Good afternoon everybody and thank you to the Committee of Ministers for organising this important meeting on the execution of judgments, as well as for inviting me to share a national good practice in this field.

But first let me, in these very dark times for Europe, join the former words of the chair of the CDDH Kristine Lice and of the lithuanian agent, and reaffirm on behalf of Spain its full compromise with Human Rights and with the letter and the spirit of the Convention.

A GOOD NATIONAL PRACTICE: SAQUETTI IGLESIAS v. SPAIN

It is a complicated case to summarize in 10 minutes, as **raising structural legislative Human Rights issues, and entailing complex execution measure**s, but practically solved in 1 year and a half, although we are still waiting for a formal clousure of the case.

I will try to be both quick and clear, if that is possible:

The case:

During a rutinary customs" check 150.000 € were found hidden in the applicant's suitcase. This money was retained by the custom police and the Spanish Ministry of Economy after imposed a penalty to the applicant of the total amount initially seized. The applicant´s appeal against the fine was rejected by the national courts and his subsequent cassation appeal before the Supreme Court was inadmitted, as the quantity of the fine was under the legal minimum (summa gravimis) of 600.000 euros due to the legislation in force at that time.

Brought the case to the Court, it found that:

A- The administrative penalty imposed was of a **criminal nature** within the meaning **of Article 6 of the ECHR and Article 2 of Protocol 7, taking into account the ~~Engel criteria:~~**

1 The criterion of internal lawfulness: public or administrative qualification

2 Nature of the infringement: it is a matter of classification: whether its purpose is to safeguard the general interests of society or, on the contrary, whether it falls within the scope of protection of certain sectoral interests.

3- The seriousness of the sanction

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B – Those penalties of criminal nature had to **enjoy the same procedural guarantees. So, t**he national regulation preventing an appeal entailed a violation of art. 2 of Protocol 7 **by preventing access to a second instance.**

WHAT DID WE DO?

1.- Analysis of the scope of the findings of the Court and its impact on our national legislation.

2.-Evaluation of possible solutions at hand:

- Legal change: problem: enormous difficulty to define which penalties could be appealed and which not; & ALSO RISK OF possible collapse of first instance contentious-administrative courts and an undue extension of the proceedings which could end in a different violation: excessive duration of procedures.

- Try to provoke a change in the interpretation of the procedural laws by the higher court. This seemed very difficult but AS IT IMPLIED HAVING to set aside national legislation BUT NOT impossible. THIS FACED AN INITIAL DIFFICULTY: THE INDEPENDENCE OF THE JUDICIARY.

This `*hole of possibility*´ made us move on.

3.- We started a **dialogue with the Committee of Ministers** through its execution department: We shar**ed this possible solution** with tem and had their initial confirmation that we could follow this path. We therefore sent an ACTION PLAN describing this possibility, which at that moment, was merely hypothetical.

4.- We then started to move pieces on the national check board:

a- we spoke with the Supreme Court in order to highlight not only the importance of the ruling, but also **the important role that the Supreme Court could play**, reminding them the doctrine of the "**Conventionality control"** by which a domestic court can **set aside domestic legislation** if, in the instant case, its application can lead to a violation as found by the Court**.**

b- we spoke with State attorneys, **the Government lawyers who defend at courts administrative fines, and** which by nature systematically oppose to the appeals against them by individuals**.**

This was probably the most difficult part: explain why it was necessary to accept the admission of the cassation appeals, because this admission was in the core of the violation found by the Court. Of course this did not mean that

they could and should oppose after, once the appeal was admitted of the fine, because this was just a procedural problem.

c- warned the Bodies with competence to impose big penalties **(**Competence Board, Stock Exchange supervisor, etc), trying to reinforce the importance of the proportionality assessment as thy would face a double check by the Supreme court, if our initiative was finally accepted**.**

WHAT DID THE NATIONAL AUTHORITIES DO?

I

INDIVIDUAL MEASURES

Revision appeal : Since 2015, Spanish law allows the applicant to ask for the reopening of the proceedings in order to quash the national final judgment, and permit a review of the case by the first instance court.

The **applicant´s lawyer made a mistake when lodging this revision appeal**: instead of asking the Supreme Court to quash of the final judgment, granting him an appeal, asked the Supreme Court to directly act as a court of second instance and consider directly the penalty excessive and disproportionate***. Although this petitum exceeded the scope of the revision appeal, the Supreme Court*** *took a* **practical approach** *to make p an examination of the merits of the revision appeal of Mr. Saquetti ossible*

As agents we spoke with the State attorneys who normally oppose to these revision appeals, explaining the importance to be flexible and make the Supreme Court understand the importance of the case in order to grant ex officio a repair to the applicant

The Supreme Court concluded **that:**

- it could be implicitly inferred that the applicant was, at least on a subsidiary basis, seeking the reinstatement of the proceedings

- more important even: **set aside the domestic legislation, as its application could be contrary to an international Treaty** solely for the purposes of re-notifying that judgment to the appellant with the express indication that a cassation appeal may be brought against it.

II

GENERAL MEASURES

After the ECtHR Judgement on the *Saquetti* case**, the Supreme Court, changing its former practice decided to admit different cassation appeals against administrative penalties (not the one of Mr Saquetti)** in order to assess if the legal regulation of the cassation appeal currently in force is in compliance with the requirements laid down by Art. 2 of Protocol 7 ECHR, as interpreted by the European Court.

1-A particular examination of the so-called *Engel* criteria;

2-A detailed assessing of the Judgement in*Saquetti Iglesias v Spain* case:

3- appreciated *the* difficulty in establishing a general regulation on administrative penalties*, in which the legislator must distinguish between offences that, despite their legal nature, must be considered criminal*.

- **lex ferenda solution: this debate would be easily resolved if a general right of appeal rule could be established in our procedural laws.**

- this difficulty cannot be used to exclude the **lex data** debate and reminded that .**Protocol No. 15 to the Convention** inserted into the preamble of the Convention the following: "**the High Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto, and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the European Court of Human Rights established by this Convention**""

5-The Supreme Court considered itself responsible to give a solution before the legislative powers.

6- Precised that a review by a higher court does not necessarily mean that it must address questions of fact and law. It can address only legal issues.

CONCLUSION:

1-The current regulation of the cassation appeals and the procedural requirements of admissibility to access to the cassation, **fulfils the requirements set down by the ECtHR case-law for a review of a penalty or conviction by a higher Tribunal.**

2-So, **in cases similar to the one assessed by the Saquetti Judgement, individuals have under the existing contentious-administrative appeals system the possibility to have their case reviewed by a second degree of jurisdiction.**

- **Translation:** we asked the Supreme Court to translate one of its 3 judgments.

III

CONCLUSION

The Agent or person responsible of following the execution at national level and reporting to the Committee of Ministers should have:

1. **initiative**
2. **authority to acquire relevant information** a
3. be able to **promote measures to accelerate the execution process**
4. **sufficient means: the office of the Agent**

A Resolution from the Committee of Ministers encouraging States parties to create an Execution Department with enough status and means would be a big step to enforce the execution of judgments and therefore the whole conventional system.