



UNIVERSITY OF PERUGIA  
DEPARTMENT OF PUBLIC LAW

“The Effectiveness of Rights in the Light of European Court of Human Rights  
Case Law”

**Section:** Globalization and Rights - Interamerican Court of Human Rights

**Title:** *The "new" rights before the Inter-American Court: search for an external consensus and absence of the margin of appreciation.*

**Author:** LAURA CAPPuccio

**Judgement of reference:** Corte IDH, Caso Artavia Murillo y Otros vs. Costa Rica, sent. 28/november/2012

**Conventional parameter:** artt. 4, 11, 17

**Key word:** Right to life, in vitro fertilization, margin of appreciation

**Abstract**

In judgment *Artavia Murillo and others vs. Costa Rica*, the Inter-American Court deals, for the first time, with the interpretation of Article 4 of the Convention, that states that the right to life is protected from the moment of conception. The ruling is a result of a decision of the Supreme Court of Costa Rica that states that the national discipline of in vitro fertilization is unlawful. The Inter-American Court develops a complex argumentation of comparative law (citing the judgments of the Court of Strasburg, the European constitutional Courts and the South- American constitutional Court). For the Inter-American Court these sentences prove that the majority of States do not consider the embryo as a person. This consensus allows the Court to conclude that the State of Costa Rica has violated the Convention. In addition, the total prohibition of in vitro fertilization is not conform to the proportionality test: i.e. to protect the right to life of the embryo from the moment of conception rigidly constrains the rights of the mother. In *Artavia Murillo* there is no reference to the



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margin of appreciation of the State. The Court has never taken into account the possibility that a member State of the Convention could interpret the right to life differently, in compliance to its national culture and religious traditions.

(16.05.2014)