

**Order of the
Inter-American Court of Human Rights
of July 10, 2007
Molina Theissen v. Guatemala
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The judgment on merits delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on May 4, 2004, in which it:

DECID[ED]:

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its Order of April 26, 2004, in which it considered that the preliminary objections filed by the State had been withdrawn and accepted the State's acknowledgement of its international responsibility.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 its 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 th[e] judgment.

4. To declare, in accordance with the terms [of the State's acknowledgement of its 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 th[e] judgment.

5. To continue hearing the case at thereparations and costs stage.

2. The judgment on reparations delivered by the Court on July 3, 2004, in which:

unanimously,

IT DECLARE[D] THAT:

1. [The] Judgment is *per se* a form of reparation, pursuant to paragraph 66 [thereof].

AND ORDER[ED] THAT:

2. The State must find and deliver the mortal remains of Marco Antonio Molina Theissen to his next of kin, pursuant to the terms of paragraphs 85 and 98 of the [...] Judgment;

3. The State must effectively investigate the facts of the instant case, with the aim of identifying, trying, and punishing the direct perpetrators and masterminds of the forced disappearance of Marco Antonio Molina Theissen, and the result of this process must be made known to the public, pursuant to the terms of paragraphs 78 to 84 and 98 of the [...] Judgment;

4. The State must publish within three months from the date of notification of the [...] Judgment, at least once, in the *Diario Oficial* and in another newspaper with national circulation, both the Section on Established Facts in Chapter V and operative paragraphs one to five of the judgment on merits delivered by the Court on May 4, 2004, as well as Chapter VI, entitled Proven Facts, without the footnotes, and operative paragraphs one to eight of the present Judgment, pursuant to paragraph 86 of the [...] Judgment;

5. The State must carry out, in the presence of its senior authorities, a public act to acknowledge its international responsibility concerning the facts of this case, and to make amends to Marco Antonio Molina Theissen and his next of kin, pursuant to the terms of paragraphs 87 and 98 of the [...] Judgment;

6. The State must designate an existing educational center in Guatemala City with a name that refers to the children who disappeared during the internal armed conflict, and it must place a plaque in memory of Marco Antonio Molina Theissen at that center, pursuant to the terms of paragraphs 88 and 98 of the [...] Judgment;

7. The State must establish a prompt procedure to obtain a declaration of absence and presumption of death due to forced disappearance, pursuant to the terms of paragraphs 91(a) and 98 of the [...] Judgment;

8. The State must adopt such legislative, administrative, or other measures as may be necessary to establish a genetic information system, pursuant to the terms of paragraphs 91(b) and 98 of the [...] Judgment;

9. The State must pay the total sum of US\$275,400.00 (two hundred and seventy-five thousand four hundred United States dollars), or its equivalent in Guatemalan currency, as compensation for pecuniary damages, pursuant to the terms of paragraphs 56 to 61 of the [...] Judgment [...].

10. The State must pay the total sum of US \$415,000.00 (four hundred and fifteen thousand United States dollars) or its equivalent in Guatemalan currency, as compensation for non-pecuniary damages, pursuant to the terms of paragraphs 67 to 73 of the [...] Judgment [...].

11. The State must pay the total sum of US \$7,600.00 (seven thousand six hundred United States dollars) or its equivalent in Guatemalan currency, which must be given to Emma Theissen Álvarez *Vda. de* Molina, the victim's mother, for costs and expenses of the proceedings at the domestic level and the international proceedings before the inter-American system for the protection of human rights, pursuant to paragraph 97 of the [...] Judgment;

[...]

3. The various reports of the State of Guatemala (hereinafter "the State") on its progress in compliance with the judgments on merits and reparations (*supra* Having seen paragraphs 1 and 2).

4. The observations of the representatives of the victim and his next of kin (hereinafter "the representatives") and of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") on the State's reports on compliance (*supra* Having seen paragraph 3).

CONSIDERING:

1. That one of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.

2. That Article 68(1) of the American Convention stipulates that “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” To this end, the State must ensure the implementation of the terms of the Court’s decisions at the domestic level.¹

3. That the obligation to comply with the decisions in the Court’s judgments corresponds to a basic principle of the law of the international responsibility of the State, supported by international case law, according to which, a State must comply with its international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as a justification for failing to comply with its treaty obligations.² The treaty-based obligations of the States Parties are binding on all the powers and organs of the State.

4. That the States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle is applicable not only to the substantive norms of human rights treaties (that is, those which contain provisions that concern protected rights), but also with regard to procedural norms, such as those that refer to compliance with the decisions of the Court. These obligations shall be interpreted and applied so that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.³

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5. That the State advised that, on December 20, 2004, it had delivered to victim’s next of kin a total of US\$698,000.00 (six hundred and ninety-eight thousand United States dollars) in compliance with the payment of compensation ordered by the Court for pecuniary damages, non-pecuniary damages, and costs and expenses.

6. That the representatives confirmed the payment of the said compensation to the beneficiaries of the compensation within the time established by the Court for compliance with this measure.

¹ Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of the Sawhoyamaxa Indigenous Community*. Supervision of compliance with judgment. Order of the Inter-American Court of Human Rights of February 2, 2007, second considering paragraph, and *Case of Yatama*. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 29, 2006, third considering paragraph.

² Cf. *Internacional Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *the Sawhoyamaxa Indigenous Community v. Paraguay*. Supervision of compliance with judgment. Order of the Inter-American Court of Human Rights of February 2, 2007, third considering paragraph, and *Case of Yatama*. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 29, 2006, fifth considering paragraph.

³ Cf. *Case of Ivcher Bronstein. Competence*. Judgment of September 4, 1999. Series C No. 54, para. 37; *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*. Supervision of compliance with judgment. Order of the Inter-American Court of Human Rights of February 2, 2007, Fourth considering paragraph, and *Case of Yatama*. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 29, 2006, sixth considering paragraph.

7. That the Commission acknowledged the State's compliance with the payment of the compensation.

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8. That the State informed that, on August 25, 2005, it had given the name of the "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 the memory of Marco Antonio Molina Theissen."

9. That the representatives expressed "their agreement" that the said school be designated with the name of the victim, and informed that the mother and one of the sisters of the victim were present in the said act.

10. That the Commission considered that the State had complied with this element of the judgment on reparations.

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11. That the State advised that the pertinent parts of the judgment delivered in this case had been published on June 10, 2005, in the *Diario Oficial de Centro América*, and on July 3, 2006, in the national newspaper, "*El Periódico*." On June 27, 2007, the State forwarded copies of these publications.

12. That the representatives indicated that they "consider this aspect of the judgment has been fulfilled."

13. That the Commission stated that the publication "did not print the facts established in paragraphs 40(7) to 40(19) of the judgment [on merits,] as the Court had ordered."

14. That, from the documentation submitted by the State, the Court observes that, in effect, paragraphs 40(7) to 40(19) of the judgment on merits do not appear in the publications in the *Diario Oficial de Centro América* and in the "*El Periódico*" newspaper, so that the State should be requested to present information in this regard.

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15. That the State advised that the "public act acknowledging international responsibility for the enforced disappearance of Marco Antonio Molina Theissen" had been held on November 30, 2006, the anniversary of the birth of Marco Antonio Molina Theissen. It also indicated that "the acting President of the Republic of Guatemala, Doctor Eduardo Stein Barillas, the President of the Presidential Human Rights Commission (COPREDEH) Frank La Rue Lewy, [...] and the family of Marco Antonio were present during the act[. In addition,] the act was attended by representatives of civil society, the diplomatic corps, human rights organizations and special guests." Lastly, it advised that the Molina Theissen family intervened in the act.

16. That the representatives confirmed that the public act had been held.

17. That the Commission appreciated "compliance with this State obligation, in particular, considering its positive impact on the moral reparation for the next of kin."

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18. That the Court considers it essential that the State submit updated information on the following elements pending compliance:

(a) Finding and delivering the mortal remains of Marco Antonio Molina Theissen to his next of kin (*second operative paragraph of the judgment on reparations*);

(b) Investigation into the facts of this case in order to identify, prosecute and punish the masterminds and perpetrators of the forced disappearance of Marco Antonio Molina Theissen (*third operative paragraph of the judgment on reparations*);

(c) Publication of paragraphs 40(7) to 40(19) of the judgment on merits (*fourth operative paragraph of the judgment on reparations*)

(d) Establishment of a prompt procedure to obtain a declaration of absence and presumption of death due to forced disappearance (*seventh operative paragraph of the judgment on reparations*), and

(e) Adoption of such legislative, administrative or other measures as may be necessary to establish a genetic information system (*eighth operative paragraph of the judgment on reparations*).

19. That the Court will consider the general status of compliance with the judgment on reparations (*supra* Having seen paragraph 2), when it receives the pertinent information on the elements of reparation that are pending compliance.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions and in accordance with Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, 25(1) and 30 of its Statute, and 29(2) of its Rules of Procedure,

DECLARES:

1. That the State has complied fully with the following operative paragraphs of the judgment on reparations:

(a) Organization, in the presence of its senior authorities, of a public act to acknowledge its international responsibility in relation to the facts of this case and to make amends to Marco Antonio Molina Theissen and his next of

kin (*fifth operative paragraph of the judgment on reparations*);

(b) Designation of an existing educational center in the city of Guatemala with a name that refers to the children who disappeared during the domestic armed conflict and placement of a plaque in remembrance of Marco Antonio Molina Theissen (*sixth operative paragraph of the judgment on reparations*);

(c) Payment of the amounts established for compensation for pecuniary and non-pecuniary damages (*ninth and tenth operative paragraph of the judgment on reparations*); and

(d) Payment of the amount established for costs and expenses in the domestic proceedings and in the international proceedings before the inter-American system for the protection of human rights (*eleventh operative paragraph of the judgment on reparations*).

2. That, in accordance with the terms of the nineteenth and twentieth considering paragraphs of this Order, it will keep open the procedure to monitor compliance with the elements pending compliance in the instant case. These are as follows:

(a) Finding and delivering the mortal remains of Marco Antonio Molina Theissen to his next of kin (*second operative paragraph of the judgment on reparations*)

(b) Investigation into the facts of this case in order to identify, prosecute and punish the masterminds and perpetrators of the forced disappearance of Marco Antonio Molina Theissen (*third operative paragraph of the judgment on reparations*);

(c) Publication of paragraphs 40(7) to 40(19) of the judgment on merits (*fourth operative paragraph of the judgment on reparations*)

(d) Establishment of a prompt procedure to obtain a declaration of absence and presumption of death due to forced disappearance (*seventh operative paragraph of the judgment on reparations*); and

(e) Adoption of such legislative, administrative or other measures as may be necessary to establish a genetic information system (*eighth operative paragraph of the judgment on reparations*).

AND DECIDES:

1. To require the State to adopt any necessary measures to comply promptly and effectively with the elements pending compliance, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.

2. To request the State to provide information on the failure to publish paragraphs 40(7) to 40(19) of the judgment on merits, pursuant to the terms of the fourth operative paragraph of the judgment on reparations.

3. To request the State to present to the Inter-American Court of Human Rights, by September 28, 2007, at the latest, a report indicating all the measures adopted to comply with the reparations ordered by the Court that are pending compliance.

4. To request the representatives of the victim and his next of kin and the Inter-American Commission on Human Rights to submit any observations they deem pertinent on the State's report mentioned in the preceding operative paragraph within four and six weeks, respectively, of receiving it.

5. To continue monitoring the aspects of the judgment on reparations of July 3, 2004, that are pending compliance.

6. To require the Secretariat of the Court to notify this Order to the State, the Inter-American Commission on Human Rights, and the representatives of the victim and his next of kin.

Sergio García Ramírez
President

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Diego García-Sayán

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary