

Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Marco Antonio Molina Theissen v. Guatemala
Doc. Type:	Judgment (Merits)
Decided by:	President: Sergio Garcia Ramirez; Vice President: Alirio Abreu Burelli; Judges: Oliver Jackman; Antonio A. Cancado Trindade; Cecilia Medina Quiroga; Manuel E. Ventura Robles; Diego Garcia-Sayan
Dated:	4 May 2004
Citation:	Molina Theissen v. Guatemala, Judgment (IACtHR, 4 May 2004)
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In the Case of Molina Theissen,

the Inter-American Court of Human Rights, pursuant to Articles 29, 53, 56, 57 and 58 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”), delivers this judgment.

I. INTRODUCTION OF THE CASE

1. On July 4, 2003, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) submitted to the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) an application concerning the State of Guatemala (hereinafter “the State” or “Guatemala”), arising from petition No. 12,101, received by the Commission’s Secretariat on September 8, 1998.

2. The Commission submitted the application based on Article 51 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), for the Court to decide whether the State had violated Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 19 (Rights of the Child) and 25 (Judicial Protection), all of them in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention, and failed to comply with the obligation embodied in Article I of the Inter-American Convention on Forced Disappearance of Persons (hereinafter “the Inter-American Convention on Forced Disappearance”). The application relates to the “forced disappearance of Marco Antonio Molina Theissen, a child of 14 years of age, who was abducted from his parents’ home by members of the Guatemalan Army on October 6, 1981.”

3. The Commission also requested the Court to order the State to adopt the pecuniary and non-pecuniary reparations claimed by the representatives of the victim and his next of kin. Finally, it requested the Inter-American Court to order the State to pay the costs resulting from

processing the case at the national level, and at the international level before the bodies of the Inter-American system for the protection of human rights.

II. COMPETENCE

4. Guatemala has been a State Party to the American Convention since May 25, 1978, and accepted the obligatory jurisdiction of the Court on March 9, 1987. Therefore, the Court is competent to hear this case, in accordance with Article 62 of the Convention. Furthermore, Guatemala has been a State party to the Inter-American Convention on Forced Disappearance since February 25, 2000.

III. PROCEEDING BEFORE THE COMMISSION

5. On September 8, 1998, the Center for Justice and International Law and the Grupo de Apoyo Mutuo [Mutual Support Group] (hereinafter “GAM”) submitted a petition to the Inter-American Commission, based on the alleged forced disappearance of Marco Antonio Molina Theissen by the Guatemalan Army. On February 3, 1999, the Commission forwarded the pertinent parts of the petition to the State.

6. On July 31, 2000, the Commission made itself available to the parties in order to reach a friendly settlement of the matter.

7. On August 9, 2000, during the procedure for the friendly settlement of several cases being processed before the Commission, the President of the Republic of Guatemala, at that time, Alfonso Portillo, acknowledged the State’s “international responsibility” in the case of Molina Theissen.

8. On January 31, 2001, the Commission invited the parties to a working meeting at the seat of the Commission to be held on March 2, 2001, to discuss the terms of a possible agreement for a friendly settlement. On April 30, 2001, the petitioners informed the Commission that they intended to withdraw from the friendly settlement procedure initiated with the State.

9. On October 10, 2001, the Commission adopted Report No. 79/01, in which it declared the petition admissible.

10. On June 3, 2002, the State presented its comments on the merits of the case and requested the Inter-American Commission to promote actively the friendly settlement procedure.

11. On July 4, 2002, the petitioners presented their comments on the merits and requested the Commission to issue the final report on the case, as stipulated in Article 50 of the American Convention.

12. On March 4, 2003, having examined the position of the parties and considering that the friendly settlement stage had concluded, the Commission adopted Report on Merits No. 35/03, in which it recommended that the State:

1. Conduct a special, rigorous, impartial and effective investigation in order to prosecute and punish the instigators and perpetrators of the forced disappearance of Marco Antonio Molina Theissen.
2. Adopt the necessary measure to locate the remains of Marco Antonio Molina Theissen and return them to his family. Also, that it adopt measures leading to Emma Theissen de Molina, María Eugenia, Emma Guadalupe and Ana Lucrecia Molina Theissen receiving adequate and prompt reparation for the violations [...] established.
3. Adopt the necessary measures to avoid similar acts occurring in the future, pursuant to the obligation to prevent and ensure the fundamental rights recognized in the American Convention.

13. On April 4, 2003, the Commission forwarded this report to the State and granted it two months to provide information on the measures adopted to comply with the recommendations made therein. The same day, the Commission informed the petitioners that it had issued Report No. 35/03 and had forwarded it to the State. It also requested them to provide information in accordance with Article 43(3) of its Rules of Procedure. On April 17, 2003, the Inter-American Commission transmitted to the petitioners, in confidence, some of the conclusions included in the said report. On May 15, 2003, the petitioners provided the Commission with the requested information and expressed their interest in the case being submitted to the Court.

14. On July 3, 2003, based on the State's failure to comply with the recommendations, the Inter-American Commission decided to submit the instant case to the Inter-American Court.

IV. PROCEEDING BEFORE THE COURT

15. On July 4, 2003, the Inter-American Commission submitted the application to the Court. The attachments to the application were received on July 30, 2003.

16. In accordance with Article 22 of the Rules of Procedure, the Commission designated Susana Villarán and Santiago Canton as delegates, and María Claudia Pulido as advisor. Also, as established in Article 33 of the Rules of Procedure, the Commission indicated the names and addresses of the victim and his next of kin and advised that they would be represented by the Center for Justice and International law (hereinafter "CEJIL", "the representatives of the victim and his next of kin" or "the representatives").

17. On August 7, 2003, after the President of the Court (hereinafter "the President") had conducted a preliminary review of the application, the Secretariat of the Court (hereinafter "the Secretariat") notified it to the State together with its attachments and informed the State of the time limits for answering the application and appointing its representatives for the process. On the same day, the Secretariat, on the instructions of the President, informed the State that it had the right to appoint a Judge ad hoc to participate in deliberating and ruling on the case.

18. On August 8, 2003, in accordance with the provisions of Article 35(1)(e) of the Rules of Procedure, the application was notified to CEJIL, represented by Viviana Krsticevic, Soraya Long Saborío, Luguelly Cunillera and Juan Carlos Gutiérrez [FN1] and they were informed that, according to Article 35(4) of the Rules of Procedure, [FN2] they had 30 days in which to present

the brief with requests, arguments and evidence. Furthermore, on August 6, 2003, in accordance with Article 35(1)(d) of the Rules of Procedure, GAM, as the original claimant, was notified.

[FN1] While this case was being processed, CEJIL made some changes in the representatives it had designated before the Court.

[FN2] Rules of Procedure adopted by the Inter-American Court of Human Rights at its forty-ninth regular session in an Order of November 24, 2000, which entered into force on June 1, 2001. This Article, among others, was reformed by the Court during its LXI Regular Session, by an Order of November 25, 2003. This reform entered into force as of January 1, 2004.

19. On September 23, 2003, the State designated Oscar Luján Fappiano as Judge ad hoc. On September 24, 2003, the Secretariat, on the instructions of the President, requested the Commission and the representatives to submit any observations they deemed pertinent, since the time limit granted to the State to appoint a Judge ad hoc had expired on September 7, 2003.

20. On October 6, 2003, after an extension had been granted, the representatives of the victim and his next of kin presented the brief with requests, arguments and evidence together with attachments. In this brief, they requested the Court to declare that the State had violated Articles 1(1), 4, 5, 7, 17, 19, 8 and 25 of the American Convention. They also requested the Court to declare that the State violated Article I of the Inter-American Convention on Forced Disappearance. Furthermore, they requested specific reparations and the payment of costs and expenses.

21. On October 17, 2003, the Commission presented its comments concerning the State's designation of the Judge ad hoc, in which it indicated that the "Court should decide the issue of the time-barred nature of the designation of the Judge ad hoc according to consistent practice and its Rules of Procedure." The representatives did not forward comments in this regard.

22. On November 6, 2003, the State submitted its brief answering the application, in which it filed three preliminary objections, [FN3] with attachments. In this brief, Guatemala "set out preliminary objections and made a partial acquiescence" by the State to the application submitted by the Commission. In addition, it requested that, based on the preliminary objections it had filed, the Court should declare the application presented by the Commission inadmissible. Lastly, the State made an offer regarding reparations. On November 7, 2003, the Secretariat, on the instructions of the President, granted the Commission and the representatives of the victim and his next of kin 30 days from reception of this brief to present their written arguments on the preliminary objections filed by the State.

[FN3] The preliminary objections filed by the State were as follows: "Lack of competence Ratione Temporis of the Court with regard to the facts, which preceded the declaration accepting the Court's obligatory jurisdiction; lack of active legal standing, and failure to exhaust regular domestic remedies."

23. On December 3, 2003, the Secretariat informed the State, on the instructions of all the members of the Court, that the designation of the Judge ad hoc had been rejected, in accordance with Articles 10(4) of the Statute and 18(3) of the Rules of Procedure, because it had been presented after the statutory time limit had expired.

24. On January 12, 2004, the Commission submitted its written arguments on the preliminary objections, in which it requested the Court to reject them.

25. On the same January 12, 2004, the representatives of the victim and his next of kin presented their written arguments concerning the preliminary objections filed by the State, in which they requested that they should be rejected. In addition, they rejected the offer regarding reparations made by Guatemala in the answer to the application (supra para. 22).

26. On March 1, 2004, the President issued an Order in which, in accordance with the principle of procedural economy and exercising the authority granted to him by Article 47(3) of the Rules of Procedure, he notified the Inter-American Commission that the testimony of Mario Alcides Polanco Pérez and the expert witness report of Oscar Ernesto Reyes, proposed by the Commission in its application, should be given before public notary (affidavit). He also requested the State to present a report on the measures taken by Julio Arango Escobar, former Ombudsman, in relation to the instant case. Furthermore, in this Order, the President convened the Inter-American Commission, the representatives of the victim and his next of kin, and the State to a public hearing to be held at the seat of the Court, as of April 26, 2004, to receive their oral arguments on preliminary objections, and possibly on merits, reparations and costs, as well as the statements of the witnesses and the reports of the expert witnesses proposed by the Commission and by the representatives.

27. On March 22, 2004, the Commission presented the statements made before public notary by the expert witness, Oscar Ernesto Reyes, and the witness, Mario Polanco. On March 24, 2004, the Secretariat forwarded these affidavits submitted by the Commission to the State and to the representatives, so that they could forward any pertinent comments. No comments were forwarded.

28. On April 2, 2004, the State submitted several documents from the file in the domestic jurisdiction relating to the measures taken by Julio Arango, former Ombudsman, who had handled the instant case.

29. On April 6, 2004, the State advised that it had designated Herbert Estuardo Meneses Coronado as its Agent, in substitution of Rosa del Carmen Bejarano Girón, and Luis Ernesto Cáceres Rodríguez as Deputy Agent. [FN4]

[FN4] While this case was being processed, the State made some changes in the representatives it had designated before the Court.

30. On April 26 and 27, the Court held two public hearings at which the following persons appeared:

for the Inter-American Commission on Human Rights:

Susana Villarán, Delegate;
María Claudia Pulido, advisor; and
Lilly Ching, advisor;

for the representatives of the victim and his next of kin:

Viviana Krsticevic, representative;
Soraya Long Saborío, representative; and
Oswaldo Ruiz, representative;

for the State of Guatemala:

Herbert Estuardo Meneses Coronado, Agent
Luis Ernesto Cáceres Rodríguez, Deputy Agent; and
Mayra Alarcón Alba, Executive Director of COPREDEH;

witnesses proposed by the Inter-American Commission on Human Rights and by the representatives of the victim and his next of kin:

Emma Theissen Álvarez vda. de (widow of) Molina;
Emma Guadalupe Molina Theissen; and
Ana Lucrecia Molina Theissen;

witness proposed by the representatives of the victim and his next of kin and convened by the Inter-American Court of Human Rights:

María Eugenia Molina Theissen;

witness proposed by the representatives of the victim and his next of kin:

Axel Mejía Paíz;

expert witness proposed by the Inter-American Commission on Human Rights:

Carlos Beristain;

expert witness proposed by the representatives of the victim and his next of kin:

Alicia Neuburger.

31. During the public hearing, and in a brief presented on April 26, 2004, the State declared that it withdrew the preliminary objections it had filed and acknowledged its international responsibility in this case (*infra* para. 36).

32. Also on April 26, 2004, during the public hearing, the Inter-American Commission and the representatives of the victim and his next of kin both declared that they accepted the State's acknowledgement of responsibility.

33. On April 26, 2004, following the conclusion of the first public hearing, the Court issued an Order in which it decided to consider that the preliminary objections filed by the State had been withdrawn; to admit the acknowledgement of international responsibility made by the State, and to continue holding the public hearing convened by an Order of the President of March 1, 2004, restricting its purpose to reparations and costs. During this public hearing the statements of the witnesses and expert witnesses who had been convened were heard, together with the arguments of the Inter-American Commission, the representatives of the victim and his next of kin, and the State.

V. ACKNOWLEDGEMENT OF RESPONSIBILITY

34. In this section, the Court will determine the scope of the State's acknowledgement of international responsibility in this case and, to this end, will take into account the arguments of the Commission, the representatives of the victim and his next of kin, and the State.

The State's arguments

35. In its answer to the application, the State requested that its partial acquiescence regarding the violation of Articles 1(1) and 25 of the American Convention to the detriment of Marco Antonio Molina Theissen and of his next of kin should be taken into consideration. The State also requested that, should the Inter-American Court declare "inadmissible any preliminary objection filed by the State, it [should] take into consideration [its] acquiescence [...] regarding the violations that [the] Court considers it has competence to hear at the merits stage of the case."

36. During the first public hearing on April 26, 2004, the State, "based on the facts set out in the application brief of the [...] Inter-American Commission on Human Rights and [in the brief with requests, arguments and evidence] of the [representatives]:"

1. Reiter[ated] the acknowledgement of responsibility of the State of Guatemala in this case, made by the former President of the Republic, Alfonso Portillo Cabrera, on August 9, 2000.

2. Withdr[ew] the preliminary objections filed by the State during the processing of the case.

3. Acknowledge[d] its international responsibility for the violation of Articles 1(1), 2, 4(1), 5(1), 5(2), 7, 8, 17, 19 and 25 of the American Convention on Human Rights and for failing to comply with the international obligation acquired under Articles I and II of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of the child, Marco Antonio Molina Theissen, without broaching the issue of the determination of the specific or individual responsibility of the alleged perpetrators.

4. Request[ed] the [...] Court, in the context of the proceeding, to consider that the hearing on merits had concluded, and that the statements of the witnesses and the reports of the expert witnesses should now provide information to the [...] Court on the corresponding measures of reparation.

5. Ask[ed] the Court, should the State of Guatemala be obliged to make financial reparations to the [...] victim and his next kin, whether the procedure for compensation by the State could be carried out in 2005, in view of the country's current fiscal deficit.

Lastly, in the public hearing, the State expressed its "profound regret for the acts endured and suffered by Marco Antonio Molina Theissen and his next of kin since October 6, 1981" and apologized as "a first gesture of respect, reparation and guarantee of non-repetition."

The Commission's arguments

37. In the application, the Inter-American Commission indicated that on August 9, 2000, the President of the Republic of Guatemala, at that time, Alfonso Portillo, when referring to several cases being processed before the Commission, including the instant case, "acknowledge[d] the State's institutional responsibility deriving from the failure to comply [with the] obligations arising from Article 1(1) of the American Convention to respect and ensure the rights embodied therein and from Articles 1, 2 and 3 of the Constitution of Guatemala," and also stated that "[...]" based on the foregoing, the Guatemalan Government accept[ed] that the relevant facts, which gave rise to the presentation of the petition to the Inter-American Commission on Human Rights [...], had occurred."

38. During the first public hearing on April 26, 2004, the Inter-American Commission indicated that it considered that the State's acknowledgement of responsibility (supra para. 36) was a positive measure and accepted the withdrawal of the preliminary objections filed by the State. The Commission noted that Guatemala accepted the facts of the case and acknowledged the violation of the rights cited in both the application and the brief with requests, arguments and evidence submitted by the representatives. The Commission also requested that it be considered that the facts of the instant case had been established and that the Court include them in its judgment. Finally, the Commission requested the Court to determine the legal effects of the State's acknowledgement of responsibility, in accordance with Article 53(2) of the Rules of Procedure, and to "decide to commence the reparations stage."

The arguments of the representatives of the victim and his next of kin

39. During the public hearing of April 26, 2004, the representatives of the victim and his next of kin stated that they appreciated the State's acknowledgement of its responsibility concerning the facts and rights set out in their brief with requests, arguments and evidence and in the Commission's application. They also accepted the State's withdrawal of its preliminary objections. However, regarding the consequences of the acknowledgement of the facts and the State's international responsibility, the representatives indicated that reparation for the forced disappearance of Marco Antonio Molina Theissen and for the violations perpetrated against his next of kin requires that the truth be established. In this regard, the representatives requested the Court to deliver a judgment that establishes the causes and consequences of the disappearance of

Marco Antonio Molina Theissen, the modus operandi of the State with regard “to the disappearance of children,” the institutional actors involved in the facts, and the acts and omissions of the State that entail its international responsibility, because they considered that the Court’s judgment plays a fundamental role in restoring the rights of the victims.

ESTABLISHED FACTS

40. The Court considers that the following facts have been established:

Concerning the internal armed conflict and the forced disappearance of persons

40(1) When the facts took place, the forced disappearance of persons was a State practice carried out principally by members of the security forces. The purpose of this practice was to dismantle movements or organizations that the State identified as having “insurgency” tendencies and to instill fear into the population;

40(2) The State based itself on the “National Security Doctrine” to characterize a person as “subversive” or as an “internal enemy,” and this could be anyone, who genuinely or allegedly supported the fight to change the established order. The victims hailed from all sectors of Guatemalan society: leaders of grass-roots or opposition organizations, workers, peasants, teachers, student leaders, members of religious orders or their lay helpers;

40(3) This practice was implemented by the army, the civil self-defense patrols (hereinafter “the PAC”), the military commissioners, the military foot-police, the national police, the judicial police and the “death squadrons”;

40(4) The detention, abduction, torture and subsequent assassination of those who were “disappeared” was carried out by heavily armed groups of individuals, who introduced and identified themselves as belonging to one of the State’s different investigation or security units. During these operations, they did not provide information on the motives for the alleged detention or the centers to which those detained would be transferred. These groups acted with total impunity and traveled in cars similar to those used by the police forces or identified as belonging to security units, with deteriorated license plates or without the road use permit;

40(5) Violence was inevitably used in the forced disappearance of persons carried out by members of State security units. These acts of violence were directed against the victims, their next of kin, and any witnesses to the events. The threats and intimidation of the victims’ next of kin continued for some time after the detention, so as to curb their initiatives to locate the persons detained and to heighten their fear;

40(6) Between 1979 and 1983, the period coinciding with the exacerbation of the internal conflict in Guatemala, boys and girls were subjected to many human rights violations, and were direct victims of forced disappearance, arbitrary execution, torture, abduction, rape, and other acts that violated their fundamental rights. The threats and torture to which they were subjected were used as a way of torturing their families, and were designed to instill exemplary terror in them;

Concerning Marco Antonio Molina Theissen and his next of kin

40(7) Marco Antonio Molina Theissen was born on November 30, 1966, and was 14 years and 10 months old when the facts took place. He lived with his family in Guatemala City. He was in third year of high school at the Guatemalan-Israeli College and hoped to complete his high school certificate and continue on to university;

40(8) His mother is Emma Theissen Álvarez de Molina and his father, who is deceased, was Carlos Augusto Molina Palma. His sisters are Emma Guadalupe, María Eugenia and Ana Lucrecia, all Molina Theissen;

40(9) The members of the Molina Theissen family and other next of kin, such as Marco Antonio's brothers-in-law, are members of the administrative, academic, political and social areas of the Universidad de San Carlos [FN5] and were identified as political opponents or "subversives" by the security forces;

40(9)(i) Carlos Augusto Molina Palma, the victim's father, was an opponent of the military regime installed in 1954; consequently, he was detained, physically abused and exiled from Guatemala on several occasions from 1955 to 1960. In 1966, Carlos Augusto reported the forced disappearance of his brother, Alfredo, publicly;

40(9)(ii) Ana Lucrecia Molina Theissen, the victim's sister, was a high school leader. Subsequently, as a teacher, she joined trade union organizations and was a member of the governing council of the Frente Nacional Magisterial [National Teachers' Front], an organization she represented on the Comité Nacional de Unidad Sindical [National Trade Union Unity Committee] from 1976 to 1978. As a university student she occasionally took part in activities promoted by the FRENTE group;

40(9)(iii) María Eugenia Molina Theissen, the victim's sister, formed part of the administrative personnel of the Universidad de San Carlos. She married Héctor Alvarado Chuga, a former high school leader, who also studied in this university and worked as a professor in the university's Escuela de Orientación Sindical [School for studies on trade unions];

40(9)(iv) Emma Guadalupe Molina Theissen, the victim's sister, was a member of "Juventud Patriótica del Trabajo," which was attached to the Guatemalan Labor Party (PGT). Julio César del Valle Cóbar, her companion, was a leader of the FRENTE student party at the Universidad de San Carlos, in Guatemala City, at the end of the 1970s and the beginning of the 1980s. On March 19, 1976, both of them were detained when they were conducting a census of one of the urban settlements established after the earthquake of February 4, 1976. During this incident, one of the students who formed part of the group, Eduardo Alvarado Chuga, Héctor Alvarado's brother, was killed, and a young woman was paralyzed after being shot in the back. The authors of these acts, transit police, remained unpunished. Emma Guadalupe and Julio César were accused of "subversion" and subsequently acquitted; her case was heard by the minor's court, because she was just under 15 years of age. While she was retained by her captors, before being handed over to the competent judicial authorities, she was raped and tortured for several days. As of this time, it is believed that military intelligence opened a dossier on both of them. On March 22, 1980, Julio César del Valle Cóbar was found tortured and shot in his car. According to reports, the "para-military forces" were responsible for this act. As a result of her companion's assassination, Emma Guadalupe had to go into hiding and flee Guatemala City.

On September 27, 1981, Emma Guadalupe was detained by members of the armed forces, who kept her in illegal and clandestine custody for nine days in the installations of the "Manuel Lisandro Barillas" Military Barracks in Quetzaltenango. During her detention, she was maintained incommunicado, blindfolded and handcuffed to the leg of a bunk bed. She was interrogated constantly and violently, suffering many kinds of torture: repeated rape by members

of the army, blows, kicks, electric shocks and psychological torture. She did not receive food or water. On the ninth day of her detention, October 5, 1981, she had lost so much weight that she was able to slip off the handcuffs and escape by the window;

[FN5] The representatives indicated in their brief with requests, arguments and evidence that “during the era of internal armed conflict, the Universidad Estatal de San Carlos was considered to be a ‘center of subversion.’”

Concerning the disappearance of Marco Antonio Molina Theissen

40(10) On October 6, 1981, two individuals armed with automatic weapons entered the home of the Molina Theissen family, located on 6th Avenue, No. 2-35, Zone 19, Colonia La Florida, in Guatemala City, and a third person remained on watch outside the residence. The child, Marco Antonio Molina Theissen was in the house, together with his mother, Emma Theissen Álvarez. One of the individuals shackled Marco Antonio, tied him to the arm of a chair, and gagged him with a piece of masking tape. The other person hit Emma Theissen Álvarez and tried to lock her up in one of the rooms of the house;

40(11) The individuals searched the Molina Theissen family’s home. When they had completed the search, they took the child, Marco Antonio Molina Theissen, put him in a nylon sack and threw him into the back of a green pick-up with official license plate 17675. Emma Theissen Álvarez was able to get out of the house and she ran after the vehicle, although she was unable to do anything. This was the last time she saw her son;

40(12) The detention and subsequent forced disappearance of Marco Antonio Molina Theissen was carried out by the Guatemalan army, presumably as a reprisal for the escape of his sister, Emma Guadalupe Molina Theissen, from the “Manuel Lisandro Barillas” Military Barracks, and to punish a family they considered to be an “enemy”;

Concerning the family of Marco Antonio Molina Theissen

40(13) The family of Marco Antonio Molina Theissen was forced to leave Guatemala, as follows:

40(13)(i) Following her escape, Emma Guadalupe Molina Theissen did not see her family again as a measure of mutual protection. Her parents did not inform her immediately of what had happened to her brother, Marco Antonio Molina Theissen, to avoid her giving herself up to the army in an attempt to get him back. On January 16, 1982, Emma Guadalupe Molina Theissen left Guatemala for exile in Mexico:

40(13)(ii) As a result of the assassination of her husband, Héctor Hugo Alvarado Chuga, on February 27, 1984, María Eugenia Molina Theissen requested asylum in the Ecuadorian Embassy for herself, her two daughters, and her parents, Carlos Augusto Molina Palma and Emma Theissen Álvarez, on March 23, 1984. On March 31, 1984, they arrived in Ecuador with refugee status;

40(13)(iii) Ana Lucrecia Molina Theissen left for Mexico with her 11-month old son on November 26, 1984;

40(13)(iv) In July 1985, Emma Guadalupe Molina Theissen and her daughter, who was born in Mexico, went to live in Costa Rica. Subsequently, Ana Lucrecia Molina Theissen and her son arrived. In November 1986, Carlos Augusto Molina Palma and Emma Theissen Álvarez were reunited with two of their daughters in this country, and in November 1990, María Eugenia Molina Theissen and her daughters arrived;

Concerning the measures taken:

40(14) The parents of Marco Antonio Molina Theissen took various measures to try and locate their son: they visited military posts, they went to hospitals, and they contacted army officers, senior members of the police and Government, representatives of the Catholic Church, and international human rights organizations. His parents contacted several individuals to negotiate his liberty; in this regard, they were asked to give money and to exchange the father for the son. The family accepted the terms and conditions of the negotiation, but the individuals never fulfilled the agreement;

40(15) The victim's parents filed several writs of habeas corpus on the day of the facts. On July 9, 1997, the victim's next of kin, with the legal advice of the Grupo de Apoyo Mutuo, filed another writ of habeas corpus before the Supreme Court of Justice of Guatemala in favor of Marco Antonio Molina Theissen, but received no reply. Subsequently, on August 11, 1997, the next of kin of Marco Antonio Molina Theissen again filed a writ of habeas corpus before the Supreme Court of Justice in his favor. The same day, the Second Trial Court of the Municipality of Mixto ordered the Ministry of National Defense and the Ministry of the Interior to inform it whether they had received or knew of any order of detention or investigation against the child, or whether they had proceeded to arrest him. On August 13, 1997, the said Ministries informed the court that they had not received any order of detention against the victim and were not aware that any investigation had been initiated into the reported facts. On August 15, 1997, the Second Trial Court of the Municipality of Mixto rejected the writ of habeas corpus that had been filed;

40(16) On January 20, 1998, the Grupo de Apoyo Mutuo initiated a special investigation procedure before the Supreme Court of Justice in favor of Marco Antonio Molina Theissen. Subsequently, on April 1, 1998, the same organization submitted an amendment to the special investigation procedure before the Criminal Chamber of the Supreme Court of Justice, which was received by this Chamber on May 7, 1999. In this procedure, the Ombudsman was instructed to initiate an investigation into the disappearance of Marco Antonio Molina Theissen and to present the results by June 25, 1999, at the latest; at the request of the said Ombudsman, this time limit was extended to September 25, 1999, by the Criminal Chamber of the Supreme Court of Justice. The Fifth Trial Court for Criminal, Drug-trafficking and Environmental Offenses was granted jurisdiction over the proceeding.

40(17) On September 25, 1999, the Ombudsman presented his report in the special investigation procedure in favor of Marco Antonio Molina Theissen; in it, he indicated that he had conducted a search in the Register of the Movement of Vehicles of the National Police, based on the license plate number noted down by the victim's mother; he had taken statements from Emma Theissen Álvarez, María Eugenia Molina Theissen and Emma Guadalupe Molina Theissen, and also from Juan Carlos Solís Oliva, former Guatemalan Military Intelligence advisor; the latter related to the mechanisms used by this agency all through the era of repression, during the government of General Romeo Lucas García; he had requested the military authorities to provide the names and addresses of the directors of the National Intelligence Service and the Head of Security of

Congress at the time of the facts; and he had identified the person who attempted to negotiate Marco Antonio Molina Theissen's liberty with his parents;

40(18) On September 27, 1999, the Ombudsman requested the Fifth Trial Court for Criminal, Drug-trafficking and Environmental Offenses to summon and take preliminary statements from several persons, [FN6] identified as alleged "mediate" authors of the planned, repressive policy of the Executive Branch and the Office of the Commander-in-Chief of the Guatemalan Army against whom there was sufficient, reasonable evidence of criminal activities. On September 30, 1999, in order to take a decision with regard to the request that it summon the above-mentioned individuals, this court requested the Ombudsman to indicate the extent of their participation in the facts under investigation and the address or places where they could be located. On March 31, 2000, the said court advised the Supreme Court that the Ombudsman had not responded to its request; and

40(19) To date, nothing is known of the status of the special investigation procedure. Marco Antonio Molina Theissen remains disappeared, and the State has not conducted an effective investigation into the facts in order to identify, prosecute and punish all those responsible.

[FN6] The persons indicated by the Ombudsman are General Romeo Lucas García, President of the Republic; Manuel Benedicto Lucas García, Chief of the General Staff of the Army; René Mendoza Palomo, Minister of Defense; Pedro García Arredondo, Head of Sixth Command and of the Judiciary Police; General Germán Chupina Barahona, Director of the Nacional Police Force; Donaldo Álvarez Ruiz, Minister of the Interior; Luis Francisco Gordillo Martínez, Commander of the Lisandro Barillas Barracks in Quetzaltenango; Julio Ramiro Marroquín Pérez, Commander of the Military Foot-Police Force, and the civilian, César Augusto Sandoval Meda.

The Court's considerations

41. Article 53(2) of the Rules of Procedure of the Court establishes that:

2. If the respondent informs the Court of its acquiescence to the claims of the party that has brought the case as well as the to claims of the representatives of the alleged victims, his [sic] next of kin or representatives, the Court, after hearing the opinions of the other parties to the case [shall decide] whether such acquiescence and its juridical effects are acceptable. In that event, the Court shall determine the appropriate reparations and indemnities.

42. The considering paragraphs of the Order of the Court of April 26, 2004, in the instant case, indicate:

1. That the State has desisted from all the preliminary objections filed in the answer to the application dated November 1, 2002.

2. That the State has acknowledged the facts and its international responsibility for the violation of Articles 1(1), 2, 4(1), 5(1), 5(2), 7, 8, 17, 19 and 25 of the American Convention on

Human Rights and for failure to comply with the international obligation established in Articles I and II of the Inter-American Convention on Forced Disappearance of Persons in the instant case.

3. That this acknowledgement by the State [...] does not interrupt the procedure of receiving the evidence requested in relation to reparations and costs.

And decided:

1. To consider that the preliminary objections filed by the State have been withdrawn.
2. To admit the acknowledgement of international responsibility made by the State, in the terms of the second considering paragraph of the [...] Order.
3. That the dispute regarding the facts has ceased and, consequently, the merits stage has concluded.
4. To continue holding the public hearing convened in an order of the President of the Inter-American Court of Human Rights of March 1, 2004, and to restrict its purpose to the reparations and costs in this case.

[...]

43. Consequently, in accordance with the State's acknowledgement, the Court considers that the facts referred to in paragraph 40 of this judgment have been established, and also that, as the State has also acknowledged, it incurred international responsibility for violation of the rights embodied in Articles 4.1 (Right to Life), 5(1) and 5(2) (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 17 (Rights of the Family), 19 (Rights of the Child) and 25 (Judicial Protection) of the American Convention on Human Rights, and for failing to comply with the obligations established in Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof, to the detriment of Marco Antonio Molina Theissen; in addition, Guatemala failed to comply with the obligation established in Articles I and II of the Inter-American Convention on Forced Disappearance of Persons to the detriment of Marco Antonio Molina Theissen.

44. The Court also considers that, in accordance with the facts that have been established (supra para. 40), the State is responsible for violation of the rights embodied in Articles 5(1) and 5(2) (Right to Humane Treatment), 8 (Right to a Fair Trial), 17 (Rights of the Family) and 25 (Judicial Protection) of the American Convention on Human Rights, and for failing to comply with the obligations established in Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof, to the detriment of the following next of kin of Marco Antonio Molina Theissen: Emma Theissen Alvarez vda. de Molina (mother), Carlos Augusto Molina Palma (deceased father), Emma Guadalupe, Ana Lucrecia and María Eugenia Molina Theissen (sisters).

45. In accordance with its Order of April 26, 2004, the Court will, in due course, rule on the scope and amount of the reparations and costs.

46. The Court considers that the State's acknowledgement of international responsibility makes a positive contribution to the course of this process and to the effectiveness of the principles that inspire the American Convention on Human Rights.

VI. OPERATIVE PARAGRAPHS

47. Therefore,

THE COURT,

DECIDES:

unanimously,

1. To reaffirm its Order of April 26, 2004, in which it considered that the preliminary objections filed by the State had been withdrawn and accepted the State's acknowledgement of international responsibility.
2. To declare that the dispute concerning the facts that gave rise to this case have ceased.
3. To declare, in accordance with the terms of the State's acknowledgement of international responsibility and with the facts that have been established, that the State violated the rights embodied in Articles 4(1) (Right to Life), 5(1) and 5(2) (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 17 (Rights of the Family), 19 (Rights of the Child) and 25 (Judicial Protection) of the American Convention on Human Rights, and that it failed to comply with the obligations established in Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof, to the detriment of Marco Antonio Molina Theissen; the State also failed to comply with the obligation established in Articles I and II of the Inter-American Convention on Forced Disappearance of Persons to the detriment of Marco Antonio Molina Theissen, in the terms of paragraph 43 of this judgment.
4. To declare, in accordance with the terms [of the State's acknowledgement of international responsibility and with] the facts that have been established, that the State violated the rights embodied in Articles, 5(1) and 5(2) (Right to Humane Treatment); 8 (Right to a Fair Trial); 17 (Rights of the Family), and 25 (Judicial Protection) of the American Convention on Human Rights, and that it failed to comply with the obligations established in Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof, to the detriment of the next of kin of Marco Antonio Molina Theissen: Emma Theissen Álvarez vda. de Molina (mother), Carlos Augusto Molina Palma (deceased father), Emma Guadalupe, Ana Lucrecia and María Eugenia Molina Theissen (sisters), in the terms of paragraph 44 of this judgment.
5. To continue hearing the reparations and costs stage of this case.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on May 04, 2004.

Sergio García-Ramírez
President

Alirio Abreu-Burelli
Oliver Jackman
Antônio A. Cançado Trindade
Cecilia Medina-Quiroga
Manuel E. Ventura-Robles
Diego García-Sayán

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Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary