

# Vincent Berger – a master of jurisprudence of the European Court of Human Rights

*Marin Voicu\**

1. I first met Vincent Berger in 1994 in Constanța (a port on the Black Sea) and I recall being fascinated by his special charisma, mainly reflected in the manner in which he conveyed to us the culture of the ECHR jurisprudence and the humanistic values of European civilisation.

At that time, Romania (from 7 October 1993) was already a member State of the Council of Europe and had recently ratified the Convention (June 1994), and a group of Romanian judges, myself included, were enrolled in a course concerning the protection of human rights and fundamental freedoms, both at the International Court of Justice in The Hague and at the Council of Europe.

That meeting may perhaps have contributed to my choice, as a career-oriented judge, of the fascinating challenge represented by the applicative study of the Convention and, particularly, of the Strasbourg case-law and literature on European fundamental rights.

I was thus fully engaged in the process of building up European Law, with positive effects on my judicial activity, at the university as well as in the teaching of young judges at the National Institute of the Judiciary.

A certain shyness and even inhibition, that marked the beginning of my career as a judge at the Court,<sup>1</sup> was overcome with the benefit of my experience of almost 30 years (at that time) as a national judge, but especially by the accommodation with the Court's jurisprudence that had been facilitated for me by the "specialist" Vincent Berger, and, mostly, by Professor Louis-Edmond Pettiti, former Dean of the Bar of Paris, judge of the Court and author of numerous academic papers of reference in the relevant domain.

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<sup>1</sup> On 26 September 1996 I was appointed as judge by the Parliamentary Assembly of the Council of Europe for a mandate of nine years, in respect of Romania (the term ended on 31 October 1998, when the new Court came into being under Additional Protocol No. 11).

In that period, I could also directly observe that Vincent Berger was following, with modesty and loyalty, in the footsteps of Professor Pettiti, and that he became, in time, not only the most reputed servant of the Court's Registry, but also a remarkable founder, a keeper of the jurisprudential treasure of the Court as well as a successor in terms of activity to Dr. Marc-André Eissen, the prestigious Registrar of the Court (also a friend of the Romanian judiciary).

2. Vincent Berger has acted faithfully, for over 35 years, not only as a true practitioner within the Court but also as a recognised advocate of its jurisprudence in France and in other European media.

2.1. A remarkable achievement in this connection is his work entitled *Jurisprudence de la Cour européenne des droits de l'homme*, published by Dalloz and, thereafter, by Sirey (Paris), in twelve editions, and translated in numerous member States of the Council of Europe, including Romania.

In his foreword to the first edition in French, of 1984, Professor Louis Edmond Pettiti emphasised the following:

“By the quality of its analysis and its topicality, the work written by Vincent Berger meets the need of lawyers to have at hand a wide panorama of the case-law of the European Court of Human Rights. ... An overview of the latest decisions helps the reader to follow the evolution of the assessments by the ‘Strasbourg judges’ and provides practitioners with a useful handbook. ...

Vincent Berger presents commentaries that are concise and to the point, encouraging the reader to look further into the Commission's reports and the Court's decisions. Through this analysis, and through other studies that have already been published in the major international journals, the key principles of the Court's decisions clearly emerge. ...

The importance of precedent in the making of the Court's decisions is fundamental. Vincent Berger does not fail to stress this point throughout his commentaries. The important role assumed by the Registry of the European Court, which has been able to retain its unity, within the institution, during the different periods of the Court's activity, is also noteworthy.

The European Convention, the evolution of human rights and fundamental freedoms, requires a special education of the legal world and a permanent training of members of the legal professions. This was

called for by the Resolution of the UNESCO International Conference for education in human rights (Vienna, 1978), which led to numerous States including human rights courses in school and university programmes, as a sign and expression of the contemporaneous spirit of solidarity”.

2.2. In the foreword to the second edition in French (1989), Louis-Edmond Pettiti praises the quality and utility of Vincent Berger’s work:

“The work of Vincent Berger is more than a continuation and an extension of the previous one. The extent of its analysis, the wide range of the judgments examined (from no. 66 to no. 127 of Series A of the Court’s publications) confers on this work a far greater educational and documentary value.”

The analytical method used by Vincent Berger appears particularly appropriate, since it allows the reader to grasp the fundamentals of the Court’s decisions, of its references to precedent and of the inter-connection of its approaches.

Vincent Berger was also careful to quote and briefly reproduce the points made by the minority in separate and dissenting opinions as regards the reasoning or the merits of the decision. The influence of minority votes, alongside their corollary of dissenting opinions, is certainly important for the development of the Court’s jurisprudence as well as for the position of academic writers. The bibliographical notes regarding each decision, as assembled by the author, equally facilitates research within the academic environment.

This book, in its twelve French editions, presents us with a panorama of the evolution of the Court’s jurisprudence, by briefly presenting the key rulings and decisions of the Court, as delivered in over 50 years of existence (1959-2011), while the last Sirey edition, of 2011, is a genuine and bright “display” of *the most remarkable decisions*.

3. With great generosity, Vincent Berger has agreed to the translation and publication of his work (updated editions) in a number of languages: German, English, Lithuanian, Russian, Hungarian, Turkish, Romanian, etc., and even signed the foreword to the Romanian edition, published in Romania in 1997 under the supervision of the Romanian Institute for Human Rights (RIHR), on which occasion he modestly wrote:

“My work aims to present this cursive and also constant course of the Court’s activity. To this end, it gathers the fundamental elements that should allow practitioners, students and others who appear in courts to apprehend the very essence of the decisions, whose texts are frequently well substantiated and sometimes puzzling. By contrast, it does not contain comments on the soundness of the decisions, nor on the stability of the reasoning thereof or an analysis of the Court’s case-law. It does not represent a treatise on jurisprudence.”

Almost four years after Romania’s accession to the Council of Europe and the ratification of the Convention, the publication in Romanian of this important work (later republished in five editions) represented a remarkable event, greeted with enthusiasm and confidence by the well-informed Romanian readers, who paid tribute, on the same occasion, to Vincent Berger’s eminence.

I was honoured to draft the foreword to that first Romanian edition (July 1997), when I was already in the second year of my term as judge of the Court,<sup>2</sup> on which occasion I noted, among other things, the following points concerning the work:

“I underline, with great satisfaction, that the work of my friend Vincent Berger is the first of its kind in Romania and in Romanian, thus honouring Romanian lawyers and explaining the great interest it has generated. We are not only in the presence of a publishing event in the legal domain, but also of a significant moment that will undoubtedly set new dimensions in constitutional and judicial doctrine and jurisprudence.

His doctrinal experience as well as his expertise as practitioner at the European Court of Human Rights has helped the author to systemise and synthesise the most representative solutions of this European Court, thus duly certifying the governing role of its jurisprudence in the application of the Convention by the member States of the Council of Europe, according to the latter’s scope and purpose.

With no statistical approach as to the activity of the Court, the work offers a global and concrete vision of the Court’s jurisprudence concerning each of the fundamental rights and freedoms enshrined in the Convention and the additional Protocols thereto.

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<sup>2</sup> Holding, at the same time, the position of President of the Constanța Court of Appeal and member of the High Council of the Judiciary.

The most appropriate way to enable the national judge to apply the subsidiarity principle, which empowers him to decide whether the Convention has been infringed or not, is to bring to his knowledge the decisions of the Court, so that he/she can use them in his/her own jurisprudence.

The broad general bibliography, comprising remarkable papers published in recent years (102 titles), as well as specific articles (584), written by famous authors, of which several have served or are serving as judges at the European Court of Human Rights, is of utmost utility for lawyers, students, researchers and, especially, judges”.

On the occasion of the 50th anniversary of the Court’s existence, I remarked, with great satisfaction, in a work dedicated exclusively to this event, Vincent Berger’s contribution to the shaping and spreading, throughout Europe and the entire world, of the Court’s jurisprudence.<sup>3</sup>

For his part, with the same spirit, Vincent Berger kindly wrote the foreword to my first work,<sup>4</sup> honouring me with warm appreciation:

“Its author is a pioneer. First, because he was the first Romanian judge at the Strasbourg Court. Appointed by the Parliamentary Assembly of the Council of Europe on 26 September 1996, he took his oath on 24 January 1997 and immediately started to fulfil his high duties. He acted as judge until 31 October 1998, when the Court was dissolved under Protocol No. 11. This period, although a short one, was fruitful, because the Court issued a great number of decisions. Marin Voicu has actively participated in the handing down of many of them. He shared with his colleagues his vast judicial experience, especially as former President of the Constanța Appellate Court and Member of the High Council of the Judiciary. From his activity in Strasbourg Mr Voicu gained a significant advantage, namely that of learning from inside the functioning and practice of the Court, an advantage that he is currently sharing with all his readers. Further, Mr Voicu is a pioneer also from other points of view. He has provided the first general presentation in Romanian of the European system of protection of human rights, accompanied by the first comprehensive analysis of the place and role of the Convention and of its jurisprudence in the Romanian legal system.

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<sup>3</sup> M. Voicu, *The European Court of Human Rights – 50 years of activity*, Universul Juridic.

<sup>4</sup> M. Voicu, *The European Protection of Human Rights. Themes and jurisprudence*, Lumina Lex, Bucharest, 2001.

Through this new book, Marin Voicu seems to break away from the shores of maritime law, in which he is an unquestioned master. Nevertheless, the book will be of great help to all speakers of Romanian who, one way or the other, have contact with the Convention: for applying, interpreting or developing it”.

In this context, the vision of Professor Luzius Wildhaber, the President of the Court at that date (2001), in the foreword to the same book, should be quoted:

“The 21st century is opening up to us. Without prejudging the future, we can ascertain that this century has inherited a context that is favourable to the protection of Human Rights and Fundamental Freedoms. The previous century did not start equally advantaged, because the individual, as a subject of international law, was ignored, while the almighty and, thus, the potentially arbitrary statehood was acclaimed. However, the combined efforts of men and women of good-will paved the way for it to become the century in which the European Convention on Human Rights and Fundamental Freedoms was born and, thereafter, the century during which the same rights were effectively enshrined”.

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I have always appreciated and respected Vincent Berger for his human qualities, which brought to him the respect and honour of his colleagues and of other people of good will, as well as for his relentless efforts and endurance, as a servant of the Court and, above all, as a servant of its jurisprudence, in the complex conditions of the democratic processes in Europe, so that the right of all people to Hope, Well-being and Happiness can become real.

Vivat, Crescat, Floreat Vincent Berger!