

# Our Death Machine vs. Citizenship and Human Rights

Dimitry V. Kochenov



Refugees from different African countries travel through the Mediterranean Sea, on a rubber boat, in extremely dangerous and precarious conditions, 27th June 2015 |

Photography: [Alessio Mamo](#)

“We were in the water for 13 hours. They [my wife Shifaa, 30, and our two children, 9-month-old Asem and 5-year-old Abdulwahab] were alive with me right up to the last hour. After that, I could do no more. Can you imagine that they died while I was holding them?

I don't understand why I didn't die with them.” [1].

## Sounding the alarm

The EU and its Member States are the architects of a barbaric system of intolerable violence spreading all across the Mediterranean Sea and generously paid for with European money. This system runs on lawlessness law: the deployment of rule of law arguments to void the law of any substance and render rights that are unusable - sometimes unthinkable - in practice, [2] and emerges as one of the main features of what the Union is about today.

With the death toll into the tens of thousands, and hundreds of thousands more suffering

unbearable abuse as a direct result of the successful implementation of EU policies, sometimes very far from EU borders, the Union and its Member States are colluding in the ongoing destruction of lives, dignity and hope on an immense scale. These policies are rooted in the general proceduralization of the EU's mission, the radical dismissal of non-citizens as potential bearers of core rights stemming from EU law, beginning with the very first steps in European integration and a dangerous abuse of the very mission of the law, which has evolved from a means of empowering individuals and tempering power within the EU into a legalistic toolbox for whitewashing crimes and justifying abuse. Countless people in the third world perceive the EU as evil, since it invests enormous amounts of money and effort into placing the innocent in mortal danger, all the while ensuring that any accountability for such policies is absent. European Union law, on this count, is a textbook example of evil law: [3] - our "agreement with Hell", in the words of Jack Balkin. [4]

The increasing legalistic bluntness of the outright dismissal of *any* rights of some categories of the non-citizen 'others' that we observe today was absolutely unheard of before. The EU is starting to deliver on Gráinne de Búrca's fear: it is too important not to be also an agent of injustice. [5] The same emerges from other recent key revelations, including, the Court's denial of own structural independence displaying the acuteness of the justice deficit by *design* [6] plaguing the EU at the most fundamental level. Such deficit could seem surprising, given that the Lenaerts' Court officially champions Rule of Law. [7]

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The idea that the supranational court meets the key requirements of Article 6 ECHR it requires the Member State courts to adhere to ended up emerging as a kind of wishful thinking after an unlawful dismissal of AG Sharpston and the Court's clarification that it was not in the position to fulfil its main function: speaking the truth to power. [8] The wanting nature of the Rule of Law at the supranational level has been reconfirmed. [9] This deficit is handy, however, when lawlessness is in charge in inter-state politics where the Court is not a tool of tempering power, [10] but rather the servant of the collective sovereign.

## From human rights ideals to the killing machine

With the Court ducking, while the Commission views its role as the facilitator in the Member States' assaults on the rights of the racialized migrants, the EU is far from not only the ethical and moral, but also from the minimal legal ideals of Rule of Law and human rights protection, emerging as a killing machine. It now kills racialized others with the help of FRONTEX and the lavishly funded thugs at its borders in denying the racialized others any humanity by default. [11] The policy, which emerges from criminal collusion between

the EU and the Member States, seems to consist of recurrent attempts to deter people mostly from the former colonies on which the Empires preyed from coming to Europe by threatening to kill them - either directly, or by proxies. The EU today is very much about EU-sponsored war on the racialized victims of citizenship [12] (no reports on white people dying in the Mediterranean among dozens of thousands of Asians and Africans are known). From the Mediterranean to the Belarussian forest, the EU has been steadily solidifying its place among the most notable enemies of human rights in the world, while the Commission's propaganda goes out of the way to rehearse the Rule of Law and rights narrative about the EU.

In the real world, meanwhile, the Union is now all about arming thugs for the passport poor in lawless spaces such as post-conflict Libya and weak former colonies further afield. [13] This conscious policy has claimed more than 25,000 non-white lives over the last eight years [14] and left more than 100,000 innocent people captured and imprisoned in anticipation of ransoms to be paid, or enslaved and sold by EU-equipped criminal militias using Frontex - once again - as their air force. [15] Frontex drones help EU Member States decide who to save and who to "redirect" to the criminals on the other side of the sea, using saving those in distress as a pretext to kidnap and enslave with a full mandate from the EU and at the EU's request.

Count the deaths: Ms von der Leyen and her friends in Member States' governments, as well as criminal Libyan mercenaries acting under EU instruction and on Frontex intelligence, have killed more people in the Mediterranean than Putin and his criminals in Ukraine. [16] Many deaths are unaccounted for, while countless dead remain unidentified: the EU appears not proud of its killings. [17] While the International Criminal Court has been notified, [18] much time will pass before we see behind bars for these well-documented crimes, [19] all those who designed a policy whereby non-white people in the sea are kidnapped by EU-funded criminals, under the pretext of saving lives, and tortured in generously funded EU prisons outside the law. [20] Sir Francis Jacobs was right, as long ago as the 1970s, when he said that the EU is about the individual. This individual today, in the 21st century, is the racialized other who is to be either killed or kidnapped, tortured and sold as slave to deter other potential migrants. The law is not on the side of such individuals. The threat of death while being "rescued" by criminals acting under EU instruction is not a deterrent in the world of passport apartheid.

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However, is the EU entirely to blame? Accountability chains are long and murky, money is grey and there is no legal or democratic oversight. The Member States use the EU in a rare show of unheard total solidarity around the idea that former colonials are better dead than

on our shores. Accountability is such a complex matter, we are told. People essentially drown by themselves, the institutions submit, and the geopolitical times are complex, say those willing to present an EU-designed mass death campaign as a unique accident of history to which we should not pay too much attention. Yet, the law - including EU law - usually works as designed. [21] Just as the massive casualties in Ukraine are cheered as a success by Putin's admirers, these unfortunate drownings en masse, in which the EU invests so heavily, do not happen of themselves. The issue, in the EU, goes deeper than the relatively recent transformation of the Union into a mass killer.

## Lawlessness law as a tool of choice

Lawlessness law is highly complex in its operation and is marked by a radical departure from the core values on which the Union and the Member States are said to be built, in particular the rule of law. [22] It operates through different tools, from moving the EU's agreements with principled human rights implications outside the scope of EU law, [23] to setting up enormous intrusive and unaccountable funding schemes - as demonstrated by the EU Emergency Trust Fund for Africa - to establish, preserve and sponsor the export of rights violations outside the EU's borders, [24] as well as deploying Frontex, an EU agency, [25] to commit and cover up crimes, break the law and share vital intelligence with EU-sponsored thugs hunting down the passport poor on the Union's behalf. [26] Torture, pushbacks and the killing of thousands of innocent people - either directly or via proxies - take place in an atmosphere of near total unaccountability and seemingly beyond the reach of EU law. It is evident that the EU acts in concert with its Member States, rather than alone: while it seems that the EU and its Member States need each other to commit mass crimes at EU borders, the national aspect of the story should not be forgotten. [27]

The mildest and most constitutionally far-reaching form of lawlessness law is what could be described as the EU's disappearing act: like a rabbit in the top hat of a street clown, the EU as such tends to evaporate when a non-EU citizen enters the scene. It is the only "citizens only" constitutional system in the contemporary world. "Thou shalt not oppress the stranger" [28] emerges as the opposite of the EU's core values. The story is not new in itself, but the intensity of this Balibar's "apartheid européen", [29] has grown significantly since J. H. H. Weiler bemoaned the first seeds being sown in the EU. [30] The EU simply does not exist for non-citizens, be it the sacred freedom of movement or non-discrimination on grounds of nationality. Even when they dare to bring a complaint of racial discrimination because of humiliating mistreatment, non-citizens are reminded of their rank of third-rate citizen: protection against racial discrimination remains non-existent for those who hold the wrong passport. [31] The fruit of the active cooperation between the Member States and the institutions, with particular emphasis on the Commission and the CJEU's initiation and rubberstamping of lawlessness, and ensuring the secure and unaccountable flow of funds, is the lawlessness law that determines the rightless position of the foreigner in the EU's legal system.

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Most crucially, lawlessness law is not a temporary or unusual departure from EU law. Rather, it is the law of the Union functioning as designed, intentionally breaking core principles of EU and international law and creating, precisely, exclusion from the most important elements of the law for non-white, non-citizens inside the Union. The EU is at the heart of a pro-active legal construction of bespoke lawlessness and arbitrariness, ensuring that any rights owed to others - including dignity and, not infrequently, life itself - are rendered entirely ephemeral and unusable in practice.

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**Dimitry V. Kochenov**

Dimitry Kochenov holds a research professorship at CEU Democracy Institute in Budapest and teaches at CEU Department of Legal Studies in Vienna. The main focus of his scholarly engagement is citizenship in the context of the evolution of the core principles of contemporary public law with a particular emphasis on the Rule of Law. His latest monograph -- *Citizenship* (MIT Press, 2019) -- has been reviewed in the *New York Review of Books* and translated into several languages. Among his (co-)edited works is *Citizenship and Residence Sales* (Cambridge 2023); *Quality of Nationality Index* (Bloomsbury 2020); *EU Citizenship and Federalism* (Cambridge 2017); *The Enforcement of EU Law and Values* (Oxford, 2017); *Reinforcing Rule of Law Oversight in the EU* (Cambridge 2016); *Europe's Justice Deficit?* (Bloomsbury, 2015) and others. Dimitry Vladimirovich has held visiting appointments and fellowships throughout the world, from Princeton to Oxford, Osaka, UNAM Mexico and NYU and advises governments and international organizations.