

Molina Theissen v. Guatemala

ABSTRACT¹

This case is about the persecution of the Molina Theissen family, who opposed the Guatemalan Government in the late 1970s and early 1980s, and the arbitrary arrest and disappearance of fifteen-year-old Marco Molina Theissen. The State fully acknowledged responsibility for the facts before the Inter-American Commission on Human Rights.

I. FACTS

A. Chronology of Events

1955 - 1960: Mr. Carlos Augusto Molina Palma is detained, physically abused and exiled from Guatemala for opposing the State's military regime installed in 1954.²

November 30, 1966: Mr. Marco Antonio Molina Theissen is born to Mr. Carlos Augusto Molina Palma and Ms. Emma Theissen Álvarez de Molina.³ The Molina Theissen family is comprised of Mr. Marco Antonio Molina Theissen's parents and his three sisters: Ms. Emma Guadalupe Molina Theissen, Ms. María Eugenia Molina Theissen, and Ms. Ana Lucrecia Molina Theissen.⁴

The Molina Theissen family and their next of kin are members of the administrative, academic, political and social arenas of the University of San Carlos (*Universidad de San Carlos*, "USC").⁵ The family takes part in activities in opposition to the State's established order; State security forces identify the family as political opponents.⁶

1. Leona Lam, Author; Elise Cossart-Daly, Grace Kim, and Sascha Meisel, Editors; Sarah Frost, Chief Articles Editor; Cesare Romano, Faculty Advisor.

2. *Molina Theissen v. Guatemala*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 106, ¶¶ 40(7)-(8) (May 4, 2004).

3. *Id.* ¶¶ 40(7)-(8).

4. *Id.* ¶ 40(8).

5. *Id.* ¶ 40(9).

6. *Id.*

Ms. Emma Guadalupe Molina Theissen is a member of the Communist Youth (*Juventud Patriótica del Trabajo*, "JPT"), which is attached to the Guatemalan Labor Party (*Partido Guatemalteco del Trabajo*, "PGT").⁷ Ms. María Eugenia Molina Theissen is part of the administrative personnel of the Universidad de San Carlos and is married to Mr. Héctor Hugo Alvarado Chug, a former high school leader who also studies at the university and who works as a professor in the university's school for studies on trade unions.⁸ Ms. Ana Lucrecia Molina Theissen is a high school leader who joins trade union organizations and who is a member of the governing council of the National Teacher's Front (*Frente Nacional Magisterial*, "FNM"), an organization she represents on the National Trade Union Unity Committee (*Comité Nacional de Unidad Sindical*, "CNUS").⁹

March 19, 1976: Ms. Emma Guadalupe Molina Theissen, one of the victim's sisters, and her companion, Mr. Julio César del Valle Cobar, are detained while conducting a census of one of the urban settlements established after the February 4, 1976 earthquake.¹⁰ Ms. Molina Theissen and Mr. Del Valle Cobar are accused of "subversion."¹¹ They are subsequently acquitted, but while Ms. Molina Theissen is detained by her captors, she is raped and tortured for several days.¹²

March 22, 1980: Mr. Del Valle Cobar is found tortured and shot in his car.¹³ According to reports, the State's paramilitary forces are responsible for this act.¹⁴ After learning of her companion's assassination, Ms. Emma Guadalupe Molina Theissen flees from Guatemala City and goes into hiding.¹⁵

September 27, 1981: Ms. Emma Guadalupe Molina Theissen is found and detained by members of the armed forces, and kept in illegal and

7. *Id.* ¶ 40(9)(iv).

8. *Id.* ¶ 40(9)(iii).

9. *Id.* ¶ 40(9)(ii).

10. *Id.* ¶ 40(9)(iv). Mr. Julio César del Valle Cobar was a leader of the FRENTE student party at the Universidad de San Carlos, in Guatemala City.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* It is unclear from the merits who created reports attributing fault to State paramilitary forces.

15. *Id.*

clandestine custody for nine days in the installations of the Manuel Lisandro Barillas Military Barracks in Quetzaltenango.¹⁶ During her detention, she is prevented from communicating with others, blindfolded, handcuffed to the leg of a bunk bed, constantly and violently interrogated, tortured, beaten, electrically shocked, raped by members of the army, and psychologically tortured.¹⁷ She loses a significant amount of weight, as she does not receive food or water for nine days.¹⁸

October 5, 1981: Ms. Emma Guadalupe Molina Theissen escapes from the Military Barracks by slipping off the handcuffs and escaping through the window.¹⁹

October 6, 1981: Two individuals armed with automatic weapons enter the Molina Theissen family home in Guatemala City around 1:30 p.m., while a third person remains on watch outside the residence.²⁰ Ms. Álvarez de Molina is struck and locked in one of the rooms in her house.²¹ Mr. Marco Antonio Molina Theissen, who is fourteen years old, is shackled, tied to the arm of a chair, and gagged with a piece of masking tape.²² After searching the home, the armed individuals throw Mr. Marco Antonio Molina Theissen into a nylon sack and into the back of a green truck.²³ Ms. Álvarez de Molina is able to get out of the house and runs after the vehicle but is unable to stop the individuals.²⁴ This is the last time Ms. Álvarez de Molina sees her son.²⁵

According to the investigations carried out by the victim's parents at the General Directorate of Internal Revenue and the General Directorate of the National Police, the vehicle belongs to the State army.²⁶ Presumably, the army kidnapped Mr. Marco Antonio Molina Theissen to punish a family for opposing the State government and as a

16. *Id.* ¶ 40(9)(iv).

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* ¶ 40(10). *See also* Molina Theissen v. Guatemala, Admissibility Report, Report No. 79/01, Inter-Am. Comm'n H.R., Case No. 12.101, ¶ 12 (Oct. 10, 2001) (noting the time of entry and that all three men entered the home).

21. Molina Theissen v. Guatemala, Merits, ¶ 40(10).

22. *Id.* ¶¶ 40(7), 40(11).

23. *Id.* ¶ 40(11).

24. *Id.*

25. *Id.*

26. Molina Theissen v. Guatemala, Admissibility Report, ¶ 12.

reprisal for the escape of his sister, Ms. Emma Guadalupe Molina Theissen.²⁷

Mr. Marco Antonio Molina Theissen's parents file writs of habeas corpus of behalf of their son.²⁸ Mr. Carlos Augusto Molina Palma, Marco Antonio's father, stops working in his job as a public accountant to focus on finding his son.²⁹

January 16, 1982: Ms. Emma Guadalupe Molina Theissen moves permanently to Mexico in order to protect herself and her family.³⁰ Her parents do not inform her immediately of what has happened to her brother, Mr. Marco Antonio Molina Theissen, for fear that she will give herself up to the army to get him back.³¹

June 1982: Ms. Álvarez de Molina resigns from her job as a schoolteacher, where she has worked for twenty-three years.³²

August 1982: Ms. Ana Lucrecia Molina Theissen quits her job as a teacher at the Escuela Nacional Rural Mixta of the village of Lo de Carranza in San Juan Sacatepéquez, drops out of her undergraduate program in History, and resigns her post as an assistant to the Philosophy Chair at the University of San Carlos.³³

Ms. María Eugenia Molina Theissen also quits her job as an employee of the University of San Carlos.³⁴

February 27, 1984: Mr. Héctor Hugo Alvarado Chuga (Ms. María Eugenia Molina Theissen's husband) is assassinated.³⁵

March 23, 1984: After Mr. Alvarado Chuga's assassination, Ms. María Eugenia Molina Theissen requests asylum from the Ecuadorian Embassy for herself, her two daughters, and her parents out of fear for

27. Molina Theissen v. Guatemala, Merits, ¶ 40(12).

28. *Id.* ¶ 40(15).

29. Molina Theissen v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶ 37(4) (July 3, 2004).

30. Molina Theissen v. Guatemala, Merits, ¶ 40(13)(i).

31. *Id.* ¶ 40(13)(i).

32. Molina Theissen v. Guatemala, Reparations, and Costs, ¶ 37(3).

33. *Id.* ¶ 37(5).

34. *Id.*

35. Molina Theissen v. Guatemala, Merits, ¶ 40(13)(ii).

her and her family's safety.³⁶

March 31, 1984: Ms. María Eugenia Molina Theissen, her two daughters, and her parents arrive in Ecuador as refugees.³⁷

November 26, 1984: Ms. Ana Lucrecia Molina Theissen and her eleven-month old son leave the State for Mexico.³⁸

July 1985: After her daughter is born in Mexico, Ms. Emma Guadalupe Molina Theissen and her daughter move to Costa Rica.³⁹ Subsequently, Ms. Ana Lucrecia Molina Theissen and her son also arrive in Costa Rica.⁴⁰

November 1986: Mr. Carlos Augusto Molina Palma and Ms. Emma Theissen Álvarez de Molina arrive in Costa Rica and are reunited with two of their daughters.⁴¹

November 1990: Ms. María Eugenia Molina Theissen and her daughters arrive in Costa Rica, and are reunited with her parents and sisters.⁴²

September 23, 1994: Mr. Carlos Augusto Molina Palma dies.⁴³

July 9, 1997: Mr. Marco Antonio Molina Theissen's next of kin, with the assistance of the Mutual Support Group (*Grupo de Apoyo Mutuo*, "GAM") files another writ of habeas corpus before the State's Supreme Court of Justice but receives no reply.⁴⁴

August 11, 1997: Mr. Marco Antonio Molina Theissen's next of kin file

36. *Id.*

37. *Id.*

38. *Id.* ¶ 40(13)(iii); *but see* *Molina Theissen v. Guatemala, Reparations, and Costs*, ¶ 37(8)(iii) (stating that this occurred on March 26, 1984).

39. *Molina Theissen v. Guatemala, Merits*, ¶ 40(13)(iv).

40. *Id.*

41. *Id.*

42. *Id.*

43. *Molina Theissen v. Guatemala, Reparations, and Costs*, ¶ 37(4).

44. *Molina Theissen v. Guatemala, Merits*, ¶ 40(15); *see also* *Molina-Theissen v. Guatemala, Admissibility Report*, Report No. 79/01, Inter-Am. Comm'n H.R., Case No. 12.101, ¶ 14 (Oct. 10, 2001) (noting that the second writ of habeas corpus was filed on June 23, 1997).

yet another writ of habeas corpus before the Supreme Court.⁴⁵ That day, the Second Trial Court of the Municipality of Mixto orders the Ministry of National Defense and the Ministry of the Interior to inform it as to whether or not they had received or knew of any order of detention or investigation against Mr. Marco Antonio Molina Theissen and whether they had arrested him.⁴⁶

August 13, 1997: The Ministries inform the Second Trial Court that they had not received any such order of detention and were not aware that any investigation had been initiated into the reported facts.⁴⁷

August 15, 1997: The Second Trial Court of the Municipality of Mixto rejects the writ of habeas corpus by the victim's parents.⁴⁸

January 20, 1998: GAM initiates a special investigation procedure before the Supreme Court of Justice on behalf of Mr. Marco Antonio Molina Theissen.⁴⁹

February 5, 1998: The second special investigation procedure is initiated by the Molina Theissen family but yields no result.⁵⁰

April 1, 1998: GAM submits an amendment to the special investigation procedure before the Criminal Chamber of the Supreme Court of Justice, instructing the Ombudsman to initiate an investigation into the disappearance of Mr. Marco Antonio Molina Theissen.⁵¹

To date, Mr. Marco Antonio Molina Theissen is still missing.⁵²

B. Other Relevant Facts

Between 1979 and 1983, as internal conflict in the State heightens, children are subject to many human rights violations, including forced

45. *Molina Theissen v. Guatemala*, Merits, ¶ 40(15); *see also* *Molina Theissen v. Guatemala*, Admissibility Report, ¶ 14 (noting that the last writ of habeas corpus was filed on "August 12").

46. *Molina Theissen v. Guatemala*, Merits, ¶ 40(15).

47. *Id.* ¶ 40(15).

48. *Id.*

49. *Id.* ¶ 40(16).

50. *Molina Theissen v. Guatemala*, Admissibility Report, ¶ 14.

51. *Molina Theissen v. Guatemala*, Merits, ¶ 40(16).

52. *Id.* ¶ 40(19).

disappearances, arbitrary executions, torture, abduction, and rape.⁵³ The State carries out forced disappearance of persons during this period as a method of dismantling organizations the State identifies as enemies and to generally instill fear in the population.⁵⁴ Threats and torture are used as ways of instilling fear in victims' families.⁵⁵

Mr. Marco Antonio Molina Theissen is in his third year of secondary school at Colegio Guatemalteco-Israelí when he is abducted; he hopes to complete his high school certificate and continue onto university.⁵⁶ Mr. Marco Antonio Molina Theissen's parents take various measures to locate their son: visiting military posts, going to hospitals, and contacting senior members of the police, government and international human rights organizations.⁵⁷ Mr. Carlos Augusto Molina Palma and Ms. Emma Theissen Álvarez de Molina attempt to negotiate his liberty with several individuals, who ask them to purchase their son's freedom or to even exchange father for son.⁵⁸ Though the family accepts the terms and conditions of these negotiations, the individuals who engage in these negotiations with the family never truly assist them.⁵⁹

As of the date of Judgment, more than twenty-two years after the facts of the instant case, the whereabouts of Mr. Molina Theissen are unknown, and those responsible for his disappearance are not identified, tried, or punished.⁶⁰

II. PROCEDURAL HISTORY

A. *Before the Commission*

September 8, 1998: The Center for Justice and International Law ("CEJIL") and GAM submit a petition to the Inter-American Commission on Human Rights on behalf of Mr. Marco Antonio Molina Theissen and his next of kin, based on his forced disappearance,

53. *Id.* ¶ 40(6).

54. *Molina Theissen v. Guatemala*, Merits, ¶ 40(1).

55. *Id.* ¶ 40(6).

56. *Id.*

57. *Molina-Theissen v. Guatemala*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 106, ¶ 40(14) (May 4, 2004).

58. *Id.*

59. *Id.*

60. *Molina-Theissen v. Guatemala*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶¶ 37(2), 79 (July 3, 2004).

allegedly carried out by the State's Army.⁶¹

April 5, 1999: In the meantime, Ms. María de la Cruz Ortiz, a prosecution agent with the Public Prosecution Service, reports to the State Supreme Court on steps taken as part of the special investigation procedure, and concludes that they are unable to establish Mr. Marco Antonio Molina Theissen's whereabouts.⁶²

September 25, 1999: Mr. Julio Arango Escobar, former Ombudsman, presents a report regarding Mr. Marco Antonio Molina Theissen's disappearance, based on his investigation of the license plate number noted by the victim's mother and statements taken from those related to and knowledgeable about the incident.⁶³ Mr. Arango Escobar's report includes names and addresses of National Intelligence Service directors, the head of Security of Congress at the time of the facts, as well as persons who attempted to negotiate Mr. Molina Theissen's liberty with his parents.⁶⁴

August 9, 2000: The State's President, Mr. Alfonso Portillo, acknowledges the State's international responsibility in the case of Mr. Marco Antonio Molina Theissen amidst ongoing friendly settlement procedures for several cases being processed before the Commission.⁶⁵

October 13, 2000: Petitioners sign a document setting the foundations for a friendly settlement agreement with the State.⁶⁶

April 30, 2001: Petitioners inform the Commission of their intention to withdraw from friendly settlement procedures with the State because of the State's failure to comply with the agreement.⁶⁷

October 10, 2001: The Commission adopts Report on Admissibility No. 79/01, concluding that it is competent to examine the petition, and

61. Molina Theissen v. Guatemala, Merits, ¶ 5.

62. Molina-Theissen v. Guatemala, Admissibility Report, Report No. 79/01, Inter-Am. Comm'n H.R., Case No. 12.101, ¶ 17 (Oct. 10, 2001).

63. Molina Theissen v. Guatemala, Merits, ¶ 17.

64. *Id.*

65. *Id.* ¶ 7.

66. Molina-Theissen v. Guatemala, Admissibility Report, ¶ 10.

67. *Id.*

finding the petition admissible under Convention procedures.⁶⁸

The Admissibility Report summarizes petitioners' claims regarding the events of October 6, 1981, the writs that have been filed by the alleged victim's family since that day, and describes the basis for Convention violations alleged by petitioners.⁶⁹ Petitioners claim that even if they have not yet exhausted domestic remedies, they may submit a petition to the Commission because of the State's ineffective investigative procedures and its lack of response to their writs of habeas corpus.⁷⁰

The Admissibility Report describes the State's investigative steps taken thus far in response to petitioners' claims.⁷¹ However, aside from the report of February 5, 1998, the State fails to provide the Commission with information on any investigations lodged with the State Supreme Court, and fails to report on the results of the five habeas corpus remedies filed on Mr. Molina Theissen's behalf.⁷² The State neither refutes that habeas corpus writs were lodged on behalf of Mr. Molina Theissen nor argues that petitioners have yet to exhaust domestic remedies.⁷³

The Commission finds the petition to be admissible on grounds on lack of timely objection by the State.⁷⁴ The Commission explains, "in order to validly oppose the admissibility of the petition, the State should have expressly and in a timely manner invoked the rule that domestic remedies should be exhausted."⁷⁵ Since the State did not raise any objection in its communications sent to the Commission, the Commission finds that the State tacitly waived its right to object going forward.⁷⁶

The Commission also finds that the petition was lodged within a reasonable period of time given efforts made by petitioner, the continuous nature of the alleged violations, and the failure of remedies pursued under domestic jurisdiction.⁷⁷ Furthermore, the Commission finds nothing in the case indicates that proceedings before the

68. *Id.* ¶¶ 9, 36.

69. *Id.* ¶¶ 12-15.

70. *Id.* ¶ 14.

71. *Id.* ¶¶ 16-18.

72. *Id.* ¶ 19.

73. *Id.*

74. *Id.* ¶ 27.

75. *Id.*

76. *Id.*

77. *Id.* ¶ 33.

Commission would duplicate domestic proceedings, and that the facts indicate there to be violations of rights guaranteed by the Convention.⁷⁸ For the aforementioned reasons, the Commission finds the petition to be admissible.⁷⁹

March 4, 2003: The Commission adopts Merits Report No. 35/03.⁸⁰ In this report, the Commission recommends the State conduct an effective investigation in order to prosecute and punish the instigators and perpetrators of the forced disappearance of Mr. Marco Antonio Molina Theissen.⁸¹ The Commission further encourages the State to take measures necessary to locate the remains of Mr. Molina Theissen, return them to his family, and to adopt measures to provide his family with adequate and prompt reparations.⁸² Lastly, the Commission recommends that the State take steps to avoid similar acts from occurring in the future, pursuant to the obligation to ensure that the fundamental rights recognized in the American Convention are respected.⁸³

B. Before the Court

July 4, 2003: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁸⁴

1. Violations Alleged by Commission⁸⁵

Article 4 (Right to Life)
Article 5 (Right to Humane Treatment)
Article 7 (Right to Personal Liberty)
Article 8 (Right to Fair Trial)

78. *Id.* ¶¶ 34-35.

79. *Id.* ¶ 36.

80. Molina-Theissen v. Guatemala, Report on Merits, Report No. 35/03, Inter-Am. Comm'n H.R., Case No. 12.101 (Mar. 4, 2003).

81. Molina-Theissen v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 106, ¶ 12(1) (May 4, 2004).

82. *Id.* ¶ 12(2).

83. *Id.* ¶ 12(3).

84. *Id.* ¶ 2.

85. *Id.* The October 10, 2001 Admissibility Report states that petitioners also claimed violation to the right of Juridicial Personality as protected under Article 3 of the Convention. *See* Molina Theissen v. Guatemala, Admissibility Report, Report No. 79/01, Inter-Am. Comm'n H.R., Case No. 12.101, ¶ 2 (Oct. 10, 2001).

Article 19 (Rights of the Child)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

Article I (Obligation to Adopt Measures) of the Inter-American Convention of Forced Disappearance of Persons.

2. Violations Alleged by Representatives of the Victims⁸⁶

Same Violations Alleged by Commission, plus:

Article 17 (Rights of the Family)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

September 23, 2003: The State designates Oscar Luján Fappiano as Judge *ad hoc*.⁸⁷

September 24, 2003: The Secretariat requests the Commission and the representatives submit any pertinent observations because, pursuant to the Rules of Procedure, the time limit granted to the State to appoint a Judge *ad hoc* expired on September 7, 2003.⁸⁸

November 6, 2003: The State submits preliminary objections regarding the admissibility of the petition and the lack of jurisdiction of the Court, because the violations alleged occurred at a time preceding the State's acceptance of the Court's obligatory jurisdiction, the victims do not have active legal standing, and domestic remedies are not exhausted.⁸⁹

December 3, 2003: The Secretariat informs the State, on instruction of all the members of the Court, that their designation of Oscar Luján

86. *Id.* ¶ 20. The Center for Justice and International Law ("CEJIL") served as representative of Mr. Marco Antonio Molina Theissen and his next of kin.

87. *Id.* ¶ 19.

88. *Id.* ¶¶ 17-19.

89. *Id.* ¶ 22.

Fappiano as Judge *ad hoc* is rejected because the designation statutory time limit had passed.⁹⁰

III. MERITS

A. *Composition of the Court*

Sergio García Ramírez, President
Alirio Abreu Burelli, Vice-President
Oliver H. Jackman, Judge
Antônio A. Cançado Trindade, Judge
Cecilia Medina Quiroga, Judge
Manuel E. Ventura Robles, Judge
Diego García-Sayán, Judge

Pablo Saavedra Alessandri, Secretary

B. *Decision on the Merits*

May 4, 2004: The Court issues its Judgment on the Merits.⁹¹

The Court found unanimously that the State had violated:

Articles 4(1) (Prohibition of Arbitrary Deprivation of Life), 5(1) (Right to Physical, Mental and Moral Integrity), 5(2) (Prohibition on Torture and Cruel, Inhumane, or Degrading Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 17 (Rights of the Family), 19 (Rights of the Child), and 25 (Right to Judicial Protection), in relation to Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of the Convention, to the detriment of Mr. Marco Antonio Molina Theissen;

Articles 1 (Obligation to Adopt Measures) and 2 (Definition of Forced Disappearance) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Mr. Marco Antonio Molina Theissen;

Articles 5(1) (Right to Physical, Mental and Moral Integrity), 5(2) (Prohibition on Torture and Cruel, Inhumane, or Degrading Treatment), 8 (Right to a Fair Trial), 17 (Rights of the Family), and 25 (Right to

90. *Id.* ¶ 23.

91. *Molina Theissen v. Guatemala*, Merits.

Judicial Protection), in relation to Article 1(1) (Obligation to Respect Rights) and 2 (Obligation to Give Domestic Legal Effects to Rights) of the Convention, to the detriment of Mr. Marco Antonio Molina Theissen's next of kin, Ms. Emma Theissen Álvarez Molina (mother), Mr. Carlos Augusto Molina Palma (deceased father), and Ms. Emma Guadalupe, Ms. Ana Lucrecia and Ms. María Eugenia Molina Theissen (siblings),⁹² all because:

The Court found that all the facts referred to in the Judgment with respect to the internal armed conflict, as well as the facts concerning Mr. Marco Antonio Molina Theissen and his next of kin to be established and uncontested by the State.⁹³ The State has acknowledged international responsibility for violation of all the rights embodied in these Articles as it failed to comply with its obligations established under the respective Conventions.⁹⁴

C. Dissenting and Concurring Opinions

[None]

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Obligation to Investigate the Forced Disappearance and Identify, Try, and Punish those Responsible

The State must effectively investigate the facts in the instant case to identify, try, and punish the direct perpetrators and masterminds of the forced disappearance of Mr. Marco Antonio Molina Theissen.⁹⁵ This result must be made known to the public so that the people of the State

92. *Id.* ¶¶ 43-44.

93. *Id.* ¶¶ 44-45.

94. *Id.*

95. *Molina-Theissen v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶ 82 (July 3, 2004).*

may know the truth.⁹⁶

2. Obligation to Search for the Remains of the Victim and Deliver Them to his Next of Kin

The Court deemed that the State must find and deliver the remains of Mr. Marco Antonio Molina Theissen to his next of kin so that they may bury those remains according to their customs and beliefs.⁹⁷ The State must transfer his remains to a place chosen by his next of kin, at no cost to them, and must comply with the family's wishes regarding burial.⁹⁸

3. Publication of the Pertinent Parts of the Judgment

The State must publish the "Facts Established" section in Chapter V and the operative paragraphs one to five of the Judgment on the Merits issued by the Court on May 4, 2004, and Chapter VI of the "Proven Facts" and operative paragraphs one to eight of the Judgment, which describes the facts surrounding the forced disappearance of Mr. Marco Antonio Molina Theissen in the national daily paper, *Diario Oficial*, and another national daily paper at least once.⁹⁹

4. Public Acknowledgment of International Responsibility

The Court held that the State must carry out a public act of acknowledgment of its responsibility regarding the facts in this case, as well as issue an apology to Mr. Marco Antonio Molina Theissen and his next of kin.¹⁰⁰ The Court also noted that high authorities of the State should attend the public act of acknowledgement.¹⁰¹

5. Naming of a School

The State must name an existing school in Guatemala City with a name that refers to the children who disappeared during the domestic

96. *Id.*

97. *Id.* ¶ 85.

98. *Id.*

99. *Id.* ¶ 86.

100. *Id.* ¶ 87.

101. *Id.*

armed conflict in Guatemala in order to enhance public awareness and to avoid repetition of the facts that occurred in the instant case.¹⁰² The school must also place a plaque in remembrance of Mr. Marco Antonio Molina Theissen at that school to honor the memory of the victim.¹⁰³

6. Adoption of Legislative, Administrative, and Other Measures

The Court found that the State must adopt legislative, administrative, and other measures necessary to create efficient procedures to address forced disappearance and create a presumption of death in the case of forced disappearance, for purposes of parentage, inheritance, and reparation.¹⁰⁴ The State must also adopt measures to establish a genetic information system to enable the identification of missing children, and clarify parentage.¹⁰⁵

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded \$100,000 to Mr. Marco Antonio Molina Theissen for the lost earnings that he would have received from his future occupation after obtaining his high school diploma.¹⁰⁶

The Court awarded \$1,400 given in equal part to each of Mr. Marco Antonio Molina Theissen's next of kin to compensate them for expenses incurred in attempting to find Mr. Molina Theissen.¹⁰⁷

The Court offered \$6,000 to Ms. Ana Lucrecia Molina Theissen, \$8,000 to Ms. María Eugenia Molina Theissen, and \$20,000 to Ms. Emma Guadalupe Molina Theissen for the documented expenses that they incurred for psychological treatment after the disappearance of their brother.¹⁰⁸

The Court awarded \$80,000 to be given in equal part to the parents

102. *Id.* ¶ 88.

103. *Id.*

104. *Id.* ¶ 91(a).

105. *Id.* ¶ 91(b).

106. *Id.* ¶ 56. This judgment is to be delivered to Mr. Marco Antonio Molina Theissen's next of kin.

107. *Id.* ¶ 58(1).

108. *Id.* ¶ 58(2).

of the victim, Ms. Emma Theissen Álvarez *Vda. de* Molina and Mr. Carlos Augusto Molina Palma (now deceased) for the loss of income as a consequence of the disappearance of Mr. Marco Antonio Molina Theissen.¹⁰⁹ Ms. Emma Theissen Álvarez *Vda. de* Molina was a teacher and Mr. Molina Palma was a private accountant before they gave up their jobs to find their son.¹¹⁰ Additionally, the fear and anguish caused by the forced disappearance of Mr. Marco Antonio Molina Theissen as well as the murder of their son-in-law, which forced the family to leave the State, generated additional expense and made it difficult for members of the Molina Theissen family to find jobs and receive sufficient income.¹¹¹

The Court offered \$60,000 to be distributed in equal part to Ms. Ana Lucrecia Molina Theissen, Ms. María Eugenia Molina Theissen and Ms. Emma Guadalupe Molina Theissen for the same reasons stated immediately above, as each of the victim's sisters gave up their jobs to help locate their brother.¹¹²

2. Non-Pecuniary Damages

The Court awarded \$100,000 to Mr. Marco Antonio Molina Theissen for his disappearance and suffering while detained by agents of the State on October 6, 1981.¹¹³

The Court provided \$275,000 to be distributed in equal part among the Molina Theissen family, for their deep grief, suffering, and feelings of guilt after the disappearance of their brother, as well as for the exile, altered living conditions, and forced separation of the Molina Theissen family.¹¹⁴

The Court awarded \$40,000 to be distributed in equal parts to Ms. Emma Theissen Álvarez *Vda. de* Molina, Ms. Ana Lucrecia Molina Theissen, Ms. María Eugenia Molina Theissen, and Ms. Emma Guadalupe Molina Theissen for future psychological treatment expenses.¹¹⁵

109. *Id.* ¶ 59. The amount set for the victim's father to be given to his next of kin.

110. *Id.*

111. *Id.*

112. *Id.* ¶ 60.

113. *Id.* ¶ 67. This judgment is to be delivered to his next of kin.

114. *Id.* ¶¶ 69-70. The amount set for the victim's father to be given to his next of kin.

115. *Id.* ¶¶ 71-72.

3. Costs and Expenses

The Court awarded \$7,600 (or the equivalent in the State's currency) to Ms. Emma Theissen Álvarez *Vda. de* Molina, the victim's mother, for payment to their attorney in domestic proceedings, and for CEJIL's services in the international proceeding before the Inter-American system.¹¹⁶

4. Total Compensation (including Costs and Expenses ordered):

\$698,000

C. Deadlines

The State must publish the facts and operative paragraphs of the Judgment within three months from the date of notification.¹¹⁷

The State must pay compensation directly to the victim and his next of kin as appropriate, reimburse costs and expenses incurred in domestic and international proceedings, and carry out the specific measures ordered within one year of the date of notification of the Judgment.¹¹⁸

If there are other reparations ordered, the State must carry out the measures within a reasonable period of time.¹¹⁹

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

December 20, 2004: The State advised the Court that it had delivered a total of \$698,000 to the victim's next of kin in compliance with the payment of compensation ordered by the Court for pecuniary and non-

116. *Id.* ¶¶ 93, 97.

117. *Id.* ¶ 86.

118. *Id.* ¶¶ 98-100.

119. *Id.* ¶ 98.

pecuniary damages and costs and expenses.¹²⁰ This payment was confirmed by the representatives of the beneficiaries and acknowledged by the Commission.¹²¹

August 25, 2005: The State informed the Court that it had given the name “Martyr Marco Antonio Molina Theissen” to the Mixed Rural Official School located in the Mártires del Pueblo settlement and organized an act to “unveil the commemorative plaque as a tribute to and in memory of Mr. Marco Antonio Molina Theissen.”¹²² The representatives expressed agreement with the name designation and the Commission considered that the State has complied with this element of the Judgment on reparations.¹²³ The victim’s mother and one of his sisters were present at the ceremony.¹²⁴

June 10, 2005: The State advised the Court that it had published the pertinent parts of the Judgment in the *Diario Oficial de Centro América*.¹²⁵ However, the Commission stated that the publication did not print the facts concerning Mr. Marco Antonio Molina Theissen and his next of kin as the Court ordered, and in agreement with the Commission; the Court requested that the State publish this information.¹²⁶

July 3, 2006: The State advised the Court that it had published the pertinent parts of the Judgment in the *El Periódico*, the State’s national newspaper.¹²⁷ However, like the publication in *Diario Oficial de Centro América*, the Commission noted that the publication did not include the facts concerning Mr. Marco Antonio Molina Theissen and his next of kin as ordered by the Court; and in agreement, the Court requested that the State publish this information.¹²⁸

November 30, 2006: A public act of acknowledgment for the

120. *Molina-Theissen v. Guatemala, Monitoring Compliance with Judgment, Order of the Court*, Inter-Am. Ct. H.R. ¶ 5 (July 10, 2007).

121. *Id.* ¶¶ 6-7.

122. *Id.* ¶ 8.

123. *Id.* ¶¶ 9-10.

124. *Id.* ¶ 8.

125. *Id.* ¶ 11.

126. *Id.* ¶¶ 13-14.

127. *Id.* ¶ 11.

128. *Id.* ¶¶ 13-14.

international responsibility of the forced disappearance of Mr. Marco Antonio Molina Theissen occurred on this date, which is also the anniversary of Mr. Molina Theissen's birth.¹²⁹ The State indicated that the State's President, the President of the Presidential Human Rights Commission, and the family of Mr. Molina Theissen were present during the act.¹³⁰ Both the representatives of the victim's next of kin and the Commission acknowledged compliance with this obligation.¹³¹

July 10, 2007: The Court issued an Order and kept open the proceeding for monitoring compliance with regard to delivering the remains of Mr. Marco Antonio Molina Theissen to his next of kin, investigating the facts of his case, publishing the facts of the Judgment, establishing prompt procedures to obtain a declaration of absence and presumption of death due to forced disappearance, and adopting legislative, administrative or other measures to establish a State genetic information system.¹³²

February 25, 2008: The State published the Judgment again in the *Diario de Centroamérica*, this time including the previously missing paragraphs of the Judgment, stipulating the facts regarding what happened to Mr. Marco Molina Theissen and his next of kin.¹³³ Though the State had yet to publish the Judgment in a newspaper with wider circulation, representatives of the Molina Theissen family communicated that the family is satisfied with the *Diario Oficial* publication and does not find it necessary to publish this information again.¹³⁴ The family instead requested that the money that is saved from another publication be used to provide monetary reparation to other families in need.¹³⁵ The Commission "took note" of these statements.¹³⁶ The Tribunal found that the State had fully complied with this obligation.¹³⁷

129. *Id.* ¶ 15.

130. *Id.*

131. *Id.* ¶¶ 16-17.

132. *Id.*

133. *Molina-Theissen v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. ¶ 35 (Nov. 16, 2009).*

134. *Id.* ¶¶ 35-36.

135. *Id.* ¶ 36.

136. *Id.* ¶ 37.

137. *Id.* ¶ 38.

April 2009: The State reported that it signed a renewable four-year agreement with the Forensic Anthropology Foundation of Guatemala (*Fundación de Antropología Forense de Guatemala*) in attempt to comply with the obligation to “adopt legislative, administrative, or other measures necessary to establish a genetic information system.”¹³⁸ The Court found that though this is a relevant aspect to achieve the goal with respect to this measure of reparation, it is only a temporary and a restrictive solution that fails to fulfill the international obligation of the State.¹³⁹ As such, the Court requested that the State report on the efforts made and the steps taken to create a genetic information system that would be run by the State and that would be fully available to justice operators and victims within four months of the Order of July 10, 2007.¹⁴⁰

August 17, 2009: The Court issued another Order for Monitoring Compliance with Judgment.¹⁴¹ In the Order, the Court noted that the State had complied with most of its obligations, but that it would keep open the procedure for monitoring compliance regarding the State’s obligation to: locate and deliver the remains of Mr. Molina Theissen to his relatives; investigate the facts of the case in order to identify, prosecute, and punish the perpetrators of the forced disappearance; establish an efficient procedure to obtain declaration of absence and presumption of death due to forced disappearance; and adopt legislative, administrative, or other measures necessary to establish a genetic information system.¹⁴²

With respect to the obligation to locate and deliver the remains of Mr. Molina Theissen, the State reported that it is awaiting Congress’ approval of the “National Search Commission for Victims of Enforced Disappearance Act.”¹⁴³ The Court found that the State has not pointed to any action or measure demonstrating progress as to this obligation and requested that the State to detail its efforts made.¹⁴⁴

Regarding the obligation to investigate facts of the case, the State reported that it has continued its search for information, formulated a

138. *Id.* ¶ 47.

139. *Id.* ¶¶ 50-51.

140. *Id.*

141. *Molina-Theissen v. Guatemala, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. (Aug. 17, 2009).*

142. *Id.* ¶¶ 9-22.

143. *Id.* “Whereas” ¶ 5.

144. *Id.* ¶ 8.

survey and research strategy, and followed up on the writs of habeas corpus filed on behalf of Mr. Molina Theissen.¹⁴⁵ However, the Court found the information submitted by the State to be insufficient and requested that the State detail information on the steps taken to investigate the facts of the case as soon as possible.¹⁴⁶

According to information provided by the State, it has also yet to comply with its obligation to create a prompt procedure for declaration of presumption of death and disappearance.¹⁴⁷ The State claimed that fulfillment of the obligation is conditioned on the cooperation of the National Search Committee.¹⁴⁸ The Court noted that the State has not demonstrated how this law will facilitate compliance with the orders of the Court, and requested that the State submit further information.¹⁴⁹

Lastly, regarding the obligation to adopt legislative, administrative and any other measures necessary to create a system of genetic information, the State reported that the Institute of Forensic Sciences of Guatemala has created a system for the collection and storage of genetic information samples.¹⁵⁰ However, the Court found that the State has failed to demonstrate real progress in the creation of the information system, and therefore, the State must further submit a report detailing the actions performed or to be performed to comply with this point.¹⁵¹

November 16, 2009: The Court issued another Order for Monitoring Compliance, and noted that the State has yet to promptly and fully comply with its obligations to locate the remains of Mr. Marco Antonio Molina Theissen or to investigate the facts of the case.¹⁵² The Court requested that the State submit a schedule listing all steps to be taken to address the problem within a defined deadline.¹⁵³

The Court further found it essential for the State to incorporate the case of Molina Theissen into the studies and actions carried out by the National Follow-Up and Support Commission for the Strengthening of Justice (*Comisión Nacional para el Seguimiento y Apoyo al*

145. *Id.* ¶ 9.

146. *Id.* ¶¶ 12-13.

147. *Id.* ¶ 14.

148. *Id.* ¶ 17.

149. *Id.*

150. *Id.* ¶ 18.

151. *Id.* ¶ 21.

152. *Molina-Theissen v. Guatemala*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. ¶ 7 (Nov. 16, 2009).

153. *Id.* ¶ 25.

Fortalecimiento de la Justicia, “CNSAFJ”) in order to better coordinate its schedule for moving the investigation of the facts of the instant case; to identify, try, and punish the perpetrators and masterminds behind the forced disappearance; as well as to further search for the remains of Mr. Molina Theissen.¹⁵⁴

With respect to the obligation to create a prompt procedure to obtain a declaration of absence and presumption of death due to the forced disappearance, the State noted that it had prepared a bill for the amendment of Sections forty-two and sixty-four of their Civil Code, which governs absence and presumed death.¹⁵⁵ However, the bills have not yet been submitted to the Legislative Branch for debate or subsequent enactment.¹⁵⁶ For that reason, the Court stated that it was essential for the State to submit another report detailing the steps to be taken, the dates of such steps, and the parties responsible for compliance.¹⁵⁷ The Court requested that the State submit a report on the methodology and the schedule to encourage the debate and the enactment of the aforementioned bill into law within four months following notification of this Order.¹⁵⁸

With respect to the adoption of legislative, administrative, or other measures necessary to establish a genetic information system, the Court requested that the State report on the efforts made and the steps taken to create a genetic information system that would be run by the State, which would also be fully available to members of the judiciary and the victims within four months following notification of this Order.¹⁵⁹

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations, and Costs

154. *Id.* ¶¶ 29-32.

155. *Id.* ¶¶ 39, 42.

156. *Id.*

157. *Id.* ¶ 44.

158. *Id.* ¶ 46.

159. *Id.* ¶¶ 50-51.

[Molina Theissen v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 106, \(May 4, 2004\).](#)

[Molina Theissen v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 108 \(July 3, 2004\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Molina Theissen v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 16, 2009\).](#)

[Molina Theissen v. Guatemala, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. \(Aug. 17, 2009\) \(Available only in Spanish\).](#)

[Molina Theissen v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(July 10, 2007\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

Molina Theissen v. Guatemala, Petition No. 12.101, Inter-Am. Comm'n H.R. (Sept. 8, 1998).

2. Report on Admissibility

[Molina Theissen v. Guatemala, Admissibility Report, Report No. 79/01, Inter-Am. Comm'n H.R., Case No. 12.101 \(Oct. 10, 2001\).](#)

3. Provisional Measures

[None]

4. Report on Merits

Molina Theissen v. Guatemala, Report on Merits, Report No. 35/03, Inter-Am. Comm'n H.R., Case No. 12.101 (Mar. 4, 2003).

5. Application to the Court

[Molina Theissen v. Guatemala, Petition to the Court, Inter-Am. Comm'n. H.R., Case No. 12.101 \(Jul. 3, 2003\).](#)

VIII. BIBLIOGRAPHY

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Óscar F. Herrera, *Estado pide Perdón por Molina Theissen*, El Periódico, <http://www.elperiodico.com.gt/es/pais/34497> (last visited Feb. 28, 2014).