CHAPTER EIGHT

Globalization of Human Rights and Mutual Influence between Courts

*The Innovative Reverse Path of the Right to the Truth*

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I Introduction

In December 2012 the European Court of Human Rights delivered its final judgment on the (in)famous case *El-Masri V. Macedonia*.1 Though the court had addressed the widely debated practice of extraordinary renditions2 in at

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2 According to the European Commission for Democracy Through Law (Venice Commission), Opinion on the International legal obligations of Council of Europe Member States in respect of secret detention facilities and inter-state transport of prisoners, no. 363/2005, 17 March 2006 at [30], extraordinary rendition is a: “process of one State obtaining custody over a person suspected of involvement in serious crime (e.g. terrorism) in the territory of another State and/or the transfer of such a person to custody in the first State's territory, or a place subject to its jurisdiction, or to a third State,” available at www.venice.coe.int. See also Irish Human Rights Commission (IHRRC), “Extraordinary Rendition: A Review of Ireland’s Human Rights Obligations” (2007), p. 7 ff., available at http://www.ihr.ie. For the extraordinary rendition practice see also: S. Egan, “Extraordinary Rendition and the Quest for Accountability in Europe” Working papers in Law, Criminology & Socio-Legal Studies, research paper no. 05/2012, University College Dublin, available at http://ssrn.com; M.L. Satterthwaite, “The Legal Regime Governing Transfer of Persons in the Fight Against Terrorism” in N. Schrijver,
least three previous cases, the decision given in *El-Masri* showed innovative legal reasoning and a wholly innovative attitude of the judges towards the far-reaching enforcement of the right to the truth. The assertion of such a right undoubtedly represents a milestone in the European Court’s case law, imbuing the whole judgment with a flavour of universality. Although the right to the truth is far from being uncommon on the other side of the Atlantic, *El-Masri* is perhaps the first case, in the relatively long judicial history of the European Court, to see this right serving as one of the main pillars for a severe conviction. The surprising innovation, however, lies not only in the recourse to the right *per se*, but also in the “new” interpretation of such a right adopted by the court.

Starting from the analysis of the European Court judgment in *El-Masri*, with an eye to the legal reasoning related to the right to the truth, we will attempt to address the innovative reverse path followed by this right, from the well-established case law of the Inter-American Court of Human Rights in San José, to the Chamber of the European Court of Human Rights in Strasbourg.

Born as a theorisation in the post-war context of the early fifties, the right to the truth has increasingly developed in Latin America and Africa since 1980. Not only did the precursory case law of the Inter-American Court make a fundamental contribution to the success of the right, but also the widespread diffusion among those peculiar socio-political contexts of non-judicial bodies known as truth commissions. Often preferred by governing *élites* concerned with the potential effects of a full judicial review on politically sensitive issues, truth commissions played a major role in reconstructing “historical truth”

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