State Department stated that "all nuclear cooperation with Iran, except for the limited activities for which waivers are being granted, will be sanctionable" and that they are not issuing waivers for new civil nuclear projects with Iran.

3. "Death Notifications in the Syrian Arab Republic" (United Nations Independent International Commission of Inquiry on the Syrian Arab Republic – November 27, 2018)

<https://reliefweb.int/sites/reliefweb.int/files/resources/DeathNotificationsSyrianArabRepublic_Nov2018.pdf>

On November 27, 2018, the United Nations Independent International Commission of Inquiry on the Syrian Arab Republic released a report entitled, "Death Notifications in the Syrian Arab Republic," in which it discusses the high number of missing and detained people within Syria and stresses the need to account for the fate and whereabouts these individuals. The Commission was mandated by the Human Rights Council to investigate and record all violations of international law since March 2011 within Syria. The report notes that arbitrary detention is widespread throughout Syria and has been conducted by all parties, but that "nowhere has the phenomenon been more pervasive than in areas under Government control." The Commission estimates that pro-government forces have disappeared tens of thousands of Syrians and notes that the

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government "has not released any information on the whereabouts of bodies, nor provided any restitution of personal belongings." The Commission also lists a set of recommendations, including that the government suspend capital punishment, reveal the fates of those detained or disappeared, assist families in retrieving bodies or remains of loved ones, and establish a national reparations mechanism.

4. Resolution 2447 (2018) (United Nations Security Council – December 13, 2018)
<https://undocs.org/S/RES/2447(2018)>

On December 13, 2018, the UN Security Council unanimously passed a resolution calling for the "integrating UN support to police, justice and corrections areas into the mandates of peacekeeping operations and special political missions from the outset." The Council noted efforts to assess the efficiency of peacekeeping operations and asked the Secretary-General to enhance the effectiveness of peacekeeping operations assistance to police and justice institutions, to promote coordinated efforts between UN country teams and other UN actors, ensure benchmarks for mission transitions are met, and centralize data streams related to peacekeeping operations to improve evaluations of operations. The Council also requested that the Secretary-General "examine ways to strengthen United Nations assistance to police, justice and corrections institutions to host countries and submit recommendations, for the consideration of the Security Council, taking into account the challenging, complex and evolving nature of current conflicts."

5. "Desperate and Dangerous: Report on the Human Rights Situation of Migrants and Refugees in Libya" (UN Support Mission in Libya – December 20, 2018)
<https://www.ohchr.org/Documents/Countries/LY/LibyaMigrationReport.pdf>

On December 20, 2018, the UN Support Mission in Libya (UNSMIL) and the UN Human Rights Office jointly released a report titled, "Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya," which details severe human rights violations faced by migrants and refugees within Libya as well as in attempting to make the Mediterranean Sea crossing on the northern coast. The report documents abuses faced by migrants and refugees as soon as they enter Libya, including "unlawful killings, torture and other ill-treatment, arbitrary detention and unlawful deprivation of liberty, rape and other forms of sexual and gender-based violence, slavery and forced labour, extortion and exploitation by both State and non-State actors." It also discusses how years of armed conflict "have weakened Libyan institutions, including the judiciary, which have been unable, if not unwilling, to address the plethora of abuses and violations committed against migrants and refugees by smugglers, traffickers, members of armed groups and State officials, with near total impunity." The findings are based on approximately 1,300 first-hand accounts and cover a twenty-month period up to August 2018. UN High Commissioner for Human Rights Michelle Bachelet said of the situation, "Tackling the rampant impunity would not only end the suffering of tens of thousands of migrant and refugee women, men and children seeking a better life, but also undercut the parallel illicit economy built on the abuse of these people and help establish the rule of law and national institutions."

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