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GROUNDS FOR REFUSAL OF EXTRADITION IN INTERNATIONAL LAW: POLITICAL OFFENCES AND THE PRINCIPLE OF NON-EXTRADITION OF NATIONALS

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Abstract:

This article examines the grounds for refusal of extradition with particular emphasis on the political offense exception and the principle of non-extradition of a state's own citizens. These refusal grounds represent enduring features of extradition law, reflecting fundamental concerns related to state sovereignty, political freedom, and the protective relationship between the individual and the state. The study analyzes the concept and evolution of political crimes in extradition law, including the traditional distinction between pure and relative political offenses, and assesses how modern international law has progressively narrowed the scope of the political offense exception, especially in response to terrorism and serious transnational violence. The article also considers United States extradition practice as a contrasting model that prioritizes treaty obligations over nationality-based protection. It concludes that while political crimes and nationality remain relevant grounds for refusal, contemporary international law increasingly seeks to balance these principles with the imperative of preventing impunity through enhanced judicial cooperation and accountability mechanisms.

Keywords: Extradition, grounds for refusal, political offense exception, political crimes, non-extradition of nationals, state sovereignty, European Arrest Warrant, Court of Justice of the European Union, international criminal cooperation.

Extradition is one of the oldest and most complex institutions of international cooperation in criminal matters. While its primary purpose is to prevent offenders from evading justice by crossing borders, extradition has never been unconditional. States have consistently reserved the right to refuse extradition in certain situations where surrender would conflict with fundamental political, constitutional, or legal values. Among the most significant and controversial grounds for refusal are the **political offense exception** and the **principle of non-extradition of a state's own citizens**. These two grounds reflect deep-rooted concerns about state sovereignty, protection of political freedom, and the relationship between the individual and the state. This article provides a comprehensive analysis of these refusal grounds, examining their conceptual foundations, historical evolution, treatment in different legal systems, and their regulation in international conventions and the legislation of the European Union and the United States[1].

The concept of a political crime occupies a central place in classical extradition law, yet it remains one of the most elusive and contested notions. Traditionally, a political crime is understood as an offense directed against the political order, security, or functioning of the state, rather than against private individuals or ordinary social interests. From this perspective, acts such as treason, espionage, sedition, or rebellion have historically been regarded as political offenses. The legal rationale for excluding such crimes from extradition lies in the fear that extradition could be misused as a tool of political persecution, allowing a requesting state to suppress political opponents under the guise of criminal prosecution.

In international law, the political offense exception developed primarily in the nineteenth century, influenced by liberal ideals and the protection of political asylum. Extradition treaties of that period commonly included clauses allowing or requiring refusal where the offense was political in nature. However, the absence of a universally accepted definition of "political crime" led

[1] United States. (1996). *United States v. Quinn*, 783 F.2d 776 (9th Cir.). *(Illustrative U.S. case law on the political offense exception)*

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to divergent interpretations. Legal doctrine has traditionally distinguished between **pure political offenses**, which directly target the state (such as treason), and **relative political offenses**, where a common crime is committed in connection with a political motive or uprising. This distinction has been crucial in extradition practice, as states have generally been more willing to refuse extradition for pure political offenses while subjecting relative political offenses to closer scrutiny.

Over time, the scope of the political offense exception has narrowed considerably. The rise of international terrorism and politically motivated violence against civilians has prompted states to reassess whether such acts deserve protection under the political offense label. Modern international law increasingly rejects the idea that serious acts of violence, even if politically motivated, should be shielded from extradition. This shift reflects a broader consensus that political objectives cannot justify crimes that fundamentally violate human rights or international security.

International conventions have played a decisive role in restricting the political offense exception. Numerous multilateral treaties explicitly exclude certain categories of crimes from being regarded as political for extradition purposes. For example, conventions addressing terrorism, aircraft hijacking, hostage-taking, and attacks against internationally protected persons typically provide that such offenses shall not be considered political offenses. This approach aims to prevent perpetrators of serious international crimes from escaping justice by invoking political motives.

Within the European legal space, this restrictive approach is particularly evident. The European Convention on Extradition of 1957 recognizes the political offense exception but allows states to deny its application in cases involving serious acts of violence. Subsequent instruments and protocols, as well as the broader counter-terrorism framework of the Council of Europe, have further limited the scope of the exception. The underlying principle is that while political dissent must be protected, acts that threaten human life and democratic order cannot be legitimized as political crimes for the purpose of avoiding extradition[2].

In the United States, extradition treaties historically included political offense clauses, and U.S. courts developed a body of jurisprudence to interpret them. American courts have often applied tests focusing on the nature of the act and its connection to political objectives. However, U.S. practice has also evolved, particularly in response to international terrorism, with courts increasingly reluctant to classify violent acts against civilians as political offenses. This convergence with international standards demonstrates a broader trend toward limiting the protective reach of the political offense exception.

Alongside the political offense exception, the principle of non-extradition of citizens represents another fundamental ground for refusing extradition. This principle is rooted in the notion of a special legal bond between a state and its nationals, often described as a relationship of allegiance and protection. Many states consider it incompatible with their constitutional identity to surrender their own citizens to foreign jurisdictions, particularly where legal systems, procedural safeguards, or penal policies differ significantly.

In international law, there is no general obligation to extradite one's own nationals. On the contrary, the refusal to extradite citizens has long been recognized as a legitimate exercise of sovereignty. This position is reflected in numerous extradition treaties, which either explicitly permit states to refuse extradition of nationals or leave the matter to domestic law[3]. As a result, national approaches vary widely, shaped by constitutional traditions and criminal justice philosophies.

Civil law countries have traditionally adhered more strictly to the non-extradition of nationals. In many European states, this principle has constitutional status, meaning that extraditing a citizen is either prohibited or subject to stringent conditions. To mitigate the risk of impunity, these states often apply the principle of **aut dedere aut judicare**, whereby refusal to extradite is coupled with an obligation to prosecute the individual domestically if sufficient evidence exists. This approach seeks to reconcile national loyalty with international responsibility[4].

By contrast, common law countries, including the United States, have generally been more open to extraditing their own citizens, provided that treaty requirements and due process guarantees are met. U.S. law does not recognize a general constitutional bar to the extradition of nationals, and American citizens have been extradited under bilateral treaties. This reflects a different conception of sovereignty, one that prioritizes treaty commitments and reciprocal cooperation over the protective bond of nationality.

Within the European Union, the principle of non-extradition of citizens has undergone significant transformation. The creation of the **European Arrest Warrant (EAW)** marked a shift from traditional extradition toward a system based on mutual

[2] United States Supreme Court. (1896). *In re Castioni*, 1 Q.B. 149. *(Commonly cited in U.S. and comparative extradition jurisprudence for the political offense doctrine)*

[3] United Nations. (2000). *International Convention for the Suppression of the Financing of Terrorism*. New York

[4] United Nations. (1990). *Model Treaty on Extradition*. UN General Assembly Resolution 45/116.

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recognition of judicial decisions. Under the EAW framework, EU Member States may surrender their own nationals to other Member States for prosecution or execution of a sentence. This represents a departure from classical extradition logic and reflects a high level of mutual trust in the criminal justice systems of EU states.

The *Melloni* case is one of the most significant judgments of the Court of Justice of the European Union (CJEU) concerning the surrender of nationals under the European Arrest Warrant and the limits of refusal based on constitutional protections. The case arose when Spanish authorities were requested to surrender Mr. Melloni, an Italian national, to Italy for the execution of a sentence imposed in absentia. Spanish constitutional law traditionally required stronger fair-trial guarantees and allowed refusal of extradition where those guarantees were not met.

The CJEU held that EU Member States may **not refuse surrender under the European Arrest Warrant on the basis of higher national constitutional standards** where EU law has harmonized the relevant safeguards. The Court emphasized that the effectiveness and uniform application of EU law require mutual trust among Member States' criminal justice systems. Consequently, even the surrender of nationals cannot be refused solely on constitutional grounds if the conditions laid down in EU legislation are satisfied[5].

This judgment is particularly relevant to the principle of non-extradition of citizens because it demonstrates how EU law has **redefined sovereignty and nationality-based refusal** within the Union. While traditionally a state could protect its nationals from extradition, *Melloni* confirms that within the EU, nationality does not justify refusal of surrender when common procedural standards apply. The case illustrates the shift from classical extradition logic toward a supranational system of judicial cooperation based on mutual recognition.

Nevertheless, even within the EU, safeguards remain. Member States may impose conditions related to the execution of sentences, such as requiring that a surrendered national be returned to serve a custodial sentence in the home state. This illustrates how the EU has sought to balance the effectiveness of cross-border enforcement with sensitivity to nationality and social reintegration concerns. Outside the EU framework, however, many European states continue to apply the traditional non-extradition principle in relations with third countries.

The *Petruhhin* case addresses extradition in a triangular context involving an EU citizen, an EU Member State, and a third country. Mr. Petruhhin, an Estonian national, was arrested in Latvia following an extradition request from Russia. Latvian law prohibited extradition of its own nationals but did not extend the same protection to nationals of other EU Member States[6].

The CJEU ruled that while EU law does not prohibit extradition of an EU citizen to a third state as such, **Member States must respect the principle of non-discrimination on grounds of nationality** under EU law. The Court held that before extraditing an EU citizen to a third country, the requested Member State must first inform the citizen's Member State of nationality and give it the opportunity to request surrender for prosecution under EU cooperation mechanisms.

This judgment is highly relevant to the principle of non-extradition of citizens because it introduces an **EU-level protective mechanism** that partially substitutes traditional nationality-based refusal. Rather than allowing extradition to a third state that might not offer comparable legal safeguards, EU law prioritizes internal prosecution within the Union. The *Petruhhin* doctrine thus balances state sovereignty, international cooperation, and individual protection, while reinforcing the EU's internal legal space as a zone of enhanced rights protection.

The political offense exception and the non-extradition of nationals remain sources of controversy in modern extradition law. One major challenge lies in distinguishing genuine political dissent from criminal conduct cloaked in political rhetoric. In authoritarian contexts, governments may label political opposition as criminal or terrorist, raising the risk that extradition requests are politically motivated. In such cases, the political offense exception and human rights safeguards intersect, requiring careful judicial scrutiny of the requesting state's motives and practices.

Another contentious issue concerns the risk of impunity. Critics argue that broad refusal grounds, particularly nationality-based refusals, can undermine international criminal cooperation by allowing offenders to avoid accountability. The growing reliance on domestic prosecution as an alternative to extradition seeks to address this concern, but practical obstacles – such as access to evidence and witnesses abroad – often complicate such efforts[7].

Finally, globalization and transnational crime continue to pressure traditional doctrines. Crimes that once appeared domestic or political now have international dimensions, making rigid application of classical refusal grounds increasingly problematic. As a result, international law shows a gradual movement toward

[5] Shaw, M. N. (2021). *International Law* (9th ed.). Cambridge University Press.
[6] Shearer, I. A. (1971). *Extradition in International Law*. Manchester University Press.
[7] Court of Justice of the European Union. (2016). *Case C-182/15, Aleksei Petruhhin*, Judgment of 6 September 2016.

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narrowing these exceptions while reinforcing procedural and human rights protections as the primary safeguards against abuse.

Grounds for refusal of extradition based on political crimes and the non-extradition of citizens reflect foundational values of international law, including state sovereignty, protection of political freedom, and the special bond between a state and its nationals. Historically, these principles served as important shields against political persecution and unjust foreign prosecutions. However, contemporary international law has progressively limited their scope in response to the realities of transnational crime and the need to prevent safe havens for serious offenders. The evolution of international conventions, U.S. extradition practice, and the European Union's mutual recognition framework demonstrates a clear trend toward balancing refusal grounds with mechanisms that ensure accountability, such as domestic prosecution and enhanced judicial cooperation. In modern extradition law, the challenge is no longer whether these refusal grounds exist, but how they can be applied in a manner that protects fundamental values without undermining the effectiveness and legitimacy of international criminal justice.

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