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КАФКИАНСКИЙ ЕВРОПЕЙСКИЙ СОЮЗ: НАКАЗАНИЕ БЕЗ ПРЕСТУПЛЕНИЯ

В данной статье рассматривается расширение использования экстерриториальных и внесудебных санкций Европейским союзом и его государствами-членами (включая юридические лица) против физических лиц. То, что раньше считалось характерной чертой американского арсенала санкций против государств и отдельных лиц, игнорирующих правовой порядок и нормы ООН, теперь широко применяется Европейским союзом. Что касается применения регламентов Совета ЕС к физическим лицам, то целевая группа включает в себя, в частности, аналитиков, ученых, журналистов, интеллектуалов, подкастеров и т. д. Другими словами, целевая группа состоит из лиц, которые не только осмеливаются публично высказываться, но и обладают властью формировать общественное мнение по вопросам, в которых у властей ЕС другая точка зрения. Их основное наказание (по сути) далеко не символическое. Первоначально эти санкции были направлены почти исключительно против российских граждан (и учреждений, корпораций и т. д.); но последние меры, принятые в декабре 2025 года, показали, что эти меры имеют эффект бумеранга. Их экспансия теперь угрожает гражданам западных стран (ЕС) или гражданам стран, не входящих в ЕС, которые проживают или работают на территории Союза. Основная предпосылка этой статьи заключается в том, что европейские мандарины (как их обычно называют) совершили опасное и открытое саморазрушительное нарушение основных правовых принципов, известных со времен Римской империи. Таким образом, возникает важный вопрос: является ли ЕС сообществом государств, основанным на праве? Более того, миф о «нормативной силе Европы» только что был развеян самими чиновниками ЕС, поскольку такой Европейский союз может экспортировать ценности, не имеющие ничего общего со старой мантрой о цивилизационной роли и примере для недемократических обществ. Жесткое ограничение прав человека и свобод личности, особенно свободы слова и выражения мнений, усугубляет хорошо известный демократический дефицит ЕС, который преследует это образование с момента его создания в середине XX века. Наконец, ограничение прав и свобод человека обнажает новое лицо Союза, которое не только недемократично, но и антидемократично и даже тоталитарно. Взятые вместе, эти события дополняют продолжающуюся милитаризацию европейского пространства (теперь включая

Великобританию и так называемую Коалицию желающих). «Геополитическая Европа» ведет себя так, как будто находится в состоянии войны как с Россией, так и со всеми своими, кто не согласен и не подчиняется доминирующим западным нарративам. Этим людям нужно заставить замолчать, но в то же время они служат примером для других народов в будущем. Сосредоточившись на таких случаях, как швейцарский аналитик Жак Бод (как наиболее известный, хотя и не единственный наказанный) и подвергшиеся санкциям российские ученые (из Валдайского дискуссионного клуба, а также из других высших учебных заведений), исследование помещает эти практики в критический правовой и геополитический контекст. В статье утверждается, что современные санкции функционируют как технология эпистемического замалчивания, порождая оруэлловских «бесправных людей», чье юридическое и социальное существование административно стирается; иными словами, так выглядит гражданская смерть живых людей. Далеко не поддерживая верховенство права, этот режим карательного управления отражает инструментализацию законности в интересах гегемонистской дисциплины, что имеет глубокие последствия для интеллектуальной и любой другой свободы в Европе и за ее пределами.

Ключевые слова: Европейский союз, Запад, верховенство права, ограничительные меры, Совет ЕС, демократический дефицит.

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KAFKAESQUE EUROPEAN UNION: PUNISHMENT WITH NO CRIME

This paper focuses on the expanding use of extraterritorial and extrajudicial sanctions by the European Union and its member states (including legal entities) against individuals. What used to be known as a characteristic of the U.S. repertoire of sanctioning states and individuals, disregarding the UN-based legal order and rules, is now becoming vastly applied method by the European Union. When it comes to the implementation of the Council of the EU's regulations to individuals, the target group includes particularly analysts, scholars, journalists, intellectuals, podcasters, etc. In other words, the target group is made of individuals who not only dare speak up publicly but also have the power to be public-opinion makers in matters in which the EU powers that be have a different narrative. Their primary punishment (in all but name) is far from symbolic. At first, these sanctions were directed almost exclusively to Russian citizens (and institutions, corporations, etc.); but the latest measures as of December 2025, have shown that these measures have a boomerang effect. Their expansion now threatens Western (EU) citizens or citizens of non-EU states that have residence or work on the territory of the Union. The basic premise of this article is that the European mandarins (as they are popularly nick-named) have

embarked on a dangerous and overt self-inflicting breach with the basic legal principles known since the Roman times. Thus one important question arises: is the EU a community of states based on law? Furthermore, the myth of «normative power Europe» has just been dismantled by the EU officials themselves, because such European Union may export values that have nothing to do with the old mantra about civilizational role and example for non-democratic societies. The severe restriction of human rights and freedoms of individuals, especially the freedom of speech and expression, adds more on the well-known democratic deficit of the EU, which follows this entity since its birth in mid-20th century. Finally, curtailing human rights and freedoms discloses a new face of the Union that is not only non-democratic, but is anti-democratic and even totalitarian. Taken all together, these events are complementary with the ongoing militarization of the European space (now including, the UK and the so-called Coalition of the Willing). The «geopolitical Europe» behaves as if it is at war both with Russia, but also with anyone of its own who dissent and does not comply with dominant Western narratives. These people are to be silenced, but at the same time they serve as a disciplinary example for any other people in the future. Focusing on cases such as Swiss analyst Jacques Baud (as the most prominent, even though not the only one punished) and sanctioned Russian academics (from the Valdai Discussion Club but also from other higher education institutions), the study situates these practices within a critical legal and geopolitical framework. The paper argues that contemporary sanctions function as a technology of epistemic silencing, producing Orwellian «unpersons» whose legal and social existence is administratively erased; in other words, this is how civil death of living persons looks like. Far from upholding the rule of law, this regime of punitive governance reflects the instrumentalization of legality in the service of hegemonic discipline, with profound implications for intellectual and any other freedom in Europe and beyond.

Key words: European Union, the West, rule of law, restrictive measures, Council of the EU, democratic deficit.

Diagnosing the Slow Death of the European Union. From its inception in the era of the European Coal and Steel Community to today's European Union, the EU's geographical and functional expansion has always been accompanied by a carefully crafted narrative. This political entity, once described as an «unidentified political object» [7] in constant transformation (always presumed to be for the better), was long celebrated as a «unique project in international relations.» [25] Its alleged uniqueness lay in the gradual extension of supranational authority, primarily in the economic and financial domains, yet creating a sui generis political system. Member states voluntarily ceded portions of their economic sovereignty in the name of a higher good: economic growth, profitability, the creation of a vast common market, etc.

By contrast, domestic politics and foreign and security policy were traditionally treated as sovereign domains, governed not by supranational but intergovernmental principles. In these areas, states proved far more reluctant to relinquish sovereignty, or, more precisely, statehood itself. At least, this used to be the conventional wisdom for some time. Yet, since the adoption of the Lisbon Treaty (after the failure of the so-called Constitution for EU in 2005), things started shifting gradually. The well-known and outspoken activist Susan George [10] made a clear warning just before the adoption of the Lisbon Treaty: «A more neo-liberal, anti-democratic document than

the EU Constitution, rejected by the French and the Dutch may be hard to imagine, but the new reform treaty tries hard.» She explained what was at stake for all peoples of Europe and why they had to reject it. At that point, the Brussel elites envisaged a role of a global actor for the EU and even more. During the Irish referendum, the Irish Anti-War Movement [18] put it bluntly: «What the EU elite have on offer is an increasingly imperialist Europe. We know this from the words of the president of the European Commission, Jose Manuel Barroso: 'Sometimes I like to compare the EU as a creation to the organisation of an empire'.»

The only way to do so was to strengthen the Common Foreign and Security Policy (CFSP). In due course, it has become a hybrid sphere, where intergovernmental principles meet supranational ones. Declaratory, CFSP remains formally intergovernmental, but the sanctions regime, through Lisbon Treaty changes and Article 215 TFEU, has created a hybrid system. It now looks (and acts) supranational because sanctions against individuals are binding EU law, bypassing national processes, though they remain reviewable by the EU courts. In essence, it is exactly the sanction regime that has created the bridge between the two spheres and, in practice, put individuals in a Kafkaesque's process. This dual mechanism means that while the decision to sanction is intergovernmental (political), the implementation is supranational (legal) and binding across the EU without national ratification. Over time, sanctions expanded from targeting states to individuals and entities (e.g., human rights violators, terrorists), creating a quasi-judicial function without formal trials. Even though some authors argue that the EU's CFSP has started its transformation with the outbreak of the special military intervention in Ukraine, others [3; 11] saw it coming years earlier. However, few believed it would hit back at the EU citizens, as it is the case now.

It is about the narrative, stupid! Distinct from the Council of Europe and especially from NATO, the EU portrayed itself as a community grounded in founding treaties and a charter of rights. Yet this self-presentation increasingly rested on public (mis)representation – or in other words, on its image and narrative.

At first, the EU elites began speaking of themselves simply as «Europe» [8] despite the fact that large parts of the continent remained excluded from Fortress Europe, a reality starkly illustrated by the prolonged marginalization of the so-called Western Balkans. Second, the carefully constructed myth of the EU's peaceful nature served to portray it as a «normative/civilian/soft power» [15; 21]: an entity relying not on coercion or military force (as in the case of the United States), but on attraction, persuasion, and socialization. While conditionality always implied an element of coercion and even echoed colonialism [2], post-socialist aspirant states nonetheless perceived Brussels as a Promised Land. i.e. a terrestrial paradise free from poverty, unemployment, and corruption, governed instead by prosperity and equality.

A defining symbol of this peace project was the repeatedly invoked reconciliation between France and Germany, once «eternal enemies» and now portrayed as «eternal friends.» Behind this façade, however, lay a suppressed history of European imperialism, colonialism, and exploitation [6; 20]. Even within the modern EU, shaped by the corporate logic of ordoliberalism, an unjust economic structure persisted, one marked

by the exploitation of weaker internal peripheries by the powerful core [9; 13]. This became increasingly visible after the demise of «Social Europe» and the welfare state following the 2008 capitalism crisis [22].

The most brutal illustration of the divorce between profit, power, and democracy within EU member states emerged during the Greek financial crisis of 2015 [25]. The crisis of capitalism, and its rescue across the so-called collective West, required emergency measures that effectively entailed a «divorce from democracy,» or more accurately, from its façade [17]. This characterization is warranted given the EU's modes of selection, appointment, and operation, combined with systemic non-transparency and lack of accountability. Even the most ardent proponents of European integration have long acknowledged the Union's inherent democratic deficit. Despite successive treaty reforms invoking this deficit as justification for amendment, the reality remains that the most powerful EU officials have never received direct democratic legitimacy from European citizens.

This problem has resurfaced sharply in the recent sanctioning of Swiss analyst Jacques Baud. A German Member of the European Parliament Michael Von Der Schulenburg publicly acknowledged that the Parliament's role in such decisions is negligible and that elected representatives themselves are largely uninformed and powerless. This admission underscores the profound hollowing out of democratic representation at the EU level [16].

The issue of human rights protection further exposes these structural flaws. Historically, the safeguarding of human rights remained primarily the responsibility of member states, with the European Court of Human Rights in Strasbourg (an institution of the Council of Europe) serving as a corrective mechanism. A glance at the Court's official website suffices to demonstrate the routine and systemic violation of human rights across Europe. In an attempt to compensate for this institutional gap, the EU adopted its own Charter of Fundamental Rights, yet this document remains a pale imitation of the Strasbourg framework. Even the Court of Justice of the European Union appears more concerned with legality and the protection of business entities than with safeguarding individual rights.

Ironically, the EU's self-styled «social» character never anticipated its rapid transformation into a «geopolitical Europe,» in which security rationales override legal and normative principles. As Costas Lapavitsas [17] aptly observes: «In the early 2000s, Yassin Kadi, a Saudi businessman, was placed on a UN terrorism sanctions list. His assets were frozen, his economic life extinguished, and no evidence was shown to him. When the case reached the EU courts, they ruled that this was unacceptable. Even sanctions adopted by the UN Security Council could not be enforced in Europe unless the targeted individual had access to the evidence and a real opportunity to defend himself before an independent court. Measures amounting to civil death could not rest on assertion alone. That was the EU's standard – but it has been quietly discarded.» [See more 4].

The Beginning of the End of «Normative Europe» and the Ascendance of Geopolitical Logic. The simplest, yet also the most superficial analysis of the

transformation, and indeed the self-destruction of the European Union would begin with the «special military operation» launched in February 2022. Such an approach conveniently absolves the EU of responsibility, portraying it as a passive and almost innocent actor, supposedly committed to soft power and normative principles. It would imply that it was merely dragged into the conflict by external circumstances. A more serious and deeper analysis, however, must take into account another key actor (NATO) whose structure and objectives may appear different from those of the EU, but only at first glance.

In reality, the nearly simultaneous existence and functioning of the EU and NATO since the early Cold War period, and especially after its end, following the collapse of socialism and the dissolution of the USSR, point to a synchronized, if not always explicit, process of creating what might be described as «Siamese twins» within Europe's security architecture. Needless to say, the United States has played the decisive role in shaping this structure. The first step in this process was the promotion of a false narrative addressed to aspiring countries, primarily former socialist states, according to which EU membership (widely perceived as a symbol of prosperity and a «return to Europe») was conditional upon prior accession to NATO.

In this way, even NATO cloaked itself in a rhetoric of peace, presenting itself as a political alliance that «spreads peace,» or as a security community in which war between its members becomes unthinkable. As several authors have rightly argued, NATO gradually developed a form of cosmopolitan militarism: it normalized militarism and, in an Orwellian fashion, domesticated it not only within the Euro-Atlantic space but also beyond it – culminating in the thesis of «Global NATO.» [23]

The outbreak of the war in 2022 was, among other things, a consequence of Western arrogance and hubris, manifested in the systematic dismissal of prior warnings, particularly those coming from Moscow. Ukraine, especially after the 2014 coup, and following the internal armed operations in regions populated by ethnic Russians, was progressively transformed into a NATO proxy. It would be naïve to believe that the EU was an innocent bystander in this process. Although awarded the Nobel Peace Prize – an award that can hardly be considered deserved, given the EU's implicit role in the disintegration of the former Yugoslavia and the wars that followed – the Union knowingly participated in the Minsk negotiations.

Angela Merkel's later admission that the aim of the Minsk process was not to achieve a lasting peace, but rather to buy time to strengthen Ukraine's military capabilities, only confirmed what had long been evident: Ukraine had been assigned the role of a proxy in the West's broader confrontation with Russia. It is precisely within this interpretation of the causes of the war that one finds the logic behind the subsequent punishment of individuals – whether Russian or Western citizens.

The outbreak of hostilities did not prompt any genuine peace initiative on the part of the EU. Instead, the Union effectively outsourced the «management» of the conflict to the Biden administration and NATO, under the pretext of assisting Ukraine's right to self-defense. Gradually, first symbolically and then very concretely, EU officials became equal partners of NATO in military planning and execution. From the statements

of the President of the European Council, to those of the President of the European Commission, and the High Representative for Foreign Affairs and Security Policy, a single chorus emerged – one calling for escalation rather than peace, for militarization rather than diplomacy.

Anyone who dared to articulate a different view was subjected to smear campaigns and labeled a «Putin apologist,» a «useful idiot,» or worse. The cases of Irish Members of the European Parliament Clare Daly and Mick Wallace were emblematic, but this rhetoric quickly expanded to include all those who challenged the dominant narrative about Russian imperialism as an existential threat to Europe. At the moment when – despite military setbacks, internal corruption, and undemocratic practices within Ukraine’s political elite – it became acceptable to claim that «the road to peace leads through war with Russia,» and that Russia must not be negotiated with but defeated militarily and fragmented, Europe’s elites transformed the continent into an openly belligerent geopolitical actor.

An old saying remains true: the first casualty of every war is truth. In this proxy conflict, collateral damage has been extensive, but among the gravest losses is the freedom to think and speak differently. Russophobia has increasingly merged with hostility toward anything Russian. The Russian Federation has been subjected – and continues to be subjected – to the most extensive sanctions regime in the history of international relations. All these sanctions were imposed without authorization from the UN Security Council, yet they function effectively due to the dominance of the U.S. dollar in international trade and finance, combined with various mechanisms of coercion and pressure.

Once it became clear that Russia was not collapsing, but rather achieving certain military gains on the ground, the articulation of inconvenient facts turned into a dangerous act. As Goethe once observed, it is dangerous to be right when those in power are wrong. Sanctions followed a clear trajectory: from self-censorship, through the cancellation of cultural events and the exclusion of artistic works solely on the basis of the author’s nationality, to an academic climate in which participation in a scholarly event held in the Russian Federation is treated as a hostile act. Whether one holds views critical of Moscow’s official policies became irrelevant; what mattered was simply «being seen there.» That was exactly the case with the professor Rein Müllerson, from Estonia, who lost his emeritus status at Tallinn University after participating in a conference organized by Russia’s Ministry of Justice in 2024.

The first targets were the Russians themselves – not only representatives of Russian state institutions, but also university rectors, professors, researchers, and ultimately the entire intellectual platform known as the Valdai Club. For years, the Club has organized public international debates – both online and in person – on global issues. In parts of the Western media, such as Croatia’s **Jutarnji list** [12], Valdai was portrayed as the «brain» of Russian state policy, with claims that President Putin was somehow «dependent» on its views. Following the most recent sanctions lists, which directly target the Club’s program directors – a club that in the past brought together some of the most prominent figures in Western academia, from John Mearsheimer to

Jeffrey Sachs – a cynical but legitimate question arises: will participants in Valдай's annual conference in Sochi be next? In fact, there are already documented cases of British and Canadian scholars being subjected to lengthy interrogations and intimidation by airport authorities upon returning from Russia, or for having given interviews to Russian media outlets.

Why does the punishment of European citizens matter? After economic and political sanctions against the Russian Federation failed to produce the desired outcomes, Europe has increasingly been forced to confront its own impotence – and, more troublingly, its abandonment of the fundamental legal and normative principles upon which it formally claims to be built.

Europe has increasingly assumed the form of a normatively ambiguous and institutionally hybrid entity whose decision-making procedures, legal authority, and political accountability are no longer clearly defined. Recent high-level summits have involved only a subset of EU member states – primarily those aligned with a maximalist military approach to the war in Ukraine – while simultaneously incorporating NATO representatives, the United Kingdom (despite its formal withdrawal from the Union), and even officials from the U.S. administration. This configuration reflects not merely political coordination but a deeper structural fusion, whereby the EU has effectively dissolved the distinction between its civilian, legal order and the military-security logic of the Euro-Atlantic alliance. What emerges is a quasi-geopolitical actor whose overriding objective is no longer conflict resolution or de-escalation, but the strategic defeat of Russia, articulated in terms that implicitly accept the prolongation of war regardless of its human costs.

This transformation has unfolded in parallel with growing social discontent within EU member states. The sustained diversion of public funds toward the financing of Ukraine's state apparatus and military capacity has coincided with austerity measures affecting public services, social welfare, healthcare, and education. While protest movements have multiplied, dissenting voices are increasingly marginalized through informal mechanisms of exclusion, travel restrictions, reputational delegitimization, and professional sanctions. In this context, the imposition of restrictive measures against the Swiss analyst Jacques Baud [5] should not be understood as an isolated or personalized act, but as a symptom of a broader shift in the EU's mode of governance [17].

Baud is not alone. A growing number of EU citizens have been subjected to sanctions that entail a comprehensive suspension of human rights, but their effect may be summarized as the following: a) financial deplatforming (freezing bank accounts cuts individuals off from the formal economy, rendering professional activity impossible); b) institutional blacklisting (universities, publishers, and conference organizers preemptively exclude sanctioned individuals to avoid reputational or legal risk); c) discursive delegitimization: State-aligned media frame targeted intellectuals as «agents» or «apologists,» destroying their credibility without factual rebuttal. Crucially, these measures are not corrective but performative/educational: their goal is not to punish a specific act, but to deter dissent by demonstrating the cost of intellectual

independence. In states where academic funding, publishing, and career advancement depend on Western validation, this creates a climate of anticipatory self-censorship. The result is not just silenced individuals, but a hollowed-out public sphere.

The severity of these sanctions effectively places targeted individuals outside the legal and social order, depriving them of the means of subsistence and participation. In Orwellian terms, they are rendered **unpersons**, or one can say this is a civil death of a living person. From a legal perspective, the most alarming feature of this regime is the absence of effective judicial protection. Decisions adopted by the EU Council under the Common Foreign and Security Policy remain largely immune from substantive judicial review, leaving affected individuals without access to legal remedies. Sanctions are imposed for acts that are not defined as criminal offenses under any positive law (such as «spreading disinformation» or endorsing «pro-Russian narratives») in clear violation of the foundational principle **nullum crimen, nulla poena sine lege**. The presumption of innocence (**ei incumbit probatio qui dicit, non qui negat**), the protection of personal liberty (**habeas corpus**), procedural due process, proportionality, and temporal limitation of punishment are systematically disregarded.

This logic of governance is not new, nor is it confined to the EU. Comparable practices can be observed in the United Kingdom and the United States, from the prolonged persecution of Julian Assange to the recent U.S. sanctions imposed on an International Criminal Court officials for authorizing arrest warrants related to war crimes in Gaza. What is distinctive in the European case, however, is the Union's self-representation as a legal and normative community, one allegedly founded on the rule of law, human rights, and democratic accountability. The current sanctioning practices expose a profound contradiction between this self-image (including the conditionality pressure on aspirant countries) and the reality of punitive governance exercised without legal safeguards. This is no less than a policy of double standards and hypocrisy.

This dynamic extends beyond the Union's borders. Candidate and associated states are implicitly expected to replicate similar practices as part of their alignment with the EU foreign and security policy. In this way, the sanctioning regime becomes a mechanism of normative diffusion, not of liberal values, but of exception-based governance. The result is a European order in which legality is instrumentalized, rights are conditional, and dissent is treated as disloyalty.

The EU no longer merely suffers from a democratic deficit; it actively produces anti-democratic outcomes by suspending fundamental legal principles in the name of geopolitical necessity. In this Kafkaesque order, law persists as form without substance, while punishment is imposed without crime, trial, or defense, amounting to a form of civil death administered through bureaucratic means. The European Union has paradoxically become a key site for the administrative and voluntaristic production of unpersons. EU-led sanctions against intellectuals are not anomalies but symptomatic of a deeper crisis (with deeply buried roots). There is replacement of legal universalism with selective 'legality' as understood and applied by the executive branch, while rights are conditional on political conformity.

Instead of a conclusion. A passage from Margaret Atwood's **The Handmaid's Tale** [1] rings alarmingly true: «That was when they suspended the Constitution. They said it would be temporary. There wasn't even any rioting in the streets. People stayed home at night, watching television, looking for some direction. There wasn't even an enemy you could put your finger on.» From time to time, something suddenly crystallizes in people's minds only to fade again, until it resurfaces later with renewed force. At the heart of this thought lies **silence**: the unquestioning acceptance of the erosion of freedom, passivity, and the zombification of society. It is correct to use the word 'society', even 'masses', because despite the protest movements in the West, one can hardly speak of demos or active citizens (polites) in the meaningful sense of the word. From today's perspective, the difference is largely technological. People no longer stare at TV screens; instead, they scroll endlessly on mobile phones, jumping from one sensation to the next, from one distraction to another. And unlike Atwood's fictional moment, today there are enemies (real or mostly invented), sometimes an entire menu to choose from: Russia, China, Venezuela, Iran, or Hamas.

Reclaiming the space of free thought calls for action against Kaja Kallas' «restrictive measures» and Ursula von der Leyen's «Democracy Shield.» There is no democracy to protect, because the EU (and the West in general) is on a path of self-destruction.

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