

Molina Theissen v. Guatemala

I. COMPLIANCE AND FOLLOW-UP ADDENDUM¹

November 24, 2015: Considering the representatives' November 2015 observations, the Court acknowledges the State's recent steps to proceed with the investigation into the facts of the case.² However, the Court expressed its dissatisfaction at seeing the case still at the investigation stage, since the events at the origin of the case took place thirty-four years ago, and the Court handed down its judgment eleven years ago.³ Furthermore, the State has not yet ascertained the whereabouts of Marco Antonio Molina Theissen's remains, and therefore, has not delivered his remains to his family.⁴

Therefore, the Court orders the State to: 1) provide updated, detailed information regarding the furtherance of this investigation, 2) identify those responsible for the human rights violations against Molina Theissen, and 3) punish the perpetrators, if applicable.⁵ The State must also provide details regarding the measures it will adopt to remove any obstacles impacting this investigation.⁶ Finally, the State must furnish a schedule of the investigation and eventual criminal proceedings to hold the perpetrator accountable.⁷

March 14, 2019: The Court examined the State's progress on four pending measures of compliance: 1) the State's investigation of the facts of the case and prosecution of the perpetrators; 2) location of Molina Theissen's remains and deliverance of them to his family; 3) creation of an expedited process that allows the State to obtain missing persons

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2. Molina Theissen v. Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Viewed" ¶ 88 (Nov. 24, 2015).

3. *Id.*

4. *Id.*

5. *Id.* ¶ 89.

6. *Id.*

7. *Id.*

declarations and presumptions of death in forced disappearance cases; and 4) creation of a genetic information system to identify missing children.⁸

First, regarding the State's investigation of the case and prosecution of the perpetrators, the Court urged the State to move forward with the investigation.⁹ The State must work to complete the ongoing criminal proceedings and investigate other alleged perpetrators, taking into account any potential limitations on criminal responsibility of other perpetrators.¹⁰ The State must also ensure that any appeals of the criminal convictions are resolved promptly.¹¹ Lastly, the State must protect judicial officials, experts, witnesses and the victim's relatives from any harassment or threat.¹²

Second, with respect to locating Molina Theissen's remains and delivering them to his family, the Court concluded that the State is still not in compliance.¹³ To ensure dignity for the victim, and peace and closure for the family, the Court required the State to provide a detailed update on its measures to locate and deliver the remains of Molina Theissen to his family.¹⁴

Third, the Court required the State to present a detailed update on adopted and planned measures to create an expedited process allowing it to obtain missing persons declarations and presumptions of death in forced disappearance cases.¹⁵

Lastly, while recognizing the State's collaboration with the Forensic Anthropology Foundation of Guatemala (FAFG) and the State's decades of commendable work in the search for victims of forced disappearance, the Court requests that the FAFG provide an expert opinion detailing the measures it believes the State should adopt to create a genetic information system.¹⁶ The Court will take into account the State's and victims' comments on said opinion.¹⁷

8. Molina Theissen v. Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering" ¶ 3 (Mar. 14, 2019).

9. *Id.* ¶ 34.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* ¶ 44.

14. Molina Theissen v. Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering" ¶¶ 43-44.

15. *Id.* ¶ 49.

16. *Id.* ¶ 57.

17. *Id.*

September 03, 2020: To assess whether the State has fully complied in investigating, identifying, and prosecuting those responsible for Molina Theissen’s forced disappearance, the State must provide detailed information with documentary support, outlining the State’s efforts to do so.¹⁸ The Court also cautioned that no domestic judicial decision, even a conviction of the perpetrator, necessarily fulfills the State’s obligation.¹⁹

The Court decided to continue monitoring compliance of the State’s pending obligations.²⁰ Further, the Court required the State to report to the Court, by November 9, 2020, on the investigation and prosecution of the perpetrators.²¹

18. *Molina Theissen v. Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R.* “Considering That” ¶ 24 (Sept. 3, 2020).

19. *Id.*

20. *Id.* “Resolves” ¶ 2.

21. *Id.* ¶ 3.