



RESEARCH NOTE

RESEARCH AND DOCUMENTATION DIRECTORATE

National mechanisms for actions against decisions taken under
Article 16(3) of Framework Decision 2002/584

[...]

[...]

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[...]

SUMMARY

INTRODUCTION

1. The Research and Documentation Directorate (DRD) received a request for a research note concerning the various laws of the Member States relating to a potential right to bring an action against the competent authority's decision under Article 16(3) of Framework Decision 2002/584.¹
2. In that regard, it should be stated first of all that Article 16(3) of Framework Decision 2002/584, which concerns conflict between a European arrest warrant and a request for extradition presented by a third country, provides that 'the decision on whether the European arrest warrant or the extradition request takes precedence shall be taken by the competent authority of the executing Member State with due consideration of all the circumstances, in particular those referred to in paragraph 1,² and those mentioned in the applicable convention'. That provision does not, however, expressly impose on Member States an obligation to guarantee that there is a right to bring an action against such a decision.
3. In order to identify Member States where, in the event of conflict between a European arrest warrant and an extradition request, it is possible to bring an action against the decision on the issue of precedence, a survey was conducted covering the 27 Member States of the Union.
4. The result of that research showed that in fifteen Member States, namely, **Germany, Austria, Cyprus, Croatia, Denmark, Finland,**

¹ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2002/584').

² Article 16(1) of Framework Decision 2002/584 provides, in the event of multiple European arrest warrants being issued for the same person, that 'the decision on which of the European arrest warrants shall be executed shall be taken by the executing judicial authority with due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for enforcement of a custodial sentence or detention order'.

Hungary, Latvia, Luxembourg, Malta, the Netherlands, Poland, Slovakia, Sweden and the **Czech Republic**, the right to bring an action against a decision on whether the European arrest warrant or the extradition request takes precedence – which is mainly taken by the Minister for Justice – is not provided for by law.³ Moreover, no case-law has been identified in those Member States supporting the existence of a right to such an action. Furthermore, in **Austria** and **Poland**, since it appears that the case-law relating to extradition decisions may be applied in respect of decisions concerning precedence, that case-law would seem to indicate that no right to bring an action against a decision on precedence exists.⁴

5. By contrast, in the twelve other Member States, namely **Belgium, Bulgaria, Spain, Estonia, France, Greece, Ireland, Italy, Lithuania, Portugal, Romania** and **Slovenia**,⁵ the possibility of bringing such an action is either provided for by national law or stems, directly or indirectly, from case-law. The present comparative study therefore covers the laws of those twelve Member States.

³ In all those Member States, apart from Germany and Latvia, the decision on precedence is taken by the Minister for Justice. In **Germany**, even though this power is vested in the Federal Ministry of Justice, the latter has delegated the power to the Länder, which have in turn vested it in the Generalstaatsanwaltschaft (Public Prosecutor's Office). In **Latvia**, decisions on precedence are taken by the Public Prosecutor's Office.

⁴ In those two Member States, decisions on extradition and decisions on precedence are taken by the Minister for Justice. In **Austria**, a decision by the same Minister authorising or refusing extradition constitutes, according to administrative case-law, a government act which is not amenable to an action, since the rights of the person concerned must be protected in the judicial proceedings relating to extradition (see Verwaltungsgerichtshof (Administrative Court), order of 7 March 2008, [ECLI:AT:VWGH:2008:2008060019.X00](#)). That decision by the Minister does not take the legal form of an individual administrative decision that may be challenged in the courts under administrative or constitutional law (see Bundesverwaltungsgericht (Federal Administrative Court), order of 27 September 2019, W195 2223187-1, [ECLI:AT:BVWG:2019:W195.2223187.1.00](#)). Similarly, in **Poland**, according to settled case-law of the Naczelny Sąd Administracyjny (Supreme Administrative Court), since the procedure for the enforcement of extradition, carried out by the Minister for Justice, is a *sui generis* procedure adopted on the basis of Article 603(5) of the [kodeks postępowania karnego](#) (Code of Criminal Procedure), the Minister's decision in that regard does not constitute an administrative decision. Since that code does not provide for the right to bring an action against the Minister's decision it cannot be challenged (see Naczelny Sąd Administracyjny (Supreme Administrative Court), orders of 13 November 2019, [OSK 2684/19](#), and of 7 July 2021, [III OSK 5006/21](#)). In that regard, the Trybunał Konstytucyjny (Constitutional Court) has also stated that the submission of a Minister's decision on enforcement of extradition to review by an administrative court is not permissible in the light of the division of powers between the ordinary courts and the administrative courts provided for by the Constitution (see Trybunał Konstytucyjny (Constitutional Court), judgment of 21 September 2011 [SK 6/10](#)).

⁵ [...]

6. With regard to the circumstances to be taken into account⁶ in the decision on precedence, it should also be noted that in those legal systems the national laws transposing Framework Decision 2002/584, irrespective of the authority designated as competent to take the decision on precedence, reproduce as a rule those provided for by Article 16 of that Framework Decision.⁷ An exception appears in **Irish** law where, in the version currently in force, the law no longer sets out a list of circumstances.⁸ Moreover, in **Italian** law, the transposing law merely provides that the decision on precedence must take into account the seriousness of the offence, the order in which the requests were presented and any other factor relevant to the decision.⁹

⁶ For the list of those circumstances, see footnote 2.

⁷ See, for **Belgium**: Article 30 of the [Loi du 19 décembre 2003 relative au mandat d'arrêt européen](#) (Law of 19 December 2003 on the European arrest warrant), for **Bulgaria**: Article 46 of the [Zakon za ekstraditsiata i evropeiskata zapoved za arest](#) (Law on extradition and the European arrest warrant), for **Spain**: Article 57 of [Ley 23/2014, de 20 de noviembre, de reconocimiento mutuo de resoluciones penales en la Unión Europea](#) (Law No 23/2014 of 20 November 2014 on the mutual recognition of decisions in criminal matters in the EU), for **Estonia**: Article 495 of the [Kriminaalmenetluse seadustik](#) (Code of Criminal Procedure), for **France**: Article L. 695-42 of the [code de procédure pénale](#) (Code of Criminal Procedure), for **Lithuania**: Article 73(6) of the [Baudžiamojo proceso kodeksas](#) (Code of Criminal Procedure), for **Greece**: Article 20 of Law 3251/2004 on the European arrest warrant and amending Law 2928/2001 on criminal organisations and other provisions; ΦΕΚ Α´ 127 of 9 July 2004, for **Portugal**: Article 23 of [Lei n.º 65/2003, de 23 de agosto que aprova o regime jurídico do mandado de detenção europeu \(em cumprimento da Decisão Quadro n.º 2002/584/JAI, do Conselho, de 13 de Junho\)](#) (Law No 65/2003 of 23 August 2003 approving the legal regime of the European arrest warrant (in accordance with Council Framework Decision No 2002/584/JHA of 13 June)), for **Romania**: Article 116 of [Legea nr. 302/2004 – privind cooperarea judiciară internațională în materie penală](#) (Law No 302/2004 on international judicial cooperation in criminal matters), and for **Slovenia**: Article 31(2) and Article 32(3) of the [Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije \(pisrs.si\)](#) (Law on cooperation between Member States in criminal matters).

⁸ Section 18 of the [European Arrest Warrant \(Application to Third Countries and Amendment\) and Extradition \(Amendment\) Act 2012, \(irishstatutebook.ie\)](#). Following an amending law of 2012, the criteria set out in the list of circumstances to be taken into account, which previously corresponded to those laid down in Article 16 of Framework Decision 2002/584, were removed. No explanation is given for the removal, however. The explanatory memorandum to the law stated that the original text was removed to include references to specific provisions of the act for reasons of clarity (see [European Arrest Warrant \(Application to Third Countries and Amendment\) and Extradition \(Amendment\) Bill 2011 Explanatory Memorandum](#), Section 19)).

⁹ Article 20(3) of [Legge n. 69 – Disposizioni per conformare il diritto interno alla decisione quadro 2002/584/GAI del Consiglio, del 13 giugno 2002, relativa al mandato d'arresto europeo e alle procedure di consegna tra Stati membri](#) (Law No 69 laying down provisions to bring domestic law into line with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States).

7. For the purposes of the present comparative-law study, the legal systems are classified into two groups, according to the authority competent to take the decision on precedence:
 - Member States where the decision on precedence is taken by an executive body (**I.**) and
 - Member States where this decision is taken by a judicial authority (**II.**).
 8. Among the latter, a distinction is made between:
 - Member States where the court takes a decision on precedence that is separate from that on enforcement, either of extradition or of the European arrest warrant (**II.A**) and
 - Member States where the decision on precedence is included in the decision on enforcement, either of extradition or of the European arrest warrant (**II.B**).
 9. Lastly, the analysis of each category of legal systems includes considerations concerning, first, the legal basis of the action against the decision on precedence, secondly, the conditions for the admissibility of that action and, lastly, the criteria for assessing the lawfulness of that decision and the scope of the action.
- I. MEMBER STATES WHERE THE DECISION ON PRECEDENCE IS TAKEN BY AN EXECUTIVE BODY**
- A. LEGAL BASIS OF AN ACTION AGAINST THE DECISION ON PRECEDENCE
10. In five Member States, namely **Belgium, Spain, Estonia, Greece** and **Ireland**, the decision on whether the extradition request or the European arrest warrant takes precedence is taken by an executive body, more specifically by the Minister for Justice (**Belgium, Estonia, Greece** and **Ireland**) or by the Council of Ministers, on a proposal from the Minister for Justice (**Spain**). It should be noted that in those five Member States, the decision on the enforcement of extradition is taken by the same authorities, while enforcement of a European arrest warrant always falls within the remit of a judicial authority.
 11. As regards, more particularly, an action against a decision on precedence, in all the abovementioned Member States, such an action is brought before an administrative court. It should also be noted that

in none of those legal systems is such an action expressly provided for by law. The right to such an action appears, however, to stem from the case-law relating to the decision on precedence (**Greece**), or to apply by analogy with what is provided for in the case-law relating to the decision on enforcement of extradition (**Belgium, Spain, Estonia, Ireland**).

12. Thus, in **Greece**, it is clear from the case-law of the Symvouliou tis Epikrateias (Council of State), which has ruled on this matter sitting as a grand chamber, that the decision of the Minister for Justice on precedence constitutes an enforceable act against which an action may be brought in an administrative court.¹⁰ Specifically, an action for annulment of that decision is brought before the Symvouliou tis Epikrateias (Council of State) itself, which has agreed to examine the lawfulness of such decisions since otherwise there would be a legal void in the judicial review of decisions in that matter.¹¹ Also, that court has refrained from describing such a decision as a 'government act' on the grounds that even though the Minister for Justice enjoys a very broad margin of discretion in this matter he is still bound to comply with the objective criteria laid down by laws and international conventions.
13. In **Belgium**, since the decision of the Minister for Justice on the question of precedence is regarded as being an administrative act, and generally an administrative act may be the subject of an action before an administrative court, an action against the decision on precedence does not appear to be excluded. More specifically, it seems that such an action may be brought before the Conseil d'État (Council of State). The latter has jurisdiction, in principle, to review any acts producing legal

¹⁰ Judgments of the Symvouliou tis Epikrateias (Council of State) of 23 January 2020, No 110/2020, recital 6 and of 15 January 2021, No 49/2021, recital 5.

¹¹ For a long time, decisions made by the Minister for Justice on requests for extradition were open to actions for annulment before the Symvouliou tis Epikrateias (Council of State) (for example, judgments of the Symvouliou tis Epikrateias (Council of State, Greece) No 2190/2001, No 1509/2010, No 3185/2010, No 3046/2017). By analogy, since 2020 it has been considered that decisions on precedence in the event of a conflict between two types of request should be subject to the same type of review before that court (judgment of the Symvouliou tis Epikrateias (Council of State), 23 January 2020, No 110/2020).

effects emanating from an administrative authority, including the Minister for Justice.¹²

14. In **Spain**, since any decision of the Council of Ministers taken in the context of an extradition procedure¹³ is amenable to judicial review, it is reasonable to assume that this should also be the case as regards whether the extradition request or the European arrest warrant takes precedence. In this regard, it should be made clear that even though the law on extradition¹⁴ provides that the government's extradition decision is not subject to such an action, the apparently absolute nature of that provision has been tempered by established case-law of the Tribunal Supremo (Supreme Court). That case-law¹⁵ permits judicial review of a decision on the enforcement of extradition, while limiting the scope of that review in the light of the nature of the power exercised at the time such a decision is adopted, which has a discretionary character linked to the exercise by the government of national sovereignty.
15. Thus, in the context of the review of an extradition decision, the person concerned may, in the first place, launch an 'exceptional action for

¹² See, in that connection, among others, Renders, R., *Droit administratif général*, 2022, Brussels, Larcier, 2022, p. 413 No. 743 and Salmon, J., Jaumotte, J., Thibaut, E., *Le Conseil d'Etat de Belgique*, Brussels, Bruylant, 2012, pp. 434 and 435, No. 204; Renders, D. and Gors, B., *Le Conseil d'Etat*, Bruxelles, Larcier, 2020, p. 41.

¹³ In Spain, the extradition procedure is a joint administrative and judicial procedure, in which there are three stages: two governmental stages, the first and the last, with the decisive judicial stage in the middle. Consequently, in the context of that procedure, the Council of Ministers may issue two decisions: the first, by which the government decides whether the procedure should be continued before the Audiencia Nacional (Central Court) following a purely formal review, consisting of verification of whether the extradition request is accompanied by the documentation provided for by law and international conventions, and the second, by which the government decides whether to enforce the order of the Audiencia Nacional (Central Court) declaring the extradition lawful and to surrender the person concerned to the requesting State. The fact that both decisions are open to judicial review is confirmed by abundant case-law (see, for example, in respect of the first decision: Tribunal Supremo (Supreme Court) judgments No 3602/2014 of 22 September 2014, [ECLI:ES:TS:2014:3602](#), No 963/2015 of 16 March 2015, [ECLI:ES:TS:2015:963](#), No 448/2004 of 29 January 2004, [ECLI:ES:TS:2004:448](#), No 4406/2003 of 24 June 2003, [ECLI:ES:TS:2003:4406](#) and No 862/2010 of 2 March 2010, [ECLI:ES:TS:2010:862](#), and in respect of the second: Tribunal Supremo (Supreme Court), judgments No 1560/2023 of 18 April 2023, [ECLI:ES:TS:2023:1560](#), No 3378/2020 of 15 October 2020, [ECLI:ES:TS:2020:3378](#) and No 518/2014 of 21 July 2015, [ECLI:ES:TS:2015:3552](#)).

¹⁴ Article 6 of [Ley 4/1985, de 21 de marzo, de Extradición Pasiva](#) (Law No 4/1985 of 21 March 1985 on passive extradition).

¹⁵ Tribunal Supremo (Supreme Court), judgment No 1560/2023 of 18 April 2023, [ECLI:ES:TS:2023:1560](#).

administrative review' before the same authority as that which issued the contested act, namely the Council of Ministers.¹⁶ The person concerned may, secondly, bring an action for judicial review against the decision of the Council of Ministers (which usually dismisses an administrative action) before Chamber for Contentious Administrative Proceedings of the Tribunal Supremo (Supreme Court).¹⁷

16. In **Estonia**, since, first, a decision on whether the extradition request or the European arrest warrant takes precedence is taken by the Minister for Justice and, secondly, the latter's decisions on the enforcement of extradition may be the subject of an action under the Code of Criminal Procedure,¹⁸ it seems reasonable to assume that a decision on precedence may also be challenged on the same legal basis.
17. In **Ireland**, it is the Minister for Justice who takes any decisions on extradition or surrender on the basis of a European arrest warrant,¹⁹ as well as on which takes precedence in the event of multiple requests. More specifically, in the event of multiple requests for extradition and surrender under a European arrest warrant, the Minister informs the High Court accordingly and that court refrains from taking any other decision pending the Minister's decision.²⁰ There is no administrative body that has jurisdiction to reconsider the Minister's decision. However, the general judicial review procedure under administrative law seems to apply.

¹⁶ Article 125 of [Ley 39/2015, del Procedimiento Administrativo Común de las Administraciones Públicas](#) (Law No 39/2015 of 1 October 2015 on the ordinary administrative procedure governing public authorities).

¹⁷ Article 58 of [Ley Orgánica 6/1985, del Poder Judicial](#) (Organic Law No 6/1985 on the judiciary) of 1 July 1985 provides that the Chamber for contentious administrative proceedings of the Tribunal Supremo (Supreme Court) is to have sole jurisdiction with regard to judicial and administrative actions brought against acts and provisions of the Council of Ministers.

¹⁸ Paragraph 452 of the [Kriminaalmenetluse seadustik](#) (Code of Criminal Procedure) of 12 February 2003. See also unofficial [translation](#) into English.

¹⁹ See [article 29 du Extradition Act 1965](#) in respect of extradition and [article 13 du European Arrest Warrant Act 2003](#) in respect of the European Arrest Warrant. It should be noted that the extradition decision taken by the Minister is sent to the High Court in order for that court to order the extradition. However, when the Minister receives a European arrest warrant, he sends it to the High Court for the latter's approval.

²⁰ Section 18 of the [European Arrest Warrant \(Application to Third Countries and Amendment\) and Extradition \(Amendment\) Act 2012, \(irishstatutebook.ie\)](#).

B. CONDITIONS FOR THE ADMISSIBILITY OF AN ACTION AGAINST THE DECISION ON PRECEDENCE

18. It should be noted at the outset that in none of the Member States studied in this chapter does an action against a decision on precedence constitute a *sui generis* action. In all those Member States, such an action therefore follows the general rules of administrative proceedings.
19. Thus, under **Greek** law, the conditions for bringing such an action are laid down in the Presidential Decree on codification of the provisions of the laws concerning the Council of State.²¹ The action may be brought, within a period of 60 days, by the person directly referred to in the contested decision or by the person whose legal interests are affected by that decision.²² In addition, individuals must necessarily be represented by a lawyer.²³ Lastly that decree gives an exhaustive list of the grounds for annulment of the decision.²⁴
20. Under **Belgian** law, it is necessary for the applicant to have an 'interest'²⁵ and the time limit for bringing the action is as a rule 60 days.²⁶

²¹ Presidential Decree 18/1989 on codification of the provisions of the law concerning the Council of State; ΦΕΚ 8 of 9 January 1989. For more information, see Ap. Geronta, 'Επιτομή Διοικητικού Δικονομικού Δικαίου', Sakkoulas Publications, Athens-Thessaloniki, 2014, p. 76 et seq; P. D. Dagtoglou, « Διοικητικό Δικονομικό Δίκαιο », Sakkoulas Publications, Athens-Thessaloniki, 2014, pp. 577 to 612.

²² Articles 47 and 48 of Presidential Decree 18/1989 on codification of the provisions of the laws concerning the Council of State; ΦΕΚ 8 of 9 January 1989.

²³ Article 26 of Presidential Decree 18/1989 on codification of the provisions of the laws concerning the Council of State; ΦΕΚ 8 of 9 January 1989.

²⁴ According to Article 48 of that decree, those grounds are as follows: lack of jurisdiction on the part of the body that adopted the contested act; infringement of essential procedural requirements; breach of the law and abuse of power.

²⁵ See in that connection for more details, inter alia, Renders, D. and Gors, B. *Le Conseil d'État*, Brussels, Larcier, 2020, p. 628 and Mast, A., Dujardin, J., Van Damme, M., Vande Lanotte, J. *Overzicht van het Belgisch administratief recht*, Mechelen, Kluwer, 2021, p. 1272 et seq.

²⁶ See Article 4 of [l'arrêté du régent déterminant la procédure devant la section du contentieux administratif du 23 aout 1948](#) (Decree of the Regent of 23 August 1948 determining the procedure before the Administrative Litigation Section), the third subparagraph of the first paragraph of which reads: 'actions shall be time-barred sixty days after the acts, regulations or decisions at issue are published or notified. If there is no requirement for them to be published or notified the period shall run from the day on which the applicant becomes aware of them'.

21. Under **Spanish** law, first, an 'exceptional action for administrative review', may be filed by the person concerned²⁷ within a period of between three months and four years depending on the ground of challenge raised.²⁸ Secondly, an action for judicial review may be brought by the person concerned within a period of between two and six months.²⁹
22. Under **Estonian** law, an action may be brought before an administrative court, by the person concerned or his lawyer, within a period of ten days following the notification of the decision.³⁰ The administrative court delivers a judgment which may then be the subject of an appeal before the ringkonnakohus (Court of Appeal) and the Riigikohus (Supreme Court) under an accelerated procedure.³¹
23. Under **Irish** law, in order to instigate the judicial review procedure, the applicant must have a sufficient interest in the matter.³² There is no

²⁷ According to Article 4 of [Ley 39/2015, del Procedimiento Administrativo Común de las Administraciones Públicas](#) (Law No 39/2015 on the ordinary administrative procedure governing public authorities of 1 October 2015), the following are regarded as parties involved in the administrative procedure: (a) those identified by that law as holding individual or collective rights or legitimate interests; (b) those who, although they have not initiated the proceedings, have rights that may be affected by the decision adopted and (c) persons whose individual or collective legitimate interests may be affected by the decision and who appear in the proceedings until a final decision is taken.

²⁸ Article 125 of [Ley 39/2015, del Procedimiento Administrativo Común de las Administraciones Públicas](#) (Law No 39/2015 of 1 October 2015 on the ordinary administrative procedure governing public authorities).

²⁹ More specifically, according to Article 46 of [Ley 29/1998, reguladora de la Jurisdicción Contencioso-administrativa](#) (Law No 29/1998 of 13 July 1998 regulating the administrative courts), that period is two months from the day following the publication of the provision at issue or from the day on which the act terminating the administrative procedure is notified or published, if it is express. If this is not the case, the period is six months and is calculated from the day after the day on which the alleged act occurred.

³⁰ See Paragraph 452¹(1), of the [Kriminaalmenetluse seadustik](#) (Code of Criminal Procedure), concerning an action challenging an extradition decision. The right of the person to whom the extradition request relates to bring an action may be inferred from the provisions of Paragraph 452(4) of that code, under which '[a copy of the extradition decision is to be sent to the prison where the person to be extradited is being held and handed to that person against his signature' and Paragraph 452(5), under which 'the decision to extradite a person shall enter into force if it has not been the subject of an action in accordance with Paragraph 452¹ of the present code [...]. A decision not to extradite a person shall enter into force from the date on which it has been issued.' Furthermore, under Paragraph 448(2) of that code, the participation of a lawyer in the extradition procedure is mandatory from the time the person is detained. This means that the lawyer may bring the action for the person being extradited.

³¹ See Paragraph 452¹(4) to (7) of the [Kriminaalmenetluse seadustik](#) (Code of Criminal Procedure), concerning an action against an extradition decision.

³² Section 18 (5) of [Superior Court Rules Order 84](#).

doubt that the person who is the subject of the extradition request or the European arrest warrant may bring an action for judicial review.

C. CRITERIA FOR ASSESSING THE LAWFULNESS OF THE DECISION ON PRECEDENCE AND SCOPE OF THE ACTION

24. As a preliminary point, it should be noted that in the five Member States being studied the scope of a review of a decision on precedence carried out by an administrative court appears to be very limited. This is due to the fact that the authority competent to take this decision (the Council of Ministers for Spain and the Minister for Justice for the other Member States) enjoys very broad discretion. Consequently, the competent court does not review the merits of the decision but rather its lawfulness. Moreover, in **Spain**, **Estonia** and **Greece**, that review extends to errors of assessment. Lastly, in **Greece**, the court may also review respect for fundamental rights.
25. More specifically, in **Greece**, as mentioned in paragraph 11, although the Minister for Justice enjoys very broad discretion when taking a decision on precedence, he or she is required to take into account the objective criteria laid down in the Greek Law on the European arrest warrant,³³ international conventions and, additionally, the Code of Criminal Procedure,³⁴ which lays down the criteria to be taken into account in the event of conflict between an extradition request and a European arrest warrant.^{35 36} These criteria are, however, neither

³³ Law 3251/2004 on the European arrest warrant and amending Law 2928/2001 on criminal organisations and other provisions; ΦΕΚ Α' 127 of 9 July 2004.

³⁴ Article 439 of Law No 4620/2019 validating the Code of Criminal Procedure; ΦΕΚ Α' 96 of 11 June 2019.

³⁵ Symvouliou tis Epikrateias (Council of State) judgments of 23 January 2020, No 110/2020, recital 6, and of 15 January 2021, No 49/2021, recital 5.

³⁶ It is clear from a combined reading of the relevant provisions that the criteria to be taken into account include the following: the person's nationality (Article 439 of the Code of Criminal Procedure), the place of the crime (Article 439 of the Code of Criminal Procedure and Article 20 of the Law on the European arrest warrant), the seriousness of the crime (Article 439 of the Code of Criminal Procedure and Article 20 of the Law on the European arrest warrant) and, in the case of more than one crime of the same gravity, the date of receipt of the first extradition request (Article 439 of the Code of Criminal Procedure and Article 20 of the Law on the European arrest warrant), the undertaking by a State to ensure the person's subsequent extradition to other requesting States (Article 439 of the Code of Criminal Procedure), the fact that the extradition request and the European arrest warrant were issued for the purposes of prosecution or for enforcement of a custodial sentence or detention order (Article 20 of the Law on the European arrest warrant). These criteria are supplemented by the criteria provided for by the relevant international conventions.

exhaustive nor set out in order of priority.³⁷ As a result, any criterion may, depending on the circumstances of each case, be decisive for the decision on precedence.

26. Furthermore, it is apparent from legal commentators³⁸ that in view of the very broad discretion enjoyed by the Minister for Justice, a court may only ascertain that he or she has made proper use of his or her discretion. In other words, it is only if the limits of that discretion have been exceeded that the decision may be annulled on grounds of an error of assessment. The action in question is in that case restricted merely to manifest errors of assessment and respect of fundamental rights. Certain general constitutional principles, such as the protection of legitimate expectations, the principle of sound administration, and the principle of proportionality and equal treatment, must be observed by the Minister for Justice and are reviewed by the *Symvoulion tis Epikrateias* (Council of State).
27. In **Belgium**, the *lois coordonnées sur le Conseil d'État* (Coordinated Laws on the Council of State) provide that that court³⁹ is to rule by means of judgments on actions for annulment brought on grounds of infringement of essential procedural requirements or requirements prescribed on pain of invalidity, as well as on grounds of the various administrative authorities exceeding or misusing their powers. In that regard, Belgian legal commentators identify the following as elements of an administrative act that may be challenged: lack of competence, the purpose, the form, the grounds and the content,⁴⁰ classifying them

³⁷ *Symvoulion tis Epikrateias* (Council of State, Greece) judgment of 23 January 2020, No 110/2020, recital 23.

³⁸ E. Prevedourou, "Το ένδικο βοήθημα της αίτησης ακύρωσης. Οι λόγοι ακύρωσης": [Ε.ΠΡΕΒΕΔΟΥΡΟΥ, "Το ένδικο βοήθημα της αίτησης ακύρωσης. Οι λόγοι ακύρωσης" – Διοικητικοί Δικαστές \(ddikastes.gr\)](http://www.ddikastes.gr).

³⁹ See first subparagraph of Article 14(1) of the [lois coordonnées du 12 janvier 1973 sur le Conseil d'État](#) (Consolidated Laws on the Council of State) of 12 January 1973.

⁴⁰ Mast, A., Dujardin, J., Van Damme, M., Vande Lanotte, J. *Overzicht van het Belgisch administratief recht*, Mechelen, Kluwer, 2021, p. 1249, No 1292.

as aspects of an 'external' or 'internal' review of the lawfulness of such an act.⁴¹

28. In **Spain**, as regards the exceptional action for administrative review, in the light of its exceptional nature, the grounds on which it may be brought are limited and concern essentially errors of assessment and breaches of law.⁴² As regards judicial review, as stated above, the Tribunal Supremo (Supreme Court)⁴³ allowed judicial review of an extradition decision, while limiting the scope of that review in the light of the nature of the power exercised at the time such a decision was adopted, that power being of a discretionary nature linked to the Government's exercise of national sovereignty. Consequently, the scope of that review seems to be very limited, since the Tribunal Supremo (Supreme Court) cannot rule on the merits of the decision. The review does make it possible, however, to ascertain the requirements laid down by law.
29. As regards more specifically judicial review of whether a decision taken by the Council of Ministers in the context of an extradition procedure complies with fundamental rights, according to the settled case-law of the Tribunal Supremo (Supreme Court), upheld by the Tribunal

⁴¹ There are several classifications of these aspects. According to one of them, among the aspects of review of the 'external' lawfulness of an administrative act are the defects of lack of competence and a procedural defect, and among the aspects of the review of its 'internal' lawfulness are breach of the law and misuse of powers (see, Mast, A., Dujardin, J., Van Damme, M., Vande Lanotte, J. *Overzicht van het Belgisch administratief recht*, Mechelen, Kluwer, 2021, p. 1249, No 1292). As regards in particular breach of the law, see Mast, A., Dujardin, J., Van Damme, M., Vande Lanotte, J. *Overzicht van het Belgisch administratief recht*, Mechelen, Kluwer, 2021, p. 1258 et seq., in which the authors state that the review may include review of the European Convention on Human Rights (see p. 1258, No 1298), and provide clarification concerning review of discretionary power, stating that discretionary power cannot be an arbitrary power and remains subject to a certain amount of review (see pp. 1259 and 1260, No 1299).

⁴² Under Article 125 of [Ley 39/2015, del Procedimiento Administrativo Común de las Administraciones Públicas](#) (Law No 39/2015 of 1 October 2015 on the ordinary administrative procedure governing public authorities, such an action may be based on the following grounds: an error of fact which is apparent from the procedural documents; an error at the time the contested decision was taken; the fact that the decision was taken on the basis of documents or evidence declared false by a final judicial decision; or the fact that the decision had been issued following punishable conduct such as violence or fraud, as confirmed by a final judicial decision.

⁴³ Tribunal Supremo (Supreme Court) judgment No 1560/2023 of 18 April 2023, [ECLI:ES:TS:2023:1560](#).

Constitucional (Constitutional Court), such review is not possible.⁴⁴ Compliance with fundamental rights is reviewed at the judicial stage⁴⁵ of the extradition proceedings and constitutes a fundamental condition for declaring the extradition lawful.

30. In **Estonia**, since the decision on whether an extradition request or a European arrest warrant takes precedence constitutes a discretionary decision of the Minister, judicial review of that decision is limited, so far as the administrative court is concerned, to ascertaining whether the Minister has made an error of assessment.
31. More specifically, according to the Code of Administrative Court Procedure,⁴⁶ in assessing the lawfulness of an administrative act issued or an administrative measure taken on the basis of discretionary power, the court ascertains whether the administrative authority has complied

⁴⁴ Tribunal Supremo (Supreme Court) judgment No 108/2000 of 20 January 2003, [ECLI:ES:TS:2003:180](#), in which that court held, first, that the decision on the lawfulness of extradition falls within the jurisdiction of the judiciary and that, within the judiciary, specific jurisdiction for that decision is granted exclusively to the Audiencia Nacional (Central Court) and, secondly, that that judgment concerning lawfulness also includes review of the conformity of the extradition with fundamental rights. The Tribunal Supremo (Supreme Court) infers from this that the Government cannot be asked to conduct, or criticised for not conducting, such a review, since it is a function which, besides the fact that it is not assigned to it by [Ley 4/1985, de 21 de marzo, de Extradición Pasiva](#) (Law No 4/1985 of 21 March 1985 on passive extradition), is contrary to the constitutional principles which proclaim the independence and exclusivity of the exercise of judicial power. That approach seems to be confirmed by the judgment of the Tribunal Constitucional (Constitutional Court) of 16 September 2019, [BOE No 247, du 14 octubre 2019](#), which declared the inadmissibility of an action for the protection of constitutional rights (*recurso de amparo*) brought against a decision of the Council of Ministers granting the applicant's surrender to the Thai authorities. The Tribunal Constitucional (Constitutional Court) held that it was the Audiencia Nacional (Central Court), and not the Government, which was responsible for ensuring compliance with fundamental rights by the Thai authorities during the judicial proceedings. Consequently, it was the findings of the Audiencia Nacional (Central Court), and not the decision of the Government which should, possibly, form the subject of a constitutional action.

In that regard, it should however also be mentioned that it was possible to identify a judgment of the Tribunal Supremo (Supreme Court) in which that court seems to have refined that approach. Its judgment of 21 July 2015, [ECLI:ES:TS:2015:3552](#) contains an analysis of an alleged infringement of the fundamental right to equal treatment and non-discrimination following the applicant's plea that the Government had previously refused extradition in similar circumstances. Even though that plea was not upheld by the Tribunal Supremo (Supreme Court) and therefore, although the action was ultimately dismissed, it may be concluded from this that in that judgment that court accepted that an infringement of fundamental rights committed at the administrative (and not the judicial) stage, could provide the basis for an action against the decision of the Minister for Justice's decision.

⁴⁵ For the stages of the extradition procedure in Spain, see footnote 13.

⁴⁶ Article 158(3) of the [Halduskohtumenetluse seadustik](#) (Code of Administrative Court Procedure) of 27 January 2011. See also unofficial English [translation](#).

with the limits and purpose of its discretionary power. The court does not therefore assess the expediency of a discretionary decision and does not exercise discretionary power on behalf of the administrative authority.

32. In **Ireland**, the rules relating to an action for judicial review provide that the High Court cannot examine the merits of the Minister's decision. That court therefore only examines the lawfulness of the decision and of the decision-making process followed by the Minister. Judicial review may be based on various grounds (irrationality, proportionality, lawfulness) which are not always conceptually distinct.
33. Irrationality of the Minister's decision may lead to the annulment of his or her decision. However, the criteria for demonstrating such irrationality are strict, since a decision that annuls the Minister's decision risks calling into question the authority of the executive. Thus, in order to show that a decision is unreasonable, it is necessary for there to be no evidence to support the contested decision.⁴⁷ Next, the proportionality of the contested decision would be called into question if the applicant established that his or her rights would be so restricted by extradition that extradition would be disproportionate in relation to the public interest it pursues.⁴⁸ Lastly, the applicant may also call into question the lawfulness of the Minister's decision by claiming that it was *ultra vires*. However, as already stated, the Irish law transposing Framework Decision 2002/584 contains no criteria to be taken into account when taking a decision on precedence. Consequently, it would be difficult to demonstrate that the Minister for Justice's decision was *ultra vires* since the law does not define the limits of the Minister's power.

⁴⁷ Supreme Court judgment in *O'Keeffe v an Bord Pleanála* 1991, [WJSC-SC 1137](#).

⁴⁸ Supreme Court judgment in *Meadows v Minister for Justice Equality and Law Reform*, [\[2010\] IEHC 3](#).

II. MEMBER STATES WHERE THE DECISION ON PRECEDENCE IS TAKEN BY A JUDICIAL AUTHORITY

A. MEMBER STATES WHERE THE COMPETENT COURT TAKES A DECISION ON PRECEDENCE THAT IS SEPARATE FROM THAT ON THE ENFORCEMENT EITHER OF EXTRADITION OR OF THE EUROPEAN ARREST WARRANT

1. LEGAL BASIS OF AN ACTION AGAINST THE DECISION ON PRECEDENCE

34. In three Member States, namely **Bulgaria**, **Italy** and **Slovenia**, a decision on whether an extradition request or a European arrest warrant takes precedence is taken by a criminal court, whilst a decision on extradition is taken by the executive, namely the Minister for Justice. It should be noted that in those three Member State the court takes a separate decision on precedence. An action may be brought against such a decision before a higher criminal court.

35. It should be pointed out, however, that of the three abovementioned legal systems only the **Slovenian** legal system expressly provides for an action against a decision on precedence. Under **Bulgarian** and **Italian** law, on the other hand, the right to bring such an action seems to result from a combined reading of the provisions relating to extradition and the European arrest warrant and of the general rules governing criminal procedure.

36. Thus, in **Slovenia**, whilst the matter of precedence is decided by a criminal chamber composed of three judges of the Vrhovno sodišče Republike Slovenije (Supreme Court of Slovenia),⁴⁹ the order in respect of an action is adopted by an appeal chamber of five judges from that court. This right to bring an action is expressly provided for by the Law on cooperation between Member States in criminal matters.⁵⁰

37. In **Bulgaria**, the decision on precedence is delivered by the Okrazhen sad (District Court).⁵¹ Since the Bulgarian Law on extradition and the

⁴⁹ Article 32(1) of the [Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije \(pisrs.si\)](#) (Law on cooperation between Member States in criminal matters).

⁵⁰ Article 33 of the [Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije \(pisrs.si\)](#) (Law on cooperation between Member States in criminal matters).

⁵¹ Article 46(3) of the [Zakon za ekstraditsiata i evropeiskata zapoved za arest](#) (Law on extradition and the European arrest warrant, DV No 46 of 3 June 2005).

European arrest warrant⁵² provides, in general, the right to bring an action against a decision of that court before the Apelativen sad (Court of Appeal), it appears that such an action may also be brought against a decision on whether an extradition request or a European arrest warrant takes precedence. No judicial decision confirming that possibility has been found, however.⁵³

38. In **Italy**, it is the Corte d'appello (Court of Appeal) competent in respect of the European arrest warrant, which, after hearing the Minister for Justice, decides whether the arrest warrant or the extradition request takes precedence.⁵⁴ An action against that decision is neither expressly provided for nor excluded by the law. Consequently, it appears possible that such an action may be brought before the Corte suprema di cassazione (Court of Cassation) under the general rules laid down in the Code of Criminal Procedure,⁵⁵ especially since, under Italian law, decisions by which a court rules in respect of personal freedom are open to an appeal on a point of law.⁵⁶

2. CONDITIONS FOR THE ADMISSIBILITY OF AN ACTION AGAINST A DECISION ON PRECEDENCE

39. It should be noted first of all that, among the legal systems studied in this chapter, in **Slovenia**, an action against a decision on precedence is subject to the specific rules laid down solely for such decisions. In

⁵² Article 48 of the [Zakon za ekstraditsiata i evropeiskata zapoved za arest](#) (Law on extradition and the European arrest warrant, DV No 46 of 3 June 2005).

⁵³ Only one Bulgarian judgment could be identified concerning the situation in which a European arrest warrant and an extradition request for the same person had been issued concurrently. Without ruling expressly on precedence, in view of the fact that the time limit for surrendering the person concerned to Romania under the European arrest warrant was going to expire and that person had to be released after that date, the Apelativen sad (Court of Appeal) ruled in favour of keeping the person concerned in provisional detention with a view to his extradition to Türkiye, taking into account the seriousness of his criminal activity presenting a real threat to the public (Court of Appeal, Plovdiv, [ordonnance No 205 du 6 avril 2017](#) Order No 205 of 6 April 2017, private criminal case No176/2017).

⁵⁴ Article 20(3) of [Legge n. 69 – Disposizioni per conformare il diritto interno alla decisione quadro 2002/584/GAI del Consiglio, del 13 giugno 2002, relativa al mandato d'arresto europeo e alle procedure di consegna tra Stati membri](#) (Law No 69 laying down provisions to bring domestic law into line with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States) of 22 April 2005.

⁵⁵ [Decreto del Presidente della Repubblica n. 447 – Approvazione del codice di procedura penale](#) (Presidential Decree No 447 approving the Code of Criminal Procedure) of 22 September 1988.

⁵⁶ O. Dominioni et al., *Procedura penale*, settima edizione, Giappichelli Editore, 2021, p. 838.

Bulgaria and **Italy** however, this action follows the general rules of criminal litigation.

40. Under **Slovenian** law, the following persons are allowed to bring an action against a decision on precedence: the person who is the subject of surrender or extradition, that person's lawyer and the public prosecutor. Such an action may be brought within a period of three days of the notification of the decision.⁵⁷
41. Under **Bulgarian** law, the Law on extradition and the European arrest warrant provides that the lawfulness of the decision of the Okrazhen sad may be reviewed by the Apelativen sad (Court of Appeal) on an action brought by the person concerned and his defence counsel or on the basis of an objection by the prosecutor, lodged within 5 days of delivery of the decision.⁵⁸
42. Under **Italian** law, in the absence of specific rules as regards the persons entitled to bring an action against a decision on precedence, it seems appropriate to refer to two relevant provisions. First, the Law on the European arrest warrant⁵⁹ provides, in essence, that the person concerned, his defence counsel and the public prosecutor at the Corte d'appello (Court of Appeal) may bring an action before the Corte suprema di cassazione (Court of Cassation) against the judgment delivered on the request for surrender, within five days of service of the judgment. Secondly, the Code of Criminal Procedure⁶⁰ provides that the judgment of the Corte d'appello (Court of Appeal) in an extradition case may be the subject of an action before the Corte suprema di cassazione (Court of Cassation), including on the merits, brought by the

⁵⁷ Article 33(1) of the [Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije \(pisrs.si\)](#) (Law on Cooperation between Member States in Criminal Matters).

⁵⁸ Article 48 of the [Zakon za ekstraditsiata i evropeiskata zapoved za arest](#) (Law on Extradition and the European arrest warrant, DV No 46 of 3 June 2005).

⁵⁹ Article 22 of [Legge n. 69 – Disposizioni per conformare il diritto interno alla decisione quadro 2002/584/GAI del Consiglio, del 13 giugno 2002, relativa al mandato d'arresto europeo e alle procedure di consegna tra Stati membri](#) (Law No 69 laying down provisions to bring domestic law into line with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States) of 22 April 2005 (GURI No 98 of 29 April 2005).

⁶⁰ Article 706 of [Decreto del Presidente della Repubblica n. 447 – Approvazione del codice di procedura penale](#) (Presidential Decree No 447 approving the Code of Criminal Procedure) of 22 September 1988.

person concerned, his defence counsel, the public prosecutor and a representative of the requesting State.

3. CRITERIA FOR ASSESSING THE LAWFULNESS OF A DECISION ON PRECEDENCE AND THE SCOPE OF AN ACTION

43. As a preliminary point, it should be noted that, of the three Member States being studied, in **Bulgaria**, judicial review of a decision on precedence seems to have the broadest scope, since the appeal court reviews that decision both in law and in fact, even the part of it that is not the subject of the action. This review also appears to be rather broad in **Slovenia**, where the supreme court has jurisdiction to assess errors of law and of fact. On the other hand, in **Italy**, where it is an appeal in cassation, such review is limited to breach of the law.
44. More specifically, in **Slovenia**, the Law on cooperation between Member States in criminal matters does not specify the scope of an action against a decision on precedence or the criteria for examining the lawfulness of the decision. However, the relevant information may be inferred from the case-law of the Vrhovno sodišče (Supreme Court) on the matter.⁶¹
45. Thus, it is clear first of all from that case-law that when taking a decision on precedence the court is required to assess in a timely manner all the relevant circumstances of that particular case and to explain which of the circumstances provided for in Article 31(2) of the Law on

⁶¹ Two orders of this court concerning nationals of Bosnia-Herzegovina, in respect of whom an extradition request and a European arrest warrant had been received simultaneously by the Slovenian authorities ([ordonnance du 14 juin 2013, I Kp 65794/2012-40](#) (order of 14 June 2013, I Kp 65794/2012-40) and [ordonnance du 23 mai 2017, I Kp 4284/2017](#)) (order of 23 May 2017, I Kp 4284/2017).

cooperation between Member States in criminal matters⁶² or in the applicable international convention takes precedence and why.⁶³

46. Next, according to that case-law, Article 31(2), mentioned above, contains a non-exhaustive list of the circumstances which a court is to take into consideration with regard to a person's surrender to a Member State or his extradition to a third country. To those circumstances should be added the criterion set out in Article 17 of the European Convention on Extradition,⁶⁴ which states that account is to be taken of the possibility of subsequent extradition to another State.⁶⁵
47. Thus, in an action against a decision on precedence, the person concerned may claim, inter alia, an error of law in respect of taking into consideration relevant circumstances, under the Law on cooperation

⁶² Under Article 31(2) of that law, in the event of a conflict between European arrest warrants, the Vrhovno sodišče (Supreme Court) is to take due account of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether a warrant has been issued for the purposes of prosecution or for enforcement of a custodial sentence or detention order. According to Article 32(3) of that law, in the event of a conflict between a European arrest warrant and a request for extradition presented by a third country, the decision on whether the European arrest warrant or the extradition request takes precedence is to be taken by that court with due consideration of all the circumstances provided for in Article 31(2) of that law and those provided for in the international conventions that are binding on the Republic of Slovenia.

⁶³ [Vrhovno sodišče Republike Slovenije \(Cour suprême de le République de Slovénie\), ordonnance du 14 juin 2013, I Kp 65794/2012-40. 1.](#) (Vrhovno sodišče Republike Slovenije (Supreme Court of the Republic of Slovenia), order of 14 June 2013, I Kp 65794/2012-40. 1.) Thus, in the present case, the Vrhovno sodišče (Supreme Court) dismissed the appeal brought by the lawyer for the person concerned, ruling that the three-judge Chamber had correctly held that the person concerned should be surrendered to a Member State and not to a third country. The Supreme Court held that the extradition of that person to Bosnia-Herzegovina would, because the person concerned was an Austrian national and Austria does not extradite its own nationals, prevent Austria from conducting criminal proceedings against that national. Moreover, it would be possible for Bosnia-Herzegovina to request the surrender of that national, once the criminal proceedings in Austria had ended, and enforce the custodial sentence imposed on him.

⁶⁴ [Convention européenne d'extradition](#) (European Convention on Extradition), signed at Paris on 13 December 1957.

⁶⁵ [Vrhovno sodišče Republike Slovenije \(Cour suprême de le République de Slovénie\), ordonnance du 23 mai 2017, I Kp 4284/2017.](#) Vrhovno sodišče Republike Slovenije (Supreme Court of the Republic of Slovenia), order of 23 May 2017, I Kp 4284/2017. Thus, in that instance, the Vrhovno sodišče (Supreme Court) ruled that, since Bosnia-Herzegovina prohibits the extradition of its own nationals to third countries, the three-judge Chamber was wrong to hold that the person concerned should be extradited to that third country and not surrendered to Germany. As a consequence, that Chamber prevented a Member State from conducting proceedings against that person. Therefore, the Vrhovno sodišče (Supreme Court) amended the contested order and ruled that the person concerned should be surrendered to Germany.

between Member States in criminal matters, and an incomplete or incorrect assessment of the facts.

48. In **Bulgaria**, since the Law on Extradition and the European Arrest Warrant contains no provision concerning the scope of the review conducted by the Apelativen sad (Court of Appeal) of decisions that may be issued on the basis of that act, it seems that the general rules of criminal procedure in appeals are to apply.⁶⁶
49. Thus, according to those provisions, the appeal court is to ascertain fully whether the decision is accurate, whatever grounds are relied upon by the parties. That court may annul or amend the decision also in the part that was not the subject of the appeal and in respect of persons who have not lodged an appeal, if there are grounds for so doing. In addition, it may establish new factual situations, since on appeal any evidence that may be gathered in accordance with the procedure laid down by the Code of Criminal Procedure is acceptable.⁶⁷
50. In **Italy**, in the absence of specific provisions, the general rules of procedure concerning appeals in cassation appear to be applicable. However, those rules confer on the Corte suprema di cassazione (Court of Cassation) a scope of review limited to the grounds relied on.⁶⁸ If the grounds relied on are held to be valid, the Corte suprema di cassazione (Court of Cassation) simply sets aside the judgment under appeal, with or without referring it back to the court which delivered it. Moreover, that appeal may be based solely on the grounds exhaustively listed in the Code of Criminal Procedure, which refer in essence to breach of the

⁶⁶ Chapter 21 of the [Nakazatelno protsesualen kodeks](#) (Code of Criminal Procedure).

⁶⁷ Articles 314 to 317 of the [Nakazatelno protsesualen kodeks](#) (Code of Criminal Procedure).

⁶⁸ Article 309 of [Decreto del Presidente della Repubblica n. 447 – Approvazione del codice di procedura penale](#) (Presidential Decree No 447 approving the Code of Criminal Procedure) of 22 September 1988.

law.⁶⁹ Furthermore, it should be noted that the Law on the European arrest warrant further restricts, with regard to a judgment on a request for surrender, the grounds on which an appeal on a point of law may be brought.⁷⁰

- B. MEMBER STATES WHERE THE DECISION ON PRECEDENCE IS INCLUDED IN THE DECISION ON ENFORCEMENT EITHER OF EXTRADITION OR OF THE EUROPEAN ARREST WARRANT
 - 1. LEGAL BASIS FOR AN ACTION AGAINST A DECISION ON PRECEDENCE
- 51. In four Member States, namely **France, Lithuania, Portugal** and **Romania**, both the decision on whether the extradition request or the European arrest warrant takes precedence and the extradition decision are taken by the same court in a single decision. Consequently, an action against that decision follows the procedural rules laid down in the context of extradition or of the European arrest warrant, depending on which one takes precedence.

⁶⁹ Thus, according to Article 306 of [Decreto del Presidente della Repubblica n. 447 – Approvazione del codice di procedura penale](#) (Presidential Decree No 447 approving the Code of Criminal Procedure) of 22 September 1988, those grounds are as follows: (a) exercise by the judge of a power reserved by law for legislative or administrative bodies or not granted to public authorities; (b) infringement or misapplication of criminal law or of other legal rules that must be taken into account in the application of criminal law; (c) failure to observe established procedural rules under penalty of invalidity, inadmissibility or lapsing; (d) failure to adduce decisive evidence where the party has requested it even during the oral procedure [...] ; and (e) insufficient grounds, conflicting or manifestly illogical grounds, where the defect results from the text of the contested decision or from other procedural documents specifically indicated in the grounds of the action.

⁷⁰ Under Article 22 of [Legge n. 69 – Disposizioni per conformare il diritto interno alla decisione quadro 2002/584/GAI del Consiglio, del 13 giugno 2002, relativa al mandato d'arresto europeo e alle procedure di consegna tra Stati membri](#) (Law No 69 laying down provisions to bring domestic law into line with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States) of 22 April 2005, such an appeal may be based solely on the grounds set out in Article 306(a), (b) and (c) of [Decreto del Presidente della Repubblica n. 447 – Approvazione del codice di procedura penale](#) (Presidential Decree No 447 approving the Code of Criminal Procedure) of 22 September 1988 (see footnote on preceding page).

52. Thus, in **France**, a decision on precedence is, in principle,⁷¹ adopted in the context of the decision of the investigating chamber of the Court of Appeal ordering the surrender of the person to the judicial authority issuing the European arrest warrant or the extradition request.⁷² Such a decision may be the subject of an action before the Criminal Chamber of the Cour de cassation (Court of Cassation) or to the Conseil d'État (Council of State), depending on the case.
53. In the context of a European arrest warrant, if the requested person declares that he or she consents to his or her surrender, the investigating chamber grants surrender, after verifying that the legal conditions for enforcement of the European arrest warrant are met. The judgment delivered by the investigating chamber is not amenable to an action.⁷³ However, if the requested person declares that he or she does not consent to his or her surrender, such a judgment cannot be the subject of an appeal.⁷⁴ Similarly, in the context of an extradition request, if the requested person declares his or her consent to being extradited the investigating chamber grants extradition, after verifying that the legal conditions for extradition are met. The judgment delivered by the investigating chamber is not amenable to an action.⁷⁵

⁷¹ In the event that the investigating chamber fails to rule on whether the European arrest warrant or the extradition request takes precedence, that chamber must rule on whether the European arrest warrant or the extradition request takes precedence before the decision on surrender can be enforced. Thus, the Conseil d'État (Council of State) has ruled that an order authorising extradition to the Swiss authorities, when the person's surrender has already been granted under two European arrest warrants, is lawful but cannot be enforced until the investigating chamber has ruled on which of the requests from those two States is to take precedence (Conseil d'État (Council of State)) decision of 19 January 2009, [No 312583](#)). Similarly, the Cour de Cassation (Court of Cassation) has ruled that a judgment of the investigating chamber ordering surrender to the Belgian authorities cannot be criticised, even if an earlier judgment by the same Chamber ordered surrender to the German authorities, since the question of precedence can be settled in the context of the proceedings relating to the enforcement of the criminal convictions (Cour de cassation (Court of Cassation), judgment of 24 January 2012, [No 11-89.177](#)). The judgment of the investigating chamber ordering that enforcement of the German warrant should take precedence over enforcement of the Belgian warrant may subsequently be the subject of an appeal (Cour de cassation (Court of Cassation)), judgment of 20 March 2012, [No 12-81.284](#)). Even though those judgment concerned a conflict between two European arrest warrants, it would appear that that solution can also be applied to a conflict between a European arrest warrant and an extradition request.

⁷² Article L. 695-42, second paragraph, of the [code de procédure pénale](#) (Code of Criminal Procedure).

⁷³ Article 695-31, third paragraph, of the [code de procédure pénale](#) (Code of Criminal Procedure).

⁷⁴ Article 695-31, fourth paragraph, of the [code de procédure pénale](#) (Code of Criminal Procedure).

⁷⁵ Article 696-14 of the [code de procédure pénale](#) (Code of Criminal Procedure).

On the other hand, if the requested person declares that he or she does not consent to his or her extradition, the opinion ⁷⁶ of the investigating chamber may be the subject of an appeal. ⁷⁷

54. The procedure applicable to actions against a judgment of the investigating chamber in the context of a European arrest warrant is purely judicial. That procedure falls under the general rules governing actions against a judgment of the investigating chamber, subject to certain specific rules concerning time limits, which have been adjusted to comply with Framework Decision 2002/584. On the other hand, the procedure applicable to actions against an opinion of the investigating chamber in the context of an extradition request is both judicial and administrative. Following a (favourable) opinion of the investigating chamber, extradition is authorised by a simple order of the Prime Minister. That order may be the subject of an action on grounds of *ultra vires* before the Conseil d'État (Council of State). An action against the opinion of the investigating chamber before the Criminal Chamber of the Cour de cassation (Court of Cassation) concerns solely the external lawfulness of the opinion (composition of the chamber, form of the opinion, correctness of the procedure followed). An extradition order may be the subject of an action on grounds of *ultra vires* before the Conseil d'État (Council of State) concerning the external lawfulness of the order, its internal lawfulness and also the internal lawfulness of the opinion of the investigating chamber.
55. In **Lithuania**, it seems clear from case-law that the question of precedence in the event of multiple extradition requests or European arrest warrants for the same person is settled by the same decision, in which the Vilniaus apygardos teismas (Regional Court, Vilnius) rules on the extradition or surrender of the person concerned. ⁷⁸ An action may be brought against that decision before the Lietuvos apeliacinis teismas (Court of Appeal, Lithuania). ⁷⁹

⁷⁶ For historical reasons, one speaks of a 'judgment' of the investigating chamber where the person being extradited has consented to his extradition and of an 'opinion' of the investigating chamber where the person has not consented to his extradition.

⁷⁷ Article 696-15 of the [code de procédure pénale](#) (Code of Criminal Procedure).

⁷⁸ See, in that regard, order of the Lietuvos apeliacinis teismas (Court of Appeal, Lithuania) of 22 April 2020, in Case [N° 1N-6-616/2020](#).

⁷⁹ Article 74 of the [Baudžiamoji proceso kodeksas](#) (Code of Criminal Procedure).

56. In **Portugal**, it is clear from the Law on the European arrest warrant⁸⁰ that a decision on precedence, and also a decision on enforcement of the European arrest warrant or extradition, is taken by the Tribunal da Relação (Court of Appeal). Depending on whether the European arrest warrant or the extradition request takes precedence, either the rules laid down for an action against a decision on the enforcement of an arrest warrant,⁸¹ or those laid down for an action against a decision on the enforcement of extradition are to apply.⁸² In either case, the action is brought before the Supremo Tribunal de Justiça (Supreme Court).
57. In **Romania**, the curtea de apel (Court of Appeal), the court having jurisdiction to take a decision on the enforcement both of a European arrest warrant and of an extradition request, also decides whether that request or the arrest warrant takes precedence. Consequently, a decision on precedence follows the review procedure established for each procedure. In the context of each of those procedures, an action is brought before the Înalta Curte de Casație și Justiție, Secția Penală (High Court of Cassation and Justice, Criminal Section).
58. In that regard, it should also be noted that Romanian law expressly provides that, if the court gives precedence to the extradition request, the procedural rules governing the extradition procedure become applicable.⁸³ The latter provide that a decision on an extradition request is open to challenge. On the other hand, if the court decides to

⁸⁰ Article 23 of [Lei n.º 65/2003, de 23 de agosto que aprova o regime jurídico do mandado de detenção europeu \(em cumprimento da Decisão Quadro n.º 2002/584/JAI, do Conselho, de 13 de Junho\)](#) (Law No 65/2003 of 23 August 2003 approving the legal regime of the European arrest warrant (in accordance with Council Framework Decision No 2002/584/JHA of 13 June)).

⁸¹ Article 24 of [Lei n.º 65/2003, de 23 de agosto que aprova o regime jurídico do mandado de detenção europeu \(em cumprimento da Decisão Quadro n.º 2002/584/JAI, do Conselho, de 13 de Junho\)](#) (Law No 65/2003 of 23 August 2003 approving the legal regime of the European arrest warrant (in accordance with Council Framework Decision No 2002/584/JHA of 13 June)).

⁸² Article 49 of [Lei n.º 144/99, de 31 de Agosto que aprova a lei da cooperação judiciária internacional em matéria penal](#) (Law No 144/99 of 31 August approving the Law on international cooperation in criminal matters). The right to bring an action against a decision enforcing extradition is confirmed also by the settled uniform case-law of the Tribunal Constitucional (Constitutional Court) which has described the extradition procedure as being similar to the criminal procedure since they involve a restriction on the personal freedom of the person extradited (see judgments [n.º 146/2012 du 13 mars 2012](#) and [n.º 273/2022 du 26 avril 2022](#) and [Relatório do Tribunal Constitucional de Portugal, de novembro de 2012, Maria José Rangel Mesquita et Cristina Sousa Machado](#) (Report of the Portuguese Constitutional Court November 2012, page 19)).

⁸³ Article 116(2) of [Legea nr. 302/2004 – privind cooperarea judiciară internațională în materie penală](#) (Law No 302/2004 on international judicial cooperation in criminal matters).

give preference to the European arrest warrant, Romanian law does not expressly lay down the procedure to be followed. By analogy, however, in such a case the procedural rules governing the European arrest warrant procedure should apply.⁸⁴ Under those rules, a decision on the enforcement of the European arrest warrant is open to challenge, unless the requested person consents to his surrender. If this is the case, that decision is final.

2. CONDITIONS FOR THE ADMISSIBILITY OF AN ACTION AGAINST A DECISION ON PRECEDENCE

59. It should be noted first of all that in none of the Member States studied in this chapter is there a specific system for bringing an action against a decision on precedence. In all those Member States, such an action therefore follows the general rules of criminal proceedings.

60. Thus, under **French** law, an action against a decision on precedence may be brought before the Criminal Chamber of the Cour de cassation (Court of Cassation) by the parties to the case, namely the requested person/person sought and the public prosecutor.⁸⁵ As regards the time limit for bringing an action, that depends on whether the court has decided the European arrest warrant or the extradition request takes precedence and is three⁸⁶ or five⁸⁷ days, respectively, following delivery of the judgment or the opinion. The time limit for bringing an action on grounds of *ultra vires* against an extradition order issued following a favourable opinion of the investigating chamber is one month from the notification of the order.

61. Under **Lithuanian** law, an action against an order for the enforcement of extradition or of a European arrest warrant may be brought by the

⁸⁴ Articles 110 to 112 of [Legea nr. 302/2004 – privind cooperarea judiciară internațională în materie penală](#) (Law No 302/2004 on international judicial cooperation in criminal matters).

⁸⁵ Article 567 of the [code de procédure pénale](#) (Code of Criminal Procedure).

⁸⁶ In order to comply with the maximum time limits laid down in the Framework Decision, the time limits laid down for bringing an action against the judgment of the investigating chamber on enforcement of the European arrest warrant were shortened as compared with ordinary law (fourth paragraph of Article 695-31 and first paragraph of Article 568-1 of the [code de procédure pénale](#) (Code of Criminal Procedure)).

⁸⁷ The provisions applicable to time limits in the context of an action challenging an opinion delivered by the investigating chamber are those of ordinary law (Article 568 [du code de procédure pénale](#) (Code of Criminal Procedure)).

person to whom the order relates and his lawyer within a period of seven days from the date on which the order is issued. The same right is conferred on the public prosecutor if he disagrees with an order refusing to extradite a person from the Republic of Lithuania or to surrender that person on the basis of a European arrest warrant.⁸⁸

62. Under **Portuguese** law, an action, before the Supremo Tribunal de Justiça (Supreme Court), against a decision on enforcement of extradition must be brought within a period of 10 days⁸⁹ and against a decision on the enforcement of a European arrest warrant, within a period of 5 days.⁹⁰ As regards the persons entitled to bring that action, under the provisions of the Code of Criminal Procedure which apply in the alternative, they are the public prosecutor and the person to whom the decision relates.⁹¹
63. Under **Romanian** law, an extradition decision may be the subject of a challenge brought by the person to whom the extradition request relates or by the public prosecutor (on his own initiative or at the request of the Minister for Justice), within a period of 5 days after the decision has been issued.⁹² On the other hand, a decision on the enforcement of a European arrest warrant may be challenged within a period of 5 days after the decision is issued, unless the requested person consents to his surrender.⁹³

⁸⁸ Article 74 of the [Baudžiamojo proceso kodeksas](#) (Code of Criminal Procedure).

⁸⁹ Article 58 of [Lei n.º 144/99, de 31 de Agosto que aprova a lei da cooperação judiciária internacional em matéria penal](#) (Law No 144/99 of 31 August on international judicial cooperation in criminal matters).

⁹⁰ Article 24 of [Lei n.º 65/2003, de 23 de agosto que aprova o regime jurídico do mandado de detenção europeu \(em cumprimento da Decisão Quadro n.º 2002/584/JAI, do Conselho, de 13 de Junho\)](#) (Law No 65/2003 of 23 August 2003 approving the legal regime of the European arrest warrant (in accordance with Council Framework Decision No 2002/584/JHA of 13 June)).

⁹¹ Article 401 of the [Código de Processo Penal, Decreto-Lei n.º 78/87](#) (Code of Criminal Procedure, Decree-Law No 78/87).

⁹² Article 52 of [Legea nr. 302/2004 – privind cooperarea judiciară internațională în materie penală](#) (Law No 302/2004 on international judicial cooperation in criminal matters).

⁹³ Article 110 of [Legea nr. 302/2004 – privind cooperarea judiciară internațională în materie penală](#) (Law No 302/2004 on international judicial cooperation in criminal matters).

3. CRITERIA FOR ASSESSING THE LAWFULNESS OF THE DECISION ON PRECEDENCE AND THE SCOPE OF THE ACTION

64. As a preliminary point, it should be noted that, in three of the four Member States studied in this chapter, namely **Lithuania**, **Portugal** and **Romania**, the scope of review seems to be broad and, in any event, it is not limited to mere assessment of manifest errors or fundamental rights. In **France**, on the other hand, review covers only breach of the law (in the case of a decision giving precedence to the European arrest warrant) or breach of the law and manifest error of assessment of the facts (in the case of a decision giving precedence to the extradition request).
65. In **France**, first, an appeal brought against an opinion of the investigating chamber of the Court of Appeal concerning extradition can be based only on grounds of external lawfulness.⁹⁴ In the case of an opinion in which the investigating chamber decides whether an extradition request or a European arrest warrant takes precedence, it might be expected that the adequacy or not of the investigating chamber's reasoning concerning that precedence might be the subject of such review.
66. However, the Criminal Chamber of the Cour de cassation (Court of Cassation) will not rule on the content of the opinion, which falls within the jurisdiction of the Conseil d'État (Council of State). The latter has jurisdiction to hear pleas alleging the internal lawfulness of the opinion of the investigating chamber, on an exceptional basis, and pleas alleging the internal and external lawfulness of the extradition on the basis of which the Prime Minister orders the person to be surrendered to the authorities of the third country. With regard to internal lawfulness, the Conseil d'État (Council of State) reviews inter alia the accuracy of the facts, in particular, whether the foreign national concerned has consented to his extradition.⁹⁵ The Conseil d'État (Council of State) also

⁹⁴ The Cour de cassation may therefore investigate, inter alia, respect for the rights of the defence (Cour de cassation (Court of Cassation), opinion of 15 March 1988, No [87-91.517](#)); the proper form of the opinion, in particular the presence of the mandatory information (Cour de cassation, opinion of 31 May 1988, Vilaplana, No [88-80.713](#)) and compliance with the obligation to provide an adequate statement of reasons laid down in the third paragraph of Article 696-5 of the Code of Criminal Procedure (Cour de cassation, opinion of 24 June 1986, Gacem, No [86-92.164](#)).

⁹⁵ Conseil d'État (Council of State), decision of 23 May 2003, Rigo, No [250162](#).

reviews whether there are exceptionally serious consequences for the applicant. Since the ‘Stefan decision of principle’, the Conseil d’État (Council of State) has limited its action to review of a manifest error of assessment.^{96 97} Failure to challenge the opinion of the investigating chamber has no effect on an action on grounds of *ultra vires* brought against an extradition order. However, it will not be possible to rely on pleas relating to the external lawfulness of the opinion of the investigating chamber before the Conseil d’État (Council of State) since only the Cour de cassation (Court of Cassation) has jurisdiction to review the external lawfulness of that opinion. More specifically, as regards the part of the opinion/order relating to precedence, the Conseil d’État (Council of State) will be able *inter alia* to review whether the order is sufficiently reasoned (procedural defect) and, as regards the content of the opinion or order, the existence of manifest errors in the assessment of the circumstances that led to precedence being given to one or other country.⁹⁸

67. Secondly, as regards an appeal brought against a judgment concerning a European arrest warrant, it should be noted that judgments of the

⁹⁶ With regard to the external lawfulness of the order, the Conseil d’État (Council of State) thus investigates, *inter alia*, formal defects such as inadequate reasoning in the contested order.

⁹⁷ With regard to the internal lawfulness of an opinion and an order, the Conseil d’État (Council of State) also investigates compliance with the general principles of extradition law, such as prohibition of extradition to a country that does not comply with human rights and fundamental freedoms (Conseil d’État (Council of State)), decision of 15 July 2004, Zagami, No [260512](#)) and prohibition of extradition under sentences handed down following adversarial proceedings by a court that does not comply with human rights and fundamental freedoms (Conseil d’État (Council of State)), decision of 27 October 1989, Picabea Burunza, No [107711](#)); observance of other principles such as review of compliance with the double jeopardy principle (Conseil d’État (Council of State)), decision of 8 December 2000, Russo, No [215357](#)) and prohibition on the extradition of a French national (Conseil d’État (Council of State)), decision of 7 December 1990, Tannoury Paris, No [112395](#)).

⁹⁸ In the decision of 15 June 2001, Di Bella, No [222654](#), the Conseil d’État (Council of State) expressly limited its review of the choice of the country that is granted precedence with regard to extradition. That decision concerned a conflict between two extradition requests, one from Switzerland the other from Italy. At that time, extradition requests were governed within the European Union by the European Convention on Extradition of 13 December 1957. Article 17 of that convention provided that in the event of concurrent extradition requests: ‘the requested Party [is to] make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the requested person and the possibility of subsequent extradition to another State’. The Conseil d’État (Council of State) limited review of the assessment of the circumstances of the two requests to the existence of a manifest error (‘having regard to all the circumstances of the case and the criteria set out in the foregoing provisions, it was permissible for the contested order, without there being any manifest error, to give the Swiss authorities precedence in extraditing the applicant’).

investigating chamber can be quashed only on grounds of breach of the law.⁹⁹ Besides the cases that are expressly accepted,¹⁰⁰ case-law accepts as breach of the law cases involving *ultra vires*, lack of jurisdiction of a court or any breach of a law that has been applied in order to address the merits of a case.¹⁰¹ However, the Cour de cassation (Court of Cassation) will not rule on the facts of the case since those facts fall to the sovereign assessment of the court adjudicating on the merits. Consequently, in the context of a conflict between a European arrest warrant and an extradition request, the Cour de cassation (Court of Cassation) will not review the investigating chamber's assessment of the circumstances provided for by French law transposing Article 16 of the Framework Decision.¹⁰²

68. To sum up, in the context of an action against a decision giving precedence to the European arrest warrant, the Cour de cassation (Court of Cassation) will limit its review to breach of the law by the investigating chamber of the Court of Appeal. In the context of an action against a decision giving precedence to the extradition request, review by the Conseil d'État (Council of State) will be somewhat more extensive, but will remain limited, as regards assessment of the facts, to review of a manifest error.
69. In **Lithuania**, the law does not restrict the right to bring an action merely to assessment of manifest errors or fundamental rights. In any event, it seems that the Apeliacinis teismas (Court of Appeal) checks for

⁹⁹ Article 591 of the [code de procédure pénale](#) (Code of Criminal Procedure).

¹⁰⁰ See Articles 592 and 593 of the [code de procédure pénale](#) (Code of Criminal Procedure), listing cases where cassation proceedings may be instituted.

¹⁰¹ Judgment of the Cour de cassation (Court of Cassation) of 24 August 2012, [No 12-85.244](#), gives as an example of cassation breach of the law in the matter of multiple European arrest warrants. In that judgment the Criminal Chamber of the Cour de cassation (Court of Cassation) criticised the judgment of the investigating chamber for infringing the first paragraph of Article 695-42 of the [code de procédure pénale](#) (Code of Criminal Procedure) in that it had made surrender of the requested person as a priority to the Italian authorities subject to the condition that that person would be surrendered to the German authorities once his presence on Italian soil was no longer necessary. That court held that the investigating chamber had added a condition to the surrender to a Member State as a priority that was not provided for in the first paragraph of Article 695-42 of the [Code of Criminal Procedure](#). Such a solution could also be applied in the event of conflict between a European arrest warrant and an extradition request (infringement of the second paragraph of Article 695-42 of the [code de procédure pénale](#) (Code of Criminal Procedure)).

¹⁰² Article 695-42, second paragraph, of the Code of Criminal Procedure (see footnote **Error! Bookmark not defined.**).

the presence of the grounds, laid down in the Criminal Code ¹⁰³ and Articles 3 and 4 of Framework Decision 2002/584, on which a person cannot be extradited or surrendered on the basis of a European arrest warrant.

70. In **Portugal**, the decision delivered by the Supremo Tribunal de Justiça (Supreme Court) following an action may relate to the entire content of the decision of the Tribunal da Relação (Court of Appeal) being challenged. ¹⁰⁴
71. In **Romania**, irrespective of whether precedence is given to the European arrest warrant or the extradition request, the grounds that may justify an action being brought are not limited to unlawful activity but may also be related to the unfounded nature of the decision, including the assessment of the criteria that have led the curtea de apel (appeal court) to give precedence to the arrest warrant or the extradition request. ¹⁰⁵

CONCLUSION

72. In fifteen of the twenty-seven Member States of the Union, namely, **Germany, Austria, Cyprus, Croatia, Denmark, Finland, Hungary, Latvia, Luxembourg, Malta, the Netherlands, Poland, Slovakia, Sweden** and the **Czech Republic**, it has not been possible to identify a right to bring an action against the competent authority's decision on the question of precedence where a Member State receives concurrently a request to enforce a European arrest warrant and an extradition request from a third country.
73. In the twelve other Member States (**Belgium, Bulgaria, Spain, Estonia, France, Greece, Ireland, Italy, Lithuania, Portugal, Romania** and **Slovenia**), however, there is the possibility of bringing such an action.

¹⁰³ Articles 9 and 9-1 of the [Baudžiamasis kodeksas](#) (Criminal Code).

¹⁰⁴ Article 402 of the [Código de Processo Penal, Decreto-Lei n.º 78/87](#) (Code of Criminal Procedure, Decree-Law 78/87).

¹⁰⁵ These are the criteria listed in a provision transposing Article 16 of Framework Decision 2002/584.

74. The comparative study of the legislative provisions and case-law to be found within those twelve legal systems has shown, in the first place, that the right to bring an action rests on different legal bases.
75. In most of these Member States there is neither legislation expressly providing for the action to be brought against a decision on precedence nor case-law directly confirming the existence of such an action. However, it seems possible to infer the right to bring such an action, and its scope, from the case-law relating to the decision to enforce extradition or the European arrest warrant and/or from the general regimes for actions applicable in administrative or criminal disputes.
76. Only **Slovenian** legislation expressly provides a special system of action against a decision on precedence, the Vrhovno sodišče (Supreme Court) having provided clarification on the scope of such review. In the other Member States, only a **Greek** court, namely the Symvouliou tis Epikrateias (Council of State), has ruled directly on the decision on precedence, by extending to the latter the application of the general rules relating to administrative actions.
77. In the second place, it has been found that the system which applies in respect of an action against a decision on precedence is determined by the branch of (executive or judiciary) power that has been granted the competence to take the decision on precedence and the decision on enforcement of extradition.
78. Thus, in Member States where both those decisions are taken by an executive body, namely **Belgium, Spain, Estonia, Greece** and **Ireland**, an action against a decision on precedence is brought before an administrative court and, as logic requires, according to the rules of administrative law.
79. Next, in Member States where the decision on precedence is taken by a court, while the extradition decision is taken by the executive, namely in **Bulgaria, Italy** and **Slovenia**, an action against a decision on precedence may be brought before a criminal court in accordance with the rules of criminal law disputes.
80. Lastly, in Member States where the decision on enforcement of extradition is taken by a court, namely in **France, Lithuania, Portugal** and **Romania**, that court decides in a single decision on precedence and on enforcement either of extradition or of the European arrest warrant.

An action against such a decision, lodged before a criminal court, is therefore brought, as the case may be, in accordance with the procedural rules laid down either for an extradition decision or for a decision on the European arrest warrant.

81. In the third place, the present comparative study shows that in **France** and **Romania**, the existence of a right to bring an action is dependent on the consent of the person concerned to his or her surrender and/or extradition. More specifically, **French** law makes no provision for an action in a case where the person concerned consents to his or her surrender on the basis of the European arrest warrant or his or her extradition, whereas in **Romanian** law, that absence of an action is limited to a case where the person concerned consents to his or her surrender on the basis of a European arrest warrant.
82. In the final place, as regards the scope of an action against a decision on precedence seems, with certain exceptions, to be dependent on the authority that is competent to take the decision on precedence. Thus, in Member States where that decision is taken by the executive (**Belgium, Spain, Estonia, Greece** and **Ireland**), in view of the executive's broad discretion, review carried out by an administrative court seems to be very limited and to be restricted to review of the lawfulness of the decision. In **Spain, Estonia** and **Greece**, however, this review also extends to errors of assessment, and in **Greece** also to respect of fundamental rights.
83. By contrast, in Member States where the decision on precedence is taken by the judiciary (**Bulgaria, France, Italy, Lithuania, Portugal, Romania** and **Slovenia**), a review by the criminal court seems to be broader and, in the majority of those Member States, is not limited solely to assessment of manifest errors or fundamental rights. In **Italy**, however, such review is limited to breach of the law and, in **France**, to breach of the law and/or manifest errors of fact.

[...]