

Le sentenze della Corte europea dei diritti come *ius superveniens*: un caso di discutibile *self-restraint* della Corte costituzionale in tema di fecondazione assistita

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Abstract: This article considers the ordinance (n. 150/2012) with which the Constitutional Court has returned the acts to the judges for a new examination to establish whether the question of constitutionality is still legally relevant after the change of mind of the European Court of Human Rights regarding the ban of the practice of artificial insemination with external donor, a practice provided for also in the Italian legislation. This ban, which had been considered contrary to ECHR by a Chamber (*S.H. and Others v. Austria*, 1 April 2010), was then “defended” by the final decision of the Grand Chamber of the Strasbourg Court (*S.H. and Others v. Austria*, GC, 3 November 2011). The issue involves problems about the relations between Courts and requires to consider the conditions under which a judgement of the Strasbourg Court is suitable to satisfy the constitutional standard (Article 117, § 1 Const.) in the incidental review of laws according to the orientation adopted by the Constitutional Court since the historical “twin judgements” of 2007.

Keywords: Artificial insemination with donor, Constitutional Court, European Court of Human Rights.