CHAPTER FIVE

THE PROTECTION OF THE RIGHT TO EDUCATION BY REGIONAL LEGAL INSTRUMENTS

1. Introduction

This Chapter deals with the protection of the right to education by regional legal instruments. The term “instrument” refers to both treaties and soft-law documents. The relevant provisions of the legal instruments will be briefly introduced. A few words will also be said on which body supervises each particular instrument and which supervisory procedures are available.

Not only legal instruments adopted at the international level protect the right to education. The right to education is also protected in many legal instruments adopted at the regional level. Such instruments have been prepared in the European, American, African and certain other regional contexts.

As far as Europe is concerned, instruments which contain provisions on the right to education have been prepared by the Council of Europe, the European Community/Union and the Conference/Organisation on Security and Co-operation in Europe.

Best-known of the Council of Europe instruments are the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, and the European Social Charter, the latter both in its original version of 1961, as subsequently developed, and in its revised version of 1996. The right to education is protected in article 2 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1952. The rights provisions of the Revised European Social Charter, which afford protection of educational rights, are articles 9 and 10 on the right to vocational guidance and the right to vocational training, respectively, article 7 on the right of children to protection, article 15 on the rights of disabled persons, article 17 on the right of children to social, economic and legal protection and article 19 on the rights of migrant workers and their families. The educational rights of migrant workers and their families

---

are also protected in articles 14 and 15 of the European Convention on the Legal Status of Migrant Workers of 1977. The Council of Europe has further adopted two instruments which deal with the protection of national minorities and the rights of persons belonging to such minorities. Whereas articles 12 to 14 of the Framework Convention for the Protection of National Minorities of 1995 are generally devoted to the educational rights of minorities, article 8 of the European Charter for Regional or Minority Languages of 1992 is devoted to the use of minority languages in education.

Various instruments of the European Union are relevant in as far as education is concerned. Articles 149 and 150 of the Treaty Establishing the European Community of 1957, as amended, confer competencies on the European Community in the fields of education and vocational training, respectively. Articles 7(2) and (3) and 12 of Regulation 1612/68 and Directive 77/486 address the education of migrant workers and their children. Additionally, the Resolution on Freedom of Education in the European Community of 1984, article 16 of the Declaration of Fundamental Rights and Freedoms of 1989 and article 14 of the Charter of Fundamental Rights of the European Union of 2000 protect the right to education.


Instruments which contain provisions on the right to education have been prepared in the American context by the Organisation of American States. The right to education is protected by articles 34(h), 49 and 50 of the Charter of the Organisation of American States of 1948, as amended, article 12 of the American Declaration of the Rights and Duties of Man of 1948 and article 13 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988. There are further plans to adopt an American Declaration on the Rights of Indigenous Peoples, protecting inter alia the right to education of indigenous peoples.

Instruments which protect the right to education have also been prepared in the African context by the (former) Organisation of African Unity