CHAPTER FIVE

REGIONAL PROTECTION AND SPECIAL ARRANGEMENTS

Former chapters analyzed the protection of religious human rights under the United Nations. This chapter addresses the protection extended to rights related to religion by the main regional systems of human rights. Regional affinities are an important element in the development of such systems. It is therefore not surprising that the most satisfactory protection is that prevailing in Europe. The European Commission and Court of Human Rights dealt frequently with issues pertaining to this area, and some of their decisions are also discussed elsewhere in this book. The European institutional arrangements concerning monitoring of human rights are now undergoing a basic change, which, it is hoped, will improve protection. In addition, the Organization for Security and Cooperation in Europe (OSCE)—formerly the Conference for Security and Cooperation in Europe (CSCE)—has recently developed important principles in the area of religious freedoms.

In America, monitoring and judicial activity in respect of religious human rights has been scarce, and the Inter-American Court has had no opportunity to issue any important judgment in this respect. As to Africa, the African Commission on Human and Peoples’ Rights has not been too creative. Although not a regional system in a geographical sense, the approach of Islam to religious human rights will also be summarily referred to. So will some special bilateral arrangements.

Europe

The literature on the European system for the protection of human rights, including religious rights, is vast.¹ Several books deal specifically with the activities of the European Court and Commission of Human Rights.² The

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court’s decisions on issues of proselytism have provoked considerable interest, as we shall see. Some of these works refer specifically to religious rights.\(^3\)

The major European human rights documents follow in general the orientation of the 1948 Universal Declaration of Human Rights and the 1966 International Covenants. The basic provisions of these documents recur with some variations and expansions in (1) the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms;\(^4\) (2) the 1975 Final Act of the Helsinki Conference on Security and Cooperation in Europe (Principle VII); (3) the Concluding Document of the Vienna Meeting of 1989 (particularly Principles 16 and 17); (4) the 1990 Document of the Copenhagen Meeting of the CSCE Conference on the Human Dimension; and (5) the 1990 Paris Charter for a New Europe.\(^5\)

The basic guarantee is set out in Article 9 of the 1950 European Convention. Paragraph 1 is identical to Article 18 of the Universal Declaration of Human Rights. Paragraph 2, to be compared with Article 18, paragraph 3 of the International Covenant on Civil and Political Rights, states:

> Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

The words “necessary in a democratic society” are absent from the covenant. They were inserted in the European text instead of a reference to limitations in the interests of national security in an earlier draft. The European Convention did not incorporate a provision intended to preserve national rules restricting the rights of certain religions.\(^6\)

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4 213 U.N.T.S. 211. The convention has its origin in a draft prepared in 1949 by the European Movement. It included a reference to freedom of religious belief, practice, and teaching.


6 Such were the cases of Sweden and Turkey. The issue was solved allowing reservations in respect of possible contradictions between the convention and national laws not in conformity with it. For the drafting process, see Evans, *Religious Liberty and International Law in Europe*, 264–272.