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a cura di Rosa Palavera, Nicola Pascucci, Cecilia Valbonesi

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EXTRADITION OF PERSONS WITH MENTAL DISORDERS AND THE RELATED ADMINISTRATIVE DIMENSION: A COMPARATIVE PERSPECTIVE BETWEEN CIVIL LAW AND COMMON LAW SYSTEMS

Alessia Teresa Accoto

1. INTRODUCTION

Extradition constitutes a fundamental instrument of international judicial cooperation in criminal matters, enabling the requesting State to obtain the surrender of an individual located in the territory of another State in order to prosecute them or to enforce a criminal conviction already issued. However, this mechanism encounters limitations stemming from the respect for fundamental human rights, chief among which are the protection of mental health and the principle of criminal responsibility [1].

The present study examines the legal framework governing extradition requests involving individuals affected by severe mental disorders. The analysis focuses on three distinct situations: persons who were not criminally responsible at the time of the offence, persons who are currently unable to participate effectively in criminal proceedings, and convicted individuals who develop a serious mental disorder during the enforcement of a sentence[2]. The central question is whether, and to what extent, such mental incapacity constitutes a bar to extradition, and what legal safeguards are provided to protect such individuals[3].

This work argues that mental incapacity does not generally constitute an autonomous ground for refusing extradition. Rather, comparative analysis demonstrates that the protection of persons lacking criminal responsibility is

1 A. Cassese, *Diritto internazionale*, a cura di P. Gaeta, Il Mulino, Bologna 2006; S. Trechsel, S.J. Summers, *Human Rights in Criminal Proceedings*, Oxford University Press, Oxford 2005.

2 A further conceptual clarification is necessary. Although the expression "persons lacking criminal responsibility" is used throughout this article as a general descriptive category, the analysis distinguishes between three legally distinct situations: (i) individuals who were not criminally responsible at the time of the offence because of a mental disorder; (ii) individuals who are currently unable to participate effectively in criminal proceedings owing to mental incapacity; and (iii) convicted persons who develop a serious mental disorder during the enforcement of a sentence. While these categories may produce similar concerns in extradition proceedings, they raise different legal questions and are therefore examined separately throughout the paper. C.F. Grosso, M. Pelissero, D. Petrini, P. Pisa, *Manuale di diritto penale. Parte generale*, Giuffrè Francis Lefebvre, Milano 2023.

3 A. Cassese, *Lineamenti di diritto internazionale penale*, 1. *Diritto sostanziale*, Il Mulino, Bologna 2005.

achieved through a combination of legal mechanisms, including humanitarian exceptions, the prohibition of inhuman or degrading treatment under Article 3 ECHR, fair trial guarantees under Article 6 ECHR, and administrative safeguards exercised during extradition procedures. The paper therefore examines how these different layers of protection interact across civil law and common law systems, with particular attention to the growing convergence of domestic and supranational standards aimed at safeguarding vulnerable individuals. The focus will be placed on Italy, France, and Germany with respect to the civil law tradition, and on the United Kingdom and the United States as representative of common law systems[4].

From a methodological perspective, the comparative analysis is structured around a number of common variables that emerge across both civil law and common law systems. These include: the legal definition of lack of criminal responsibility and its relationship with mental disorder; the distinction between substantive criminal responsibility and procedural competence to stand trial; the role of psychiatric and medical expertise in extradition proceedings; the legal grounds for refusing, postponing, or conditioning extradition on mental health grounds; the involvement of administrative authorities in assessing humanitarian concerns; and the use of diplomatic or medical assurances to mitigate risks associated with transfer. These variables provide a common analytical framework through which the different national approaches can be compared.

Particular attention will also be devoted to the administrative dimension of extradition. The protection of individuals affected by serious mental disorders does not depend exclusively on judicial decision-making, but also on the activities of ministries, central authorities, healthcare institutions, and diplomatic actors involved in the extradition process. The collection of medical evidence, the exchange of information between States, the provision of assurances, and decisions concerning the timing or postponement of surrender frequently play a decisive role in safeguarding fundamental rights.

Through an examination of legislative frameworks, case law, and legal doctrine, this paper seeks to determine whether there is a trend towards convergence among legal systems in the protection of vulnerable individuals, and whether international legal instruments provide common criteria for assessing the appropriateness of extradition in cases involving lack of criminal responsi-

4 M. Delmas-Marty, *Verso un diritto penale comune europeo?*, in Riv. it. dir. e proc. pen. (1997) 545; C. Slobogin, *Minding Justice: Laws That Deprive People with Mental Disability of Life and Liberty*, Harvard University Press, Harvard 2006.

bility. The analysis will conclude with critical reflections on the desirability of introducing shared minimum standards to strengthen the protection of fundamental rights in extradition proceedings.

2. MENTAL DISORDER AND CRIMINAL PROCEEDINGS: DISTINGUISHING CRIMINAL RESPONSIBILITY, PROCEDURAL CAPACITY AND SENTENCE ENFORCEMENT

In Italian criminal law, according to well-established legal doctrine, criminal responsibility (understood as imputability[5]) constitutes a prerequisite for liability[6]: an individual may be found guilty and punished only if, at the time of the offence, they were capable of understanding and willing their actions (substantive responsibility)[7]. This condition is distinct from procedural capacity, which refers to the individual's ability to effectively participate in criminal proceedings (procedural competence)[8] and also from incapacity arising after conviction during the enforcement of a sentence. This distinction is crucial for assessing extradition cases, which require balancing the needs of inter-State cooperation with the protection of individual fundamental rights[9].

For the purposes of extradition law, three distinct categories must be differentiated. The first concerns criminal responsibility at the time of the offence and relates to the individual's capacity to understand and control their conduct when the alleged crime was committed. The second concerns procedural capacity, namely the ability of the requested person to understand the proceedings and effectively exercise defense rights at the time extradition is sought or criminal proceedings are conducted. The third concerns mental incapacity arising after conviction during the enforcement of a sentence, which raises questions regarding the compatibility of detention and punishment with human dignity and

5 "Imputabilità".

6 Several theories have been proposed on this issue: imputability as the capacity to bear punishment; imputability as the capacity for culpability. The problem was raised by F. Grispigni, *Il delitto del non imputabile nel concorso di più persone in uno stesso reato*, in La Scuola Positiva (1911) 1-17; see also F. Grispigni, *La responsabilità giuridica dei c.d. non imputabili*, Società Editrice Libraria, Milano 1920, 6.

7 Is the first category that concerns criminal responsibility at the time of the offence and relates to the individual's capacity to understand and control their conduct when the alleged crime was committed.

8 The second category that concerns procedural capacity, namely the ability of the requested person to understand the proceedings and effectively exercise defence rights at the time extradition is sought or criminal proceedings are conducted.

9 The third one concerns mental incapacity arising after conviction during the enforcement of a sentence, which raises questions regarding the compatibility of detention and punishment with human dignity and the rehabilitative function of criminal sanctions. G. Fiandaca, E. Musco, *Diritto penale. Parte generale*, Zanichelli, Bologna 2026, 347 ss.

the rehabilitative function of criminal sanctions. Although these situations may overlap in practice, they involve different legal standards, different evidentiary assessments, and potentially different consequences for extradition proceedings.

In the Italian system, substantive criminal responsibility is governed by Article 85 of the Criminal Code, which provides that no one can be punished for an act defined by law as a crime if, at the time it was committed, they were not criminally responsible. A person is considered criminally responsible if they have the capacity to understand and to will[10]. The law identifies several main causes for exclusion of responsibility linked to the individual's mental condition: total or partial mental defect (Articles 88[11] and 89[12] of the Italian Criminal Code), which respectively entail a complete exclusion of liability or a reduction of the sentence (these conditions are assessed by psychiatric evaluation to determine the subject's mental state at the time of the act)[13]; minor age (Articles 97[14]-98[15]), whereby individuals under 14 are always exempt from responsibility, and those aged between 14 and 18 may be exempt if found incapable of understanding or willing due to immaturity; deaf-mutism (Article 96[16]); chronic intoxication from alcohol or narcotics (Article 95[17]); and intoxication due to unforeseeable circumstances or force majeure (Article 91[18])[19].

10 Text in the original language: «Nessuno può essere punito per un fatto preveduto dalla legge come reato, se, al momento in cui lo ha commesso, non era imputabile. È imputabile chi ha la capacità d'intendere e di volere».

11 Article 88 italian criminal code: «Non è imputabile chi, nel momento in cui ha commesso il fatto, era, per infermità, in tale stato di mente da escludere la capacità d'intendere o di volere».

12 Article 89 italian criminal code: «Chi, nel momento in cui ha commesso il fatto, era, per infermità, in tale stato di mente da scemare grandemente, senza escluderla, la capacità d'intendere o di volere, risponde del reato commesso; ma la pena è diminuita».

13 M. Bertolino, *L'imputabilità e il vizio di mente nel sistema penale*, Giuffrè Editore, Milano 1990, 516 ss.

14 Article 97 italian criminal code: «Non è imputabile chi, nel momento in cui ha commesso il fatto, non aveva compiuto i quattordici anni».

15 Article 98 italian code of criminal procedure: «È imputabile chi, nel momento in cui ha commesso il fatto aveva compiuto i quattordici anni, ma non ancora i diciotto, se aveva capacità di intendere e di volere; ma la pena è diminuita. 1. Quando la pena detentiva inflitta è inferiore a cinque anni, o si tratta di pena pecuniaria, alla condanna non conseguono pene accessorie. Se si tratta di pena più grave, la condanna importa soltanto l'interdizione dai pubblici uffici per una durata non superiore a cinque anni, e, nei casi stabiliti dalla legge, la sospensione dall'esercizio della responsabilità genitoriale».

16 Article 96 italian criminal code: «Non è imputabile il sordomuto che, nel momento in cui ha commesso il fatto, non aveva, per causa della sua infermità, la capacità d'intendere o di volere. 1. Se la capacità d'intendere o di volere era grandemente scemata, ma non esclusa, la pena è diminuita».

17 Article 95 italian criminal code: «*Per i fatti commessi in stato di cronica intossicazione prodotta da alcool ovvero da sostanze stupefacenti, si applicano le disposizioni contenute negli articoli 88 e 89*».

18 Article 91 italian criminal code: «Non è imputabile chi, nel momento in cui ha commesso il fatto, non aveva la capacità di intendere o di volere, a cagione di piena ubriachezza derivata da caso fortuito o da forza maggiore. 1. Se l'ubriachezza non era piena, ma era tuttavia tale da scemare grandemente, senza escluderla, la capacità d'intendere o di volere, la pena è diminuita».

19 G. Fiandaca, E. Musco, *Diritto penale* cit.

Procedural capacity, by contrast, is governed by Article 70[20] of the Italian Code of Criminal Procedure, which provides that proceedings cannot continue against a person who, due to mental illness, is unable to participate meaningfully in the trial. This provision is intended to safeguard the right to an effective defense and the principle of a fair trial, and it applies regardless of the individual's mental state at the time of the offence, focusing instead on their condition during the judicial process[21].

Instead, ever in the Italian criminal justice system, the onset of mental illness in a convicted person who was originally deemed criminally responsible at the time of the offence affects the enforcement stage of the sentence. Pursuant to Articles 147 and 148 of the Criminal Code, the execution of the sentence must be suspended whenever the convicted person suffers from a serious mental disorder, since the rehabilitative function of punishment (Article 27(3) of the Constitution) would otherwise be undermined. In such circumstances, the judge orders admission to an appropriate psychiatric facility – currently the Residences for the execution of security measures (REMS[22]) – by applying a security measure in lieu of the penalty. This substitution, however, does not extinguish the sentence: its execution remains suspended and may resume should the state of mental infirmity cease. The system thus reflects a balance between the demands of social defense and the protection of the dignity of the convicted individual, who cannot be subjected to imprisonment when unable to comprehend its meaning or benefit from its rehabilitative purpose[23].

A similar distinction is observed in common law jurisdictions. In the United States, criminal responsibility is assessed through various tests depending on the state jurisdiction, including the *M'Naghten Rule*, the *Irresistible Impulse Test*, and the *Cognitive Capacity Test*. Procedural competence is evaluated through

20 Article 70 italian code of criminal procedure: «1. Quando non deve essere pronunciata sentenza di proscioglimento o di non luogo a procedere e vi è ragione di ritenere che, per infermità mentale sopravvenuta al fatto, l'imputato non è in grado di partecipare coscientemente al processo, il giudice, se occorre, dispone anche di ufficio, perizia. 2. Durante il tempo occorrente per l'espletamento della perizia il giudice assume, a richiesta del difensore, le prove che possono condurre al proscioglimento dell'imputato, e, quando vi è pericolo nel ritardo, ogni altra prova richiesta dalle parti. 3. Se la necessità di provvedere risulta durante le indagini preliminari, la perizia è disposta dal giudice a richiesta di parte con le forme previste per l'incidente probatorio. Nel frattempo restano sospesi i termini per le indagini preliminari e il pubblico ministero compie i soli atti che non richiedono la partecipazione cosciente della persona sottoposta alle indagini. Quando vi è pericolo nel ritardo, possono essere assunte le prove nei casi previsti dall'articolo 392».

21 P. Tonini, C. Conti, *Manuale di procedura penale*, Giuffrè Francis Lefebvre, Milano 2020, 132-133.

22 "Residenze per l'esecuzione delle misure di sicurezza".

23 For further information on this point see: F. Italia, *The Inadequate Protection of Prisoners with Mental Disorders in the Case Law of the European Court of Human*, in Cassazione penale 4 (2025) 1365-1373.

the standard of *competency to stand trial*, which requires that the defendant be able to understand the nature of the proceedings and assist their legal counsel[24][25].

In the United Kingdom, the doctrine of insanity is likewise based on the *M'Naghten Rules*, according to which a defendant is not criminally liable if, due to a mental disorder, they were unable to understand the nature of the act or that it was wrong. Procedural competence is evaluated using the standard of *fitness to plead*, which requires that the individual be able to understand the charges, make informed decisions regarding their defense strategy, and participate effectively in the trial[26].

With regard to the execution of a sentence against a person who develops a serious mental disorder, common law jurisdictions recognize the principle that punishment cannot be carried out against those who are mentally incompetent, although the mechanisms differ. In the United States, constitutional jurisprudence – from Ford vs. Wainwright (1986)[27] to Panetti vs. Quarterman (2007)[28] – has established that executing a sentence against a mentally incompetent individual violates the Eighth and Fourteenth Amendments, requiring the suspension of the sentence until competence is restored, often with placement in a forensic psychiatric facility. In the United Kingdom, by contrast, the *Mental Health Act 1983* provides for hospital orders, which temporarily substitute imprisonment with admission to a high-security psychiatric hospital, sometimes accompanied by restriction orders that condition release on the Secretary of State's approval. In both jurisdictions, the execution of the sentence is suspended for the duration of the mental disorder; however, while the U.S. approach focuses primarily on suspension pending restoration of competence, the U.K. model implements a substitution mechanism that grants greater administrative discretion over the individual's detention and release.

At the supranational level, the case law of the European Court of Human Rights has repeatedly emphasized the importance of protecting individuals with mental disorders in judicial proceedings. In particular, there is no unified criminal law framework governing criminal responsibility: the determination of a person's capacity to understand and act at the time of the offense remains

24 C. Slobogin, *Minding Justice: Laws That Deprive People with Mental Disability of Life and Liberty*, Harvard University Press, Harvard 2006.

25 Cfr. D. Piva, *Le componenti impulsive della condotta. Tra imputabilità, (pre) colpevolezza e pena*, Jovene Editore, Napoli 2020.

26 A. Ashworth, J. Horder, *Principles of Criminal Law*, Oxford University Press, Oxford 2013, 1 ss.

27 Ford vs. Wainwright, 477 U.S. 399, Judgment of 26 June 1986.

28 Panetti vs. Quarterman, 551 U.S. 930, Judgment of 28 June 2007.

the exclusive competence of national legal systems. Similarly, the assessment of competence at the time of trial is left to the member states, which must ensure the right to a fair trial under Article 47 of the Charter of Fundamental Rights of the European Union. However, the EU, and more broadly the Council of Europe through the European Court of Human Rights jurisprudence[29], imposes specific obligations on member states concerning the enforcement of sentences against individuals who develop a mental disorder after conviction: detention cannot be inhuman or degrading, and measures must be provided to suspend the execution of the sentence or to place the individual in an appropriate psychiatric facility until mental competence is restored. In this way, the European framework protects the dignity of the convicted person and the rehabilitative purpose of punishment, while leaving broad discretion to national systems regarding the modalities and instruments of enforcement.

The Court has ruled that extraditing a person who is incapable of participating effectively in their trial may constitute a violation of Articles 3[30] (prohibition of inhuman or degrading treatment) and 6[31] (right to a fair trial) of the European Convention on Human Rights, particularly where adequate medical care or procedural safeguards are not ensured in the requesting State[32].

These distinctions provide the conceptual framework for the comparative analysis developed in the following section.

29 This issue will be examined in greater detail below in the third chapter.

30 Article 3 ECHR: «No one shall be subjected to torture or to inhuman or degrading treatment or punishment».

31 Article 6 ECHR: «1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. 3. Everyone charged with a criminal offence has the following minimum rights: a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; b. to have adequate time and facilities for the preparation of his defence; c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court».

32 Bensaid vs. United Kingdom, App. No. 44599/98, Judgment of 6 February 2001, ECHR 2001-I.

3. EXTRADITION AND MENTAL DISORDER: COMPARATIVE RESPONSES TO CRIMINAL NON-RESPONSIBILITY, PROCEDURAL INCAPACITY AND POST-CONVICTION MENTAL ILLNESS

The issue of extraditing mentally incompetent individuals highlights the different foundational approaches of civil law and common law systems, particularly with regard to the balance between the demands of criminal justice and the protection of individual rights. In order to ensure a consistent comparison, the following analysis focuses on five principal variables: the legal definition of criminal non-responsibility, the distinction between non-imputability and competence to stand trial, the evidentiary role of psychiatric expertise, the legal grounds available for refusing or postponing extradition, and the role played by administrative authorities and diplomatic assurances in safeguarding fundamental rights. Through these parameters, it is possible to identify both significant differences and growing areas of convergence among the examined jurisdictions.

3.1 Italy

In the Italian legal system, extradition is governed by Articles 697 et seq. of the Code of Criminal Procedure, which establish a set of conditions, including the respect for the fundamental rights of the individual. Of particular relevance to the present analysis, Article 705 of the Code[33] provides that the Court of Appeal may refuse extradition if there are grounds to believe that the individual risks being subjected to inhuman or degrading treatment in the requesting State. This provision, in conjunction with Article 3 of the European Convention on Human Rights (ECHR), may be interpreted as affording protection to mentally incompetent persons, where their psychiatric condition renders the transfer hazardous to their health or incompatible with human dignity.

33 Article 705 procedural italian criminal code: «1. Quando non esiste convenzione o questa non dispone diversamente, la corte di appello pronuncia sentenza favorevole all'estradizione se sussistono gravi indizi di colpevolezza ovvero se esiste una sentenza irrevocabile di condanna e se, per lo stesso fatto, nei confronti della persona della quale è domandata l'estradizione, non è in corso procedimento penale né è stata pronunciata sentenza irrevocabile nello Stato. 2. La corte di appello pronuncia comunque sentenza contraria all'estradizione: a) se, per il reato per il quale l'estradizione è stata domandata, la persona è stata o sarà sottoposta a un procedimento che non assicura il rispetto dei diritti fondamentali; b) se la sentenza per la cui esecuzione è stata domandata l'estradizione contiene disposizioni contrarie ai principi fondamentali dell'ordinamento giuridico dello Stato; c) se vi è motivo di ritenere che la persona verrà sottoposta ad atti persecutori o discriminatori per motivi di razza, di religione, di sesso, di nazionalità, di lingua, di opinioni politiche o di condizioni personali o sociali ovvero alla pena di morte o a pene o trattamenti crudeli, disumani o degradanti o comunque ad atti che configurano violazione di uno dei diritti fondamentali della persona; c-bis) se ragioni di salute o di età comportino il rischio di conseguenze di eccezionale gravità per la persona richiesta».

Although Italian case law has not explicitly established that an individual's inability to consciously participate in proceedings in the requesting State constitutes an autonomous ground for refusing extradition, such a conclusion may be inferred through systematic and interpretative reasoning, in light of principles established in adjacent legal areas.

Specifically, under domestic law, the supervening mental incapacity of the accused to consciously participate in criminal proceedings mandates, pursuant to Articles 70 and 71 of the Code of Criminal Procedure, the suspension of the trial, in accordance with the principles of effective adversarial process and the right to defense.

Similarly, in extradition matters, Article 705(2)(c-bis) of the Code prohibits surrender where there are serious humanitarian concerns, such as psychiatric or physical conditions that, in view of the prison conditions or healthcare system of the requesting country, pose a real risk of inhuman or degrading treatment within the meaning of Article 3 ECHR.

In light of these legal and jurisprudential frameworks, it can be inferred that the presence of a severe mental illness – where it fundamentally impairs the individual's ability to participate meaningfully in foreign proceedings – may, in certain circumstances, amount to a situation capable of compromising the core of fundamental rights, thus justifying refusal of extradition. This interpretation aligns with Article 111 of the Italian Constitution and the jurisprudence of the European Court of Human Rights (ECtHR). Attention must be paid both to the issue of mental capacity at the time of the alleged offence and to the individual's fitness to stand trial at the time extradition is sought.

3.2 France

In France, extradition is governed by the Code of Criminal Procedure (Articles 696 et seq.), which lists among the grounds for refusal a manifest breach of fundamental rights (Article 696.4, paragraph 7). French case law demonstrates careful attention to the mental health of the person sought, particularly with reference to Article 3 ECHR. On multiple occasions, French courts have suspended or denied the extradition of individuals suffering from serious psychiatric conditions where the requesting State could not provide adequate therapeutic care[34].

However, in the absence of a specific statutory provision, the evaluation is entrusted to the competent judge, who assesses each case individually, often rely-

34 M. Delmas-Marty, *Verso un diritto penale comune europeo?* cit., 545.

ing on expert medical opinions. The French approach is therefore characterized by a judicial model in which protection for the mentally incompetent is grounded in a broad interpretation of constitutional and conventional principles.

3.3 Germany

In Germany, extradition is governed by the Law on International Mutual Assistance in Criminal Matters (Gesetz über die internationale Rechtshilfe in Strafsachen – IRG). This law provides that extradition may be refused if it conflicts with the fundamental principles of the German constitutional order or violates fundamental human rights, including the right to human dignity enshrined in Article 1 of the Basic Law (Grundgesetz – GG). German jurisprudence has recognized the need to assess the compatibility of extradition with the individual's mental health status, especially where there is a risk of deterioration or of receiving inadequate treatment abroad.

Particularly significant is the 2007 judgment of the Federal Constitutional Court (Bundesverfassungsgericht) on the European Arrest Warrant[35], which underscored the necessity of concretely verifying the respect for fundamental rights in the event of the forced transfer of a vulnerable person. This position has also been reiterated in cases concerning extradition requests from non-EU States.

3.4 United Kingdom

In the United Kingdom, extradition is governed by the Extradition Act 2003, which distinguishes between requests from EU Member States (Part 1) and those from third countries (Part 2). The UK system provides for refusal of extradition where it would be "oppressive" to the requested person due to personal circumstances such as serious mental illness (Extradition Act 2003, Sections 91–93)[36].

British courts have consistently recognized that extradition of individuals suffering from severe mental disorders may violate Article 3 ECHR, particularly where appropriate treatment is lacking or there exists a real risk of suicide (ECtHR, Bensaid vs. United Kingdom, 2001). The UK approach favors a case-by-case balancing of the public interest in extradition against the individual's right to mental health, often relying on psychiatric evaluations and proportionality assessments[37].

35 Bundesverfassungsgericht (BVerfG), 2 BvR 2236/04, Judgment of 18 July 2005.

36 For further information see N. Walker, *Crime and Insanity in England*, Edinburgh U.P., Edinburgh 1968.

37 A. Ashworth, J. Horder, *Principles of Criminal Law* cit., 1 ss.

3.5 United States

In the United States, extradition is governed by bilateral treaties and the doctrine of dual criminality. Assessment of the individual's mental health takes place within the framework of federal extradition proceedings, during which the judge must determine whether the person is capable of understanding the charges and participating in the process[38].

Although the Supreme Court has not directly addressed the issue of mental incapacity as an obstacle to extradition, affirmed the importance of mental health rights in other contexts, stating that the inhumane treatment of individuals with mental disabilities may constitute a violation of the Fourteenth Amendment[39].

Moreover, several federal courts have suspended extradition in cases involving serious psychiatric diagnoses, especially where the individual risks irreversible harm or where the requesting State lacks adequate healthcare guarantees. Nonetheless, protections in the U.S. are generally less structured than in Europe, and courts exercise broader discretion in granting mental health-related defenses[40].

3.6 Concluding Remarks

The comparative analysis highlights several common trends as well as important structural differences. First, none of the examined jurisdictions recognizes mental incapacity as an autonomous statutory ground for refusing extradition. Protection is instead achieved through broader constitutional, human rights, or humanitarian safeguards. Second, all jurisdictions distinguish, albeit with different terminology, between criminal responsibility at the time of the offence and the individual's present capacity to participate in legal proceedings. Third, psychiatric expertise plays a central role throughout the examined systems, although its procedural weight varies considerably. Civil law jurisdictions generally rely on formally appointed experts whose assessments are integrated into judicial decision-making, whereas common law systems tend to grant courts greater discretion in evaluating competing expert evidence. Finally, significant differences emerge regarding the administrative dimension of extradition. While civil law systems emphasize legality review and constitutional guarantees, common law jurisdictions generally allow wider reliance on executive discretion, humanitarian considerations, and diplomatic assurances. Nevertheless, all

38 See R.J. Bonnie, *The Competence of Criminal Defendants: Beyond Dusky and Drope*, in University of Miami Law Review 47 (1993) 539 ss.

39 Ford vs. Wainwright, 477 U.S. 399 (1986); Panetti vs. Quarterman, 551 U.S. 930 (2007).

40 M.L. Perlin, *The Jurisprudence of the Insanity Defense*, Carolina Academic Press, Durahm 1993.

systems examined reveal an increasing tendency to subject extradition decisions involving persons affected by mental incapacity to enhanced scrutiny grounded in human dignity and fundamental rights[41].

4. THE ROLE OF INTERNATIONAL LAW AND SUPRANATIONAL JURISPRUDENCE IN THE PROTECTION OF THE NON-IMPUTABLE PERSON

The complexity of extradition procedures between different states makes the intervention of international law and supranational courts indispensable, as they act as guarantors of the respect for fundamental rights in extradition cases, particularly for individuals who are non-imputable.

4.1 International Human Rights Law

The main international legal framework is represented by the European Convention on Human Rights (ECHR), which guarantees, among other things, the right to a fair trial (Art. 6) and the prohibition of inhuman or degrading treatment (Art. 3). The European Court of Human Rights (ECtHR) has developed extensive case law aimed at ensuring that extradition does not pose a real and substantial risk to the mental health and dignity of the person[42].

Particularly relevant is the case of Bensaid vs. the United Kingdom *(*2001), in which the ECtHR held that the extradition of a person suffering from severe mental disorders may violate Article 3 if the requesting State does not provide adequate medical treatment or if there is a risk of suicide or inhuman treatment. This ruling has served as a landmark for numerous national and supranational decisions.

In parallel, the International Covenant on Civil and Political Rights (ICCPR) also protects the right to a fair trial and human dignity, though its application in extradition cases is less specific compared to the ECHR. Other instruments, such as the UN Convention on the Rights of Persons with Disabilities, reinforce the necessity of ensuring adequate and non-discriminatory treatment.

4.2 Case Law of the Court of Justice of the European Union (CJEU)

Within the European Union, the CJEU has played a key role in defining the limits of mutual recognition where the execution of a European Arrest Warrant

41 On this point see R. Wenin, *La mens rea nello Statuto di Roma. Un'analisi esegetico-sistematica dell'art. 30 in chiave comparata*, Giappichelli Editore, Torino 2012.

42 For further information V. Mitsilegas, *EU Criminal Law*, Hart Publishing, Oxford 2009.

(EAW) may jeopardize fundamental rights. In the landmark judgment Aranyosi and Căldăraru (Case C-659/15)[43], the Court held that the execution of an EAW must be postponed where there is objective, reliable, specific and properly updated evidence demonstrating a real risk of inhuman or degrading treatment in the issuing Member State. The executing judicial authority is required to conduct an individual assessment and, where necessary, seek additional information from the issuing authority before deciding whether surrender may proceed[44].

This approach, defined two-step test, was subsequently refined in ML (Case C-220/18 PPU)[45], where the Court clarified that the assessment required by Aranyosi must be concrete and individualized, focusing on the specific detention conditions that the requested person is likely to face after surrender. The judgment confirmed that mutual trust cannot operate automatically where credible evidence suggests a risk to fundamental rights and reinforced the obligation of judicial authorities to verify the actual circumstances of detention in the issuing Member State[46].

The principles established in ML were further developed in Dorobantu (Case C-128/18)[47], where the Court clarified that the executing judicial authority must assess, on the basis of objective, reliable, specific and properly updated information, whether the detention conditions likely to be faced by the requested person in the issuing State comply with the requirements of Article 4 of the Charter of Fundamental Rights of the European Union. The judgment reinforced the obligation to conduct an individualized assessment of the actual conditions of detention and confirmed that mutual trust cannot dispense judicial authorities from verifying the effective protection of fundamental rights where credible risks have been identified.

43 Joined Cases C-404/15 and C-659/15 PPU, Aranyosi and Căldăraru, EU:C:2016:198, Judgment of 5 April 2016.

44 For further information on the European Arrest Warrant: A. Stirone, *Il mandato di arresto europeo*, Giappichelli, Torino 2025 and L. Bernardini, *Rifiuto della consegna per motivi di salute nella fase esecutiva del m.a.e.*, in Giurisprudenza Italiana 2 (2026), 458-470.

45 Case C-220/18 PPU, ML, EU:C:2018:589, Judgment of 25 July 2018.

46 Cfr. G. Colavecchio, *Il rispetto dei diritti fondamentali nell'esecuzione del mandato d'arresto europeo: l'evoluzione del two-step test e il ruolo degli organismi di prevenzione della tortura*, in Ordine internazionale e diritti umani (2021) 1311-1312. For further information see V. Mitsilegas, *The limits of mutual trust in Europe's area of freedom, security and justice: from automatic inter-State cooperation to the slow emergence of the individual*, in Yearbook of European Law (2012), 319 and V. Mitsilegas, *The Symbiotic Relationship Between Mutual Trust and Fundamental Rights in Europe's Area of Criminal Justice*, in New Journal of European Criminal Law 6 (2015) 457 ss.

47 Case C-128/18, Dorobantu, EU:C:2019:857, Judgment of 15 October 2019.

This line of jurisprudence was further developed in E.D.L. (Case C-699/21)[48], concerning a requested person suffering from a serious medical condition. The Court held that surrender must be postponed where substantial grounds exist for believing that the transfer itself would expose the individual to a real risk of a significant reduction in life expectancy or a rapid, substantial and irreversible deterioration of health. The judgment is particularly relevant for cases involving severe mental disorders because it shifts the focus from the substantive criminal status of the requested person to the concrete consequences of surrender on that individual's health and dignity.

The E.D.L. judgment confirms that mutual recognition is not absolute and that executing authorities must undertake a detailed and individualized assessment of medical evidence. It also emphasizes the importance of cooperation between issuing and executing authorities, including the exchange of information and the consideration of measures capable of mitigating the identified risks[49].

Taken together, Aranyosi and Căldăraru, ML, and E.D.L.[50] demonstrate the progressive evolution of EU law from a model based on largely automatic mutual trust toward a system of conditional trust grounded in the protection of fundamental rights. This jurisprudence requires an individualized assessment of vulnerability, detention conditions, and health-related risks, confirming that mutual recognition cannot prevail where surrender would expose the requested person to a real risk of treatment contrary to Article 4 of the Charter.

4.3 Other International Bodies and Standards

Organizations such as the Council of Europe, the United Nations, and the World Health Organization (WHO) have promoted guidelines and recommendations for the protection of persons with mental disorders in the judicial context, highlighting the importance of ensuring humane and rights-based treatment.

The principle of non-refoulement, generally applied in international humanitarian and refugee law, is also relevant in extradition matters to prevent the transfer of individuals to countries where they may face inhuman treatment or conditions incompatible with their mental health status.

48 Case C-699/21, E.D.L., EU:C:2023:295, Judgment of 18 April 2023.

49 M. Aranci, *La tutela della salute può giustificare il rifiuto della consegna del ricercato – Corte giust., sentenza 18 aprile 2023, causa C-699/21, EDL*, in Rivista del contenzioso europeo 1 (2023) 1-5; G. Colaiacovo, *Mandato d'arresto europeo e tutela della salute: la Corte di giustizia detta criteri stringenti*, in Cass. pen. 7-8 (2023) 2585 ss.

50 Also see Case C-128/18, Dorobantu, EU:C:2019:857, Judgment of 15 October 2019.

4.4 Challenges and Future Perspectives

Despite the legal and jurisprudential advancements, critical issues remain concerning the difficulty of assessing mental health in a transnational context, disparities between the healthcare and judicial systems of the involved countries, and the lack of binding uniform global standards.

Recent CJEU case law, particularly E.D.L., suggests that future developments may increasingly focus on vulnerability-based assessments rather than rigid legal classifications. This approach places greater emphasis on the concrete effects of surrender on the individual concerned and requires judicial authorities to evaluate medical evidence in a dynamic and individualized manner.

The adoption of common minimum standards, as proposed by some scholars and international bodies, could help address these gaps, ensuring more effective and consistent protection of the non-imputable person in extradition proceedings[51].

The implementation of these supranational standards is not entrusted exclusively to courts. In practice, compliance with human rights obligations often depends on the activities of administrative authorities responsible for gathering medical information, communicating with foreign authorities, assessing assurances, and coordinating the practical execution of surrender. For this reason, the administrative dimension of extradition constitutes an essential component of the protection framework applicable to mentally vulnerable individuals.

5. ADMINISTRATIVE PROFILES OF THE EXTRADITION OF THE PERSONS EXEMPT FROM CRIMINAL RESPONSIBILITY BY REASON OF MENTAL DISORDER

As the preceding analysis has shown, the protection of individuals with psychiatric conditions in extradition proceedings cannot be ensured solely through substantive criminal law rules, procedural guarantees, or supranational human rights standards. Equally important is the administrative framework through which extradition requests are processed and implemented. The extradition of individuals affected by serious mental disorders therefore engages not only judicial safeguards but also complex administrative mechanisms that may significantly influence the outcome of the surrender procedure.

51 M. Chiavaro, A. Perduca, *La cooperazione giudiziaria internazionale in materia penale*, Giappichelli, Torino 2022.

The protection of mentally vulnerable individuals is therefore not entrusted exclusively to judicial authorities. Extradition procedures reveal a form of shared responsibility between courts and administrative authorities, both of which contribute to the assessment of risks affecting the individual's health, dignity and procedural rights. Judicial review alone would often be insufficient, since many of the factual elements relevant to the decision – including medical information, detention conditions and diplomatic assurances – are collected and verified through administrative channels.

In most legal systems, extradition requests undergo a dual-level assessment: an administrative stage, typically conducted by the central authority (e.g., the Ministry of Justice), and a judicial stage, entrusted to the courts[52]. The administrative authority performs a crucial gatekeeping function, ensuring that the request is formally valid, consistent with international treaties, and compatible with the fundamental rights protected under domestic law before judicial review occurs[53].

In cases involving non-imputable individuals, administrative scrutiny assumes heightened importance.

First, it requires the collection and evaluation of medical and psychiatric documentation, often obtained through cooperation with health authorities or international medical institutions. Such documentation is essential to determine whether the individual can withstand transfer without being subjected to inhuman or degrading treatment, in accordance with Article 3 ECHR and analogous constitutional provisions (e.g., Article 1 GG in Germany; Article 111 of the Italian Constitution). Particular importance is attached to diplomatic assurances.

Second, the central authority may request assurances from the requesting State regarding the adequacy of psychiatric care, detention conditions, and access to medical treatment.

Particular importance is attached to diplomatic assurances. Where concerns arise regarding the individual's mental health, requesting States may provide specific guarantees concerning access to psychiatric treatment, detention conditions, continuity of medical care, or placement in specialized facilities. Although such assurances do not automatically eliminate the risk of rights violations, they frequently constitute a decisive element in the assessment conducted by both

52 In Italy, the Ministry of Justice acts as the central authority responsible for receiving, transmitting and coordinating extradition requests. Although the final decision belongs to the judicial authority, the Ministry plays a crucial role in collecting information, liaising with foreign authorities and evaluating the practical feasibility of surrender.

53 UNODC (United Nations Office on Drugs and Crime), *Manual on Mutual Legal Assistance and Extradition*, 2012.

judicial and administrative authorities. However, the reliance on such assurances raises significant questions regarding their enforceability and the availability of effective post-surrender monitoring mechanisms, particularly when a vulnerable individual's health is at stake.

The importance of the administrative functions has been further reinforced by the Court of Justice of the European Union in E.D.L. The Court stressed that where serious health concerns arise, executing authorities must rely on objective and up-to-date medical evidence and engage in active communication with the issuing authority in order to determine whether adequate safeguards can be provided. This process may include requests for additional information, clarification regarding available healthcare facilities, and assurances concerning the treatment that will be made available after surrender. Consequently, the administrative phase of extradition and surrender procedures increasingly operates as a mechanism for risk assessment and prevention, rather than merely as a formal stage of intergovernmental cooperation.

This obligation reflects positive duties established by ECtHR jurisprudence, notably in Bensaid vs. United Kingdom (2001) and Soering vs. United Kingdom (1989)[54], to prevent the transfer of individuals at risk of serious harm due to their mental condition.

Administrative authorities may also exercise discretion to suspend the extradition procedure when there are serious doubts about the individual's current capacity to undergo proceedings abroad. This mirrors domestic safeguards such as Articles 70 and 71 of the Italian Code of Criminal Procedure, which requires suspension of trial in cases of supervening mental incapacity. Similarly, in France, although there is no explicit statutory provision, judicial practice is supported by administrative collection of expert opinions. In common law jurisdictions, judicial oversight is predominant, but administrative actors - such as the U.S. Department of State or the U.K. Home Secretary - retain significant discretion in granting or denying extradition, allowing them to account for humanitarian concerns, including severe psychiatric conditions[55].

From a comparative perspective, the administrative dimension serves as a preventive safeguard complementing judicial review. Civil law systems emphasize formal legality checks combined with protection of constitutional rights, whereas common law jurisdictions allow broader administrative discretion, of-

54 Soering vs. United Kingdom, App. No. 14038/88, Judgment of 7 July 1989, Series A No. 161.

55 UNODC (United Nations Office on Drugs and Crime), *Manual on Mutual Legal Assistance and Extradition*, 2012; J. Silvis, *Extradition and Human Rights Diplomatic assurances and Human Rights in the Extradition Context*, 2014 (Lecture presented 20 May 2014, PC-OC meeting in Strasbourg).

ten framed in terms of "oppressiveness" or proportionality. In both models, the administrative stage increasingly operates as a first filter, preventing extradition proceedings from advancing where there is a clear risk of undermining fundamental rights. Recent practice shows a trend toward formalizing administrative safeguards through intergovernmental agreements, memoranda of understanding regarding prison and healthcare conditions, and protocols for the transfer of medical records. Although not always binding, these mechanisms reflect growing recognition that the protection of requested persons suffering from serious mental disorders must be addressed not only in court but also within the broader framework of inter-State cooperation. Thus, administrative profiles emerge as a crucial layer of protection, ensuring that extradition procedures remain consistent with international human rights obligations and the dignity of the individual.

In this way, the administrative dimension of extradition cannot be regarded merely as a procedural stage ancillary to judicial decision-making. Rather, it constitutes an autonomous layer of protection through which States identify, assess and mitigate the risks associated with the surrender of vulnerable individuals. The increasing reliance on medical assessments, inter-authority cooperation and diplomatic assurances demonstrates that the effective protection of persons affected by serious mental disorders depends as much on administrative action as on judicial review.

6. CONCLUSION

The extradition of persons affected by serious mental disorders lies at the intersection of international judicial cooperation, fundamental rights protection, and the diverse legal traditions governing criminal responsibility and procedural fairness. The comparative analysis conducted in this article demonstrates that mental incapacity does not generally operate as an autonomous ground for refusing extradition. Rather, its legal relevance emerges through a combination of constitutional principles, humanitarian considerations, fair trial guarantees, human dignity requirements, and administrative safeguards designed to protect particularly vulnerable individuals.

The analysis has also shown the importance of distinguishing between three legally distinct situations: the absence of criminal responsibility at the time of the offence, the inability to effectively participate in criminal proceedings, and the onset of serious mental illness during the enforcement of a sentence. Although these situations may produce similar concerns in extradition proceedings, they

engage different legal standards and require separate assessments. Accordingly, extradition decisions involving individuals with psychiatric conditions cannot be based on a generic notion of mental incapacity, but must take into account the specific legal implications arising from each condition.

From a comparative perspective, significant differences remain between civil law and common law systems. Civil law jurisdictions generally rely on codified rules and constitutional guarantees, whereas common law systems tend to favor case-by-case balancing and broader judicial or executive discretion. Nevertheless, a common trend is clearly emerging. Across all examined jurisdictions, the protection of individuals experiencing severe mental illness increasingly depends on individualized assessments of risk, the use of psychiatric expertise, and the recognition that extradition cannot be justified where it would undermine fundamental rights.

Supranational jurisprudence has played a decisive role in promoting this convergence. The case law of the European Court of Human Rights has established that extradition may not proceed where there exists a real risk of inhuman or degrading treatment or a serious impairment of fair trial rights. Likewise, the jurisprudence of the Court of Justice of the European Union, particularly Aranyosi and Căldăraru, ML, and E.D.L., reflects a progressive shift from a model of largely automatic mutual trust toward a framework of conditional trust based on the concrete assessment of individual vulnerability, detention conditions, and health-related risks. These decisions confirm that the decisive question is not merely whether surrender is formally justified, but whether its execution is compatible with the protection of human dignity and fundamental rights.

The analysis further demonstrates that these protections cannot be guaranteed solely through judicial review. The administrative dimension of extradition plays an equally important role. Ministries of Justice, central authorities, healthcare institutions, and diplomatic actors contribute to the collection of medical evidence, the exchange of information between States, the evaluation of assurances, and the practical management of surrender procedures. As recent European case law confirms, the effective protection of mentally vulnerable individuals increasingly depends upon close cooperation between judicial and administrative authorities.

From a normative perspective, this article argues that extradition systems should adopt common minimum procedural guarantees for persons affected by serious mental disorders. Such safeguards should include mandatory psychiatric assessment whenever substantial doubts arise regarding the individual's

mental condition, reasoned judicial review of the impact of surrender on health and procedural rights, the possibility of obtaining medical and humanitarian assurances from the requesting State, and the postponement or refusal of extradition where a serious and individualized risk cannot be adequately mitigated. While legal systems may legitimately differ in their institutional arrangements, international cooperation in criminal matters must remain subject to a shared commitment to human dignity, effective access to justice, and the protection of vulnerable persons.

The comparative analysis suggests that the traditional focus on criminal responsibility should be progressively replaced by a vulnerability-based approach. What ultimately matters is not whether the requested person was criminally responsible at the time of the offence, but whether extradition would expose that person to a real risk of degrading treatment, denial of effective participation in proceedings, or serious deterioration of health.

Ultimately, the legitimacy of extradition cannot be measured solely by its effectiveness as a mechanism of international cooperation. It must also be assessed by its capacity to protect those individuals whose mental condition places them at particular risk. Only through an integrated approach combining criminal law safeguards, human rights protection, medical expertise, and administrative oversight can extradition remain consistent with the fundamental values upon which contemporary legal systems are founded.