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The Philosophy of the European Court of Human Rights: Axiological Paradigm

Avrupa İnsan Hakları Mahkemesi'nin Felsefesi: Aksiyolojik Paradigma

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Abstract: The article presents an overview of the practice of the European Court of Human Rights (hereinafter referred to as the ECHR) from the standpoint of the philosophy of law, in particular axiology. The study aims to provide a systematic review of the axiological paradigm in two contexts, namely, "the ECHR as a value" and "values of the ECHR". The study has led to the following conclusions: First, the ECHR has a geopolitical integrative, protective, hermeneutic, law-making and orientation value in socio-cultural and political-legal contexts. Secondly, the core of the philosophy of the ECHR is certainly humanistic anthropological values, but the concept of "values of the ECHR" is not limited by these. In the administration of justice, procedural values (the principles of the pre-trial and judicial process, the value of the evidence, the value of substantiation of decisions, etc.), the value of the quality of law, the value of the balance in the conflict of interests (proportionality and expediency of legal restrictions) and the value of context for interpreting legal rules, are realized. These values are the guidelines for the formation of such a legal field, within which the protection of human rights and freedoms is transformed from an abstract category to a real struggle for existing as well as defending interests.

Keywords: Philosophy of law, justice, human rights, values, axiology.

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Introduction

An overview of the practical activity of the European Court of Human Rights (hereinafter referred to as the ECHR) in the light of philosophical and legal methodology is a key prerequisite for understanding the essence of this institution and its role in the civilizational development of Europe. The creation of such an institute gave a humanitarian impulse across the continent and became the basis for a qualitatively new round of human-centric paradigm development. Committed to guaranteeing the respect for fundamental rights and freedoms set out in the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (hereinafter referred to as the Convention), Ukraine has joined the process of promoting universal values that have crystallized over many decades and have been the subject of numerous philosophical and legal discussions. However, this process was quite complicated. It is unfortunate to state that our country is one of the so-called "big four" countries against which the ECHR receives the largest number of complaints, the lion's share of which ends in decisions in favour of the applicants. This situation indicates that there are problems of a systemic nature, because the Convention's actual answer to the "eternal" question of the philosophy of law "how should it be?" seems to exist, but the implementation of the activity aspect of "what to do so as it should be" remains our "hometask", the solution of which requires, *inter alia,* deep philosophical reflections. As V. Bihun rightly pointed out, modern legal activity has formed a request for legal science, which consists in the formation of the philosophy (theory) of justice, the practical purpose of which is to promote the establishment of an effective judicial power, judicial tradition (tradition of justice) in Ukraine (Bihun, 2009, p. 9). Therefore, the article is part of a series of articles on understanding the philosophy of justice of the ECHR as a basis for reforming our country in accordance with international human rights standards.

The problems of the activities of the ECHR are broad enough to determine the interdisciplinary nature of publications devoted to the study of various aspects of the functioning of this international institution. In particular, in recent years in Ukrainian legal science, scholars have paid attention to the practice of the ECHR in the context of discussing civil

law issues, criminal law issues and process, within the framework of the training of judges, as well as theory and philosophy of law. The doctrine of values has been developed for decades by representatives of different movements and schools (T. Lotze, W. Windelband, G. Rickert, R. Perry, M. Scheler, M. Heidegger, J.-P. Sartre, M. Merlot-Ponty, K. Mannheim, G. Radbroch, R. Dvorkin and others) and has been studied by the Ukrainian scientists (O. Bandura, M. Kozyubra, S. Maksymov, S. Slyvka, Yu. Shemshuchenko, V. Shkoda, etc.).

Despite understanding the importance of the problem, there is a clear tendency for a significant number of publications on the investigation of applied lawmaking and enforcement issues in the light of functioning of the ECHR. Instead, only little attention is paid to the philosophical and legal dimension (axiology, hermeneutics, praxeology, etc.). In view of the stated above, the purpose of the article is a systematic description of the axiological paradigm that underlies the ECHR's administration of justice. In order to achieve this goal, we propose to consider the subject of the study through the binary structure of "the ECHR as a value" – "values of the ECHR".

1. The ECHR as a Value of Socio-Cultural and Political and Legal Existence of the European Community

The ECHR has appeared in history as a result of long-term development. A significant event was preceded by an understanding of hopelessness if the system of internationally recognized "benefits", "values" codified in the aforementioned Convention did not have a responsible, authoritative "bodyguard" similar to Judge Hercules R. Dvorkin, who could embody the role of an arbitrator of disputes at the level of "man-state". The importance of the ECHR for the European continent is realized through the functions and powers vested in it.

Geopolitical integrative value. Foreign scientists point out that the ECHR plays a significant role in the integration process of European countries. The development of a single minimum standard of human rights and freedoms, a common order for their protection and restoration contribute to the creation of a unified philosophical and legal paradigm that underlies the socio-humanitarian development of Europe. The ob-

jectification of spiritual and integrative foundations of universal importance seems possible through the mediation of international-legal and national-legal mechanisms, which would provide conditions for the unhindered formation, restoration and preservation of humanistic traditions of communities (national-cultural, religious, etc.) (Rabinovych, 2008, p. 42). The objective of the collective ensuring of the rights and freedoms is a part of the preamble to the Convention and all its additional Protocols, and the mandate of confidence addressed to the ECHR is based on a common heritage of political traditions, ideals, freedom and the supremacy of law.

Protective value. According to T. Mikhaylina, one can think a lot about values in law as such, but for the average person not the conceptualization of legal values, but their reality, that is their actual exercising, always comes to the fore (Mikhaylina, 2018, p. 121). The ECHR is intended to ensure the protection of rights and the restoration of justice in cases where the actual exercise of rights is limited by unreasonable activities of the state. However, the realization of this protection depends on a number of conditions, for example, protection concerns violations of the Convention that have occurred as a result of arbitrariness, acts or omissions of the state; the ECHR can only be addressed within six months since the claimant has such a right; a prerequisite for the admission of the application is the exhaustion of all possible national means of the applicant's rights protection; the jurisdiction of the ECHR extends only to the territory of those states which ratified the Convention, and other conditions. The ECHR provides a principle of legal certainty that allows all interested parties to foresee the consequences of acts affecting the goods defined in the Convention. There have been attempts in the world to create similar institutions. Yet, the US Court of human Rights was established in the US, but only 20 states agreed to recognize its authority. There is an African Court of Human Rights, but it also has very limited jurisdiction. D. Luban states that the ECHR is the only human rights judicial institution in the world with effective enforcement powers (Luban, 2013, p. 7). Although the implementation of the decisions of the ECHR is not supported by the same rigorous coercive system as it is at the national level, the institution is still considered to be the most effec-

tive international system of human rights protection. However, in the context of discussing the value of the ECHR as a subject of protection, it is not just about protecting and restoring the rights of a particular person. The value of the ECHR is also that this institution aims to "strengthen the resistance of all countries against the insidious attempts to undermine the democratic way of life and thus to ensure overall political stability in Western Europe" (Wildhaber, 2007, p. 523).

Hermeneutic value. In each of its decisions, explaining its legal position, evaluating events, phenomena and processes, the ECHR provides interpretations of the Convention's provisions, clarifications on the relevance of national models of enforcement, in accordance with the supremacy of law, equality, etc. Paragraph 1 of Part 1 of Law of Ukraine No. 475/97-BP of 17 July 1997, on the basis of which the Convention and its separate protocols were ratified, states that Ukraine fully recognizes the jurisdiction of the ECHR in all matters concerning interpretation and application of the Convention. However, in contrast to the formalist approach, the legal interpretation of the ECHR has a clear methodological orientation – human rights (Luban, 2013, p. 7)[1].

Law-making value. Article 17 of the Law of Ukraine No. 3477-IV "On the Enforcement of Judgments and the Application of Practice of the European Court of Human Rights" (with further amendments) provides for the application of the Convention and Practice of the ECHR by the courts as a source of law, and Article 18 defines the procedure for reference to the Convention and Practice of the ECHR. It should be noted that this refers to the "practice of the Court" in its broad sense, and not only to the decisions on Ukraine (Fuley, 2015, p. 7). Consequently, the decision of the ECHR becomes the part of the regulatory framework of the member states of the Convention, which requires great responsibility. Scientists rightly describe the peculiarity of judicial lawmaking as one that forces judges to approach disputes in accordance with extremely high standards of justice, because due to the fact that their decision will be not only an enforceable act, but also a source (form) of law, the arguments of judges will be open to analysis and criticism from the legal

[1] В оригіналі: human rights-oriented legal interpretation.

community. Judicial lawmaking makes justice not an *individual* regulator of social relations, but a *general* one, and these standards go from a single state (a solved case) to a general state (a generally compulsory rule for resolving certain types of cases). And this is precisely what allows us to translate values and principles from abstract form to reality, as well as to give them specific meaning (Bernyukov & Bihun, 2009, p. 262). The ECHR can initiate changes in national legislation. A distinctive example is the institute of "pilot" decisions, which allows the ECHR to point out significant gaps in legislation that identify deficiencies in the application of the norms in practice, which ultimately leads to the breaking of the Convention's system of values. In some cases, it was the ECHR's own recognition of the application admissible and its admission for consideration that compelled the country to amend the current legislation or the enforcement practice (Rabinovych & Radanovych, 2002, p.129).

Orientation value. The Convention is a codified act that presents a universal model of values recognized by the European community as the "highest good". Guaranteeing the realization of human rights at the national level is a guideline that determines perspective areas for reform and development. The judicial practice of the ECHR presents three key methodological guidelines: 1) *an information guideline,* that is, the ECHR shows what is recognized as a value by the international community; 2) *an operational guideline,* that is, the ECHR determines how the problems of enforcement practice should be solved, so that universal values are guaranteed by the state, protected or restricted in a legal way; 3) *a strategic guideline,* that is, the ECHR presents how, in the course of judicial practice, approaches to resolving the conflict of parties are gradually changing in conditions of paradigmatic changes and changes in the context.

The ECHR cannot only influence the judicial practice at the national level but can produce reforms. Its decisions serve not only to resolve individual cases, but also to promote the study, protection and development of the provisions of the Convention, and thus to promote states' compliance with their obligations (Egli, 2008, p. 158)[2]. The judicial prac-

[2] В оригіналі: more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties URL:

tice may signal that a particular national law or policy of the government is contrary to supranational, regional norms in the sphere of human rights, and this can be used in civil society to "reformat" a relevant law or policy. In this sense, according to British scholars, the ECHR's decisions help to balance, changing the "political landscape" in favour of legal or political reform. Although it is difficult enough to trace the causal link between global changes and practice of the ECHR, it does exist (Donald & Gordon, 2012, p. 44, 45). At the same time, the ECHR should not be seen as a dictating, imposing and single model for the strategic development of the member states. For example, in the "Gincho v. Portugal" case, the ECHR has made it clear that there is no perfect model of the judicial system. Each state independently decides what its judicial system should be, and requires, in essence, a single, but the most important point – the system must be such that it guarantees its citizens the right to a fair trial within a reasonable time (Romanyuk, 2015, p. 11, 12).

At first sight, it seems that the ECHR has an influence only on the state, on the implementation of humanitarian policy through legislative, executive and judicial bodies, on the activities of international institutions, as well as on the evolution of international standards in the sphere of human rights. However, P. Rabinovych and N. Radanovych dwell on the impact of the ECHR's activities at the individual level through the formation of the legal consciousness of certain officials, as well as of individual citizens. Many judgements of the ECHR state that the satisfaction of the applicant's claims is already moral compensation for the harm caused by the violation of his rights, namely the decision in favour of the individual gives him a sense of protection, satisfaction and, accordingly, influences the application of the Convention, encourages its national implementation (Rabinovych & Radanovych, 2002, p.138).

2. Value constants in the activity of the ECHR

Legal axiology is a specific area of philosophical and legal reflection that studies "value validity and value fullness of law" (Horobets, 2012, p. 5). Through the justice provided by the ECHR, such validity and fullness take on a new quality as the metaphysical is extrapolated into law-

https://www.zaoerv.de/68_2008/68_2008_1_b_155_174.pdf.

enforcement practice, the validity of the mechanism of protection of the meaningful is verified, and the paradigm of axiological constants is constructed, to which the ECHR constantly appeals. The unity of the values on the basis of which the proceedings are carried out, forms a specific axiosphere (Dufenyuk, 2014, p. 161). For the legal assessment of the facts, "axiom-legal issues are important, because it its activities the ECHR thoroughly evaluates the phenomena and circumstances of reality, selects the evidence that is of legal importance in view of the peculiarities of specific cases" (Slabak, 2014, p. 409). So let's consider the structure of value constants of the ECHR. It includes the following:

- *human rights and fundamental freedoms as the axiological core of the philosophy of justice of the ECHR* (right to life, right to a fair trial, right to respect for privacy and family life, right to expression of one's views, right to freedom of thought, conscience and religion, protection of property rights, etc.). If one looks at these benefits in a historical retrospective, paradigmatic changes in legal understanding and the approximation of the right to the positive and the natural are evident (Bratasyuk, 2014, p. 205). And even today, the value-oriented maxims of humanism do not always become a peremptory basis for balancing the dichotomies of the "rights of the defense party – the powers of the prosecution party", "the rights of the defense party – the rights of the victim", "the measure of the offender's guilt – the measure of responsibility", "the measure of the offender's guilt – the measure of criminal coercion", etc. (Dufenyuk, 2014, p. 233). The Convention is considered as a "living instrument", interpreted in the light of "current conditions", so the relevant minimum level is revised in the direction of strengthening human rights protection (Selmouni v. France) (Khylyuk, 2015, p. 117). However, universal values are filled with specific historical meaning, depending on the cultural context. Today, it is not enough to state "what a good is". S. Rabinovych states that at the present stage of development of world civilization, common values of universal scale can acquire specific legal content as requirements of a negative, prohibitive character (Rabinovych, 2008, p. 41). For example, the Convention prohibits torture or inhuman or degrading treatment or punishment, arbitrary and unlawful deprivation of liberty, discrimination in the use of rights and freedoms, forced labour, etc.;

- *procedural values,* which are the "methodological pillars" of the activities of the ECHR and, on the one hand, can be the object of ECHR evaluation, as they allow to assess the effectiveness of national means of ensuring the rights and fundamental freedoms, their conformity with the Convention, and on the other hand, can be the basis of the process in the ECHR itself. These include the principles of the process (the supremacy of law, publicity, equality, obligation of court decisions, reasonable terms, etc.), presumptions, as well as the value of evidence, the value of substantiating decisions, the value of enforcing judgements, etc. It is fundamentally important that these values are less dependent on sociocultural contexts and have the character of definite demands. For example, the autonomous conception of the concept of "criminal offense" in the practice of the ECHR, as S. Khylyuk states, provides the same level of minimum procedural and substantive guarantees of human rights in the criminal and legal sphere in all states of the Council of Europe, regardless of different national approaches to determining criminal and punishable acts (Khylyuk, 2015, p. 111);

- *The value of the balance of interests* as an immanent component of the solution to the conflict at the level of "man-state". The ECHR is often in search of the balance, in particular, in assessing the proportionality of the punishment imposed, the adequacy of the applied measure of carrying out the criminal proceedings, the proportionality of the degree of human rights restriction and the tasks of the investigation, the adequacy of the investigation period and the need to ensure completeness and effectiveness, etc. The methodological basis for achieving equilibrium and resolving the conflict of values is a certain type of legal understanding, which determines the justification of the legal position of the court. The analysis of the ECHR's practice suggests that the motivational parts of the decisions are ontologically and epistemologically integrative. They accumulate manifestations of sociological, realistic and existentialist theories of law and a semantic connection with the ideas of naturalism (Rabinovych, 2009, p.10, 41-42);

- *The value of the quality of the law* as a basis for the formation of a legal position on the evaluation of actions, justification of restrictions on rights and freedoms, fairness of punishment, etc. For example, the

ECHR formulates the following value criteria: a legal act must be accessible to the citizen as a guideline for legal behaviour and its consequences, sufficient for the legal rules applicable in a particular case; a rule cannot be regarded as a law unless it is formulated with the necessary precision ("the Sunday Times v. the United Kingdom"); the law must meet quality requirements, that is, it must be accessible and foreseeable ("Canton v. France"); the criminal law is so vague that one cannot understand exactly what behaviour is forbidden ("Kokkinakis v. Greece", "S.R. v. United Kingdoms", "K.-HW v. Germany" (Panov, 2015, p. 9). In the case of "Shchokin v. Ukraine", the ECHR stated that the lack of clarity and precision in the national legislation, which led to "the possibility of different interpretations of such an important financial issue, violates the "quality of law" requirement of the Convention and does not provide adequate protection from arbitrary interference of public authorities in the applicant's property rights".

- *The value of the context of interpretation* as the socio-humanitarian and moral outline within which conflict arises and is resolved. For judges, the circumstances of each case are "coefficients of social tendencies", and judges must therefore rely, at least in part, on tendencies or social conditions that dominate in the course of decision-making process (Bihun, 2011, p. 76). Today, the main problem of legal hermeneutics is not only the problem of understanding the meaning of the norms of law, but also the problem of their interpretation on the basis of the individual's understanding of all legal reality as a whole (Dufenyuk, 2014, p. 81). Contextuality can be found when the ECHR applies different approaches to resolving similar cases. For example, in one case the right to engage in a particular activity is punishable because "the severity of such a measure gives it the punitive and restraining nature inherent in criminal sanctions" (Mihai Toma v. Romania), in the other case the same action is considered to be a measure "to protect society" and not to punish the person (Haarvig v. Norway) (Hylyuk, 2015, p. 114). The context becomes particularly important when dealing with evaluative judgements, such as "diligence", "sufficiency", "relevance", "efficiency", "reasonableness", "substantiality", "necessity", "urgency", "persuasiveness", "materiality", "belonging", "expediency", etc.

The judge as a "personality" comprehensively considers all factors, written law, historical and social context, sees in legal rules "living energy" (Bihun, 2011, p. 76). And here comes one of the greatest philosophical and legal debates: what should be a priority to a judge – the law (supremacy of law) or statute (supremacy of statute)?

The principle of the supremacy of law is one of the fundamental values. According to this principle, a person, his rights and freedoms are recognized as the highest values and determine the content and orientation of the state's activities, as well as respect for human dignity. The essence of this principle is detailed, for example, in Article 11 of the Criminal Procedure Code of Ukraine. Ensuring the supremacy of law in the field of criminal justice, as defined by V. Tertyshnyk ten years ago, is associated with the development of such a procedural form of justice, in which priority is given to human rights and freedoms, their limitations are eliminated as much as possible or such restrictions are allowed as an extreme necessity, when it is impossible to achieve the aim of justice by other means, and the harm caused by the restriction of human rights and freedoms will be less than prevented (Tertyshnyk, 2009, p. 31). But it's not so simply. It is understandable for lawyers to say that the supremacy of law is more addressed to legislators than to judges (Dudorov & Mazur, 2017, pp. 132-134). Even if the law is to some extent unjust, the judge should not make a decision against it, as it can lead to chaos, unpredictability and legal uncertainty.

However, not all issues can be governed by the letter of the law. For judges, there is still a certain field of legal reality where the supremacy of law can be realized. In this case, the basis for the position of a judge may be a known "Radbruch formula", which provides that in the conflict of positive law (legal certainty) and the high idea of justice, preference must still be given to positive law. Only when the law reaches an unbearable level of injustice, in fact denies justice, should it yield to justice (Bratasyuk, 2014, pp. 204-211). G. Radbruch's doctrine of legal values evolved from the recognition of the priority of law to the recognition of the priority of justice on the basis of reflection on "legitimate wrong" and "supralegitimate law" in the context of philosophical discourse on the politics and positive law of Nazism (Spaak, 2008, p. 261-290). In the conflict

of legal positivism and meta-ethical relativism, the idea of the law prevailed over the idea of the statute. G. Radbruch concludes his "five-minute" monologue on the philosophy of law with the following: "There are legal principles that are more authoritative than any legal regulation, and a statute that contradicts them has no power" (Radbruch, 2004, p. 96). This approach is consistent with the axiological methodology of the Nuremberg trial, which, despite the principles of *nullum crimen sine lege* and *nulla poena sine leg*e, made a guilty verdict. And this meta-ethical relativism is at the heart of the motivating parts of many decisions of the ECHR.

3. ECHR in the prism of methodological criticism

The axiology of law, as T. Mikhaylina states, should not become "... technocratic and be reduced to purposeful fixation at the level of legal prescriptions of certain ideals and values, which should rather be reproduced between the lines, in the spirit of law and its actual implementation, and not in the letter of law" (Mikhaylina, 2018, p. 122). This approach also seems appropriate in the context of the debate on axiology of justice, including the axiological paradigm of the ECHR. The value markers identified at the level of the Convention are the basis for decision making and justification of the legal position, but the subtle value matter is realized in each case and context in its own way. Where these markers are not so obvious or where there is fierce competition between values of different order (types, levels), the ECHR has a field for interpretation, and thus the Convention becomes "a living instrument" (Donald & Gordon, 2012, p. 87).

Since the time of creation the ECHR has interpreted the norms of law in thousands of decisions. Did this interpretation always coincide with the one the developers of the Convention in 1949-1950 made? Certainly not. Therefore, it is rightly noted by current lawyers, that the ECHR views the Convention as a "living instrument". The interpretation of this court takes into account, first of all, the dynamics of the contemporary context, not the historical approach, since it allows, first, to take into account those values and standards that were not known to the developers of the Convention at that time; second, to take into account

current changes in the state which is a respondent party in the case (Donald & Gordon, 2012, p. 88).

But despite its high teleology, serving the idea of strengthening human rights, and promoting common values recognized by the international community, the ECHR is criticized.

First, it is stated that the ECHR sometimes goes far beyond the interpretation of the Convention, including inserting the new content into the norms, that was not intended originally. According to experts, the ECHR has established itself as a High Court for states and delves into those areas where there is no agreement between the member states.

Second, it is stated that sometimes individual decisions of the ECHR do not sufficiently account for historical, cultural and other differences. The Convention forms a single template for most aspects of human existence as a guarantee of protection against despotic influences, arbitrariness of the state. The problem arises when they try to apply this template to all forms of collective action or political and administrative decision-making. There is simply no consensus that could hold that level of detailing. There is a tendency to create entirely new legal concepts and to increase attention to the positive obligations of the state. Some experts believe that the ECHR "has departed from the normal principles of interpretation of international treaties" and that its "excessive activity in law" has become a "systemic problem" (Donald & Gordon, 2012, p. 91-2).

Third, the insufficient clarity, certainty and quality of substantiation of decisions, inconsistency in the application of norms in similar cases, which is a significant dilemma for judicial practice, are criticized. The ambiguity of the case-law practice of the ECHR provokes conflicts and misunderstandings of what the respondent state should actually do not to be sued.

In response to such criticism, opponents state that an evolutionary approach to interpretation based on understanding the purpose of the Convention allows for the extension and adaptation of standards to new conditions of the present, and as for insufficient clarity and inconsistency, they state that this problem is too exaggerated. The abstract value essence of rights and freedoms becomes real in the practical plane when

considered by the ECHR concerning a particular individual under specific conditions.

Conclusion

The conducted research gives the grounds for the following conclusions. The axiological paradigm of the ECHR should be viewed from the standpoint of the binary construction of "the ECHR as a value", that is, the significance of the existence of such an institution for Europe's progress towards the assertion of human right and fundamental freedoms, and the "values of the ECHR", that is, the meaningful constants that form the methodological principles of justice, are protected and promoted by this court.

The vast majority of publications focus on the second component, but it is important to consider the institution in a broader context, since it provides the basis for forming the motivation that encourages the High Contracting Parties to comply with the Convention, to implement standards in the field of rights and fundamental freedoms at the national level. The ECHR has a geopolitical integrative, protective, hermeneutic, law-making and orientation value in socio-cultural and political-legal contexts.

Each decision of the ECHR verifies the effectiveness of the international community's guarantees for the protection of human rights and fundamental freedoms. The core of the philosophy of the ECHR is certainly humanistic anthropological values, but the concept of "values of the ECHR" is not limited by these. In the administration of justice, procedural values (the principles of pre-trial and judicial process, the value of evidence, the value of substantiation of decisions, etc.), the value of the quality of law, the value of the balance in the conflict of interests (proportionality and expediency of legal restrictions) and the value of context for interpreting legal rules, are realized. These values are the guidelines for the formation of such a legal field, within which the protection of human rights and freedoms is transformed from an abstract category to a real struggle for existing as well as defending interests. Although the ECHR is sometimes criticized, nothing better has been suggested yet.

The conceptualization of axiology of the ECHR cannot be consid-

ered complete, as it is a dynamic institution that uses the Convention as a "living instrument" in its practice. Therefore, in the coming debates, we may witness new paradigm changes under the influence of new global challenges and threats.

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Öz: Bu makale, Avrupa İnsan Hakları Mahkemesi'nin (bundan sonra AİHM olarak anılacaktır) hukuk felsefesi, özellikle aksiyoloji açısından uygulamasına genel bir bakış sunmaktadır. Çalışma, aksiyolojik paradigmanın "bir değer olarak AİHM" ve "AİHM'nin değerleri" olmak üzere iki bağlamda sistematik bir şekilde gözden geçirilmesini amaçlamaktadır. Çalışma aşağıdaki sonuçlara yol açmıştır: Birincisi, AİHM sosyo-kültürel ve politik-yasal bağlamlarda jeopolitik bütünleştirici, koruyucu, hermeneutik, yasa yapma ve oryantasyon değerine sahiptir. İkincisi, AİHM felsefesinin özü kesinlikle hümanist antropolojik değerlerdir, ancak "AİHM değerleri" kavramı bunlarla sınırlı değildir. Adalet yönetiminde, usul değerleri (yargılama öncesi ve yargı sürecinin ilkeleri, kanıtların değeri, kararların doğrulanmasının değeri vb.), hukukun kalitesinin değeri, çıkar çatışmasındaki dengenin değeri (yasal kısıtlamaların orantılılığı ve uygunluğu) ve yasal kuralların yorumlanması için bağlamın değeri gerçekleştirilir. Bu değerler, insan hak ve özgürlüklerinin korunmasının soyut bir kategoriden var olan ve çıkarları savunan gerçek bir mücadeleye dönüştürüldüğü böyle bir yasal alanın oluşturulmasına ilişkin kılavuzlardır.

Anahtar Kelimeler: Hukuk felsefesi, adalet, insan hakları, değerler, aksiyoloji.