

# We and the Others

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Centar za toleranciju i dijalog  
Center for Tolerance and Dialogue

CTD

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## EDITORIAL

CENTRE FOR TOLERANCE AND DIALOGUE

# We and the Others

The fall of communist regimes in whole Eastern Europe and former SFRY and, consequently in Montenegro, opened up a series of problems of society functioning, especially in the light of the fact that procedures and instruments of differing interests conflict management have not been established yet. In nationally, culturally and religiously mixed community such as Montenegro is, questions of multiethnicity, multiculturalism and multireligiousness of life have become of special relevance, which can be metaphorically summed up in a syntagma *We and Others*.

Faced with the shortage of government institutions and instruments for articulation and reconciliation of different interests, on the one hand, and lack of general culture, especially the political one, and tolerance which is necessarily dictated by the life in multiethnic, multicultural and multireligious communities, on the other hand, The Youth Centre "Budo Tomovic" in Podgorica and Forum for Ethnic Relations in Belgrade devised and established the Centre for Tolerance and Dialogue (CTD) with the seat in Podgorica.

Centre acts as an addition to a wide gamut of nongovernmental organizations, with emphasize on education for democratic solution of conflicts, and life implying learning, recognition of and respect for differences. Likewise, spreading and enriching nongovernmental international cooperation is of key interest for development of civil society and the over-all democratisation and reform in Montenegro.

Fundamental objectives of the CTD are defined by the very reasons for its establishment, while the operative ones can be divided into a number of wholes. The work of primary impor-

tance consists in collection, processing and exchange of information of special relevance for studying and monitoring interethnic relations, especially conflicts and, it should be underlined, ways of establishing and developing life in tolerance. Education of the young and support to young people who are ready and willing to encourage development and spreading of the culture of dialogue and tolerance are of particular significance. CTD work also includes intensification of cooperation, linking of different ethnic, religious and other communities and their organizations. Enrichment of communications in conflicting communities and drawing attention to circumstances and acts leading to an escalation of conflicts originating from ethnic, religious or cultural differences are of extreme importance.

*We and Others*, the quarterly of the Centre for Tolerance and Dialogue, the first issue being before you, has been conceived as a part of the effort to establish understanding and tolerant life of different communities, with an emphasize on minority groups and their rights. By presenting the CTD projects, both those that were already implemented and those that are under preparation, *We and the Others*, has ambition to become a public and expert panel which will without any bias register negative and positive steps forward in multiethnicity, multiculturalism and multireligiousness of Montenegro. Work of nongovernmental organizations on establishment of new democratic principles and giving proposals for setting up institutions based on them - as we can learn from the experience of developed countries and of countries that have long time before Montenegro begun the painstaking process of transition - is not easy to be accomplished without special information and publishing activities, the more so that even verbally democratic and open media are very often closed, or even worse, rigid in relation to conflicts and even the very life of complex communities.

*We and the Others* will try to fill in part that information "gap", and such an ambition cannot be, at least even partially, fulfilled without feedback information which means, above all, ideas, experience and suggestions of readers.

Editorial staff

## Assistance of friends and associates

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# From Slavery to Civil Disobedience

*Individuality of human being and independence of his personality are a basis for the building of human rights corps*

Prof. Dr Stevan Lilic

The idea of human rights appears in the most diverse forms of human life and creation, inter alia, in arts and literature, legislation and law, philosophy and religion, customs and politics, etc. Though the idea of human rights has its complex philosophical background, two central concepts of the philosophy of human rights are, nevertheless, simple and easily understandable. Those are the concepts of the individuality of human being and independence of his personality. The man is considered as a being having power over his doings while causes of his actions lie primarily in himself.

## Roots in Greek myths

Though roots of the idea of human rights date back to classical Greek myths, one might say that the modern idea of human rights was appearing concurrently with development of Enlightenment and universality of the New Age, ... the struggle that some basic human rights and freedoms do not enjoy only citizens of a state but all people, began in fact as far back as in the 18th century, by the adoption of the famous Declaration of the Rights of Man and of the Citizen in the beginning of the French Revolution in 1789, because it was not a document relating only to the French people. And yet, sovereignty of the state was so strong that it dictated co-existence of non-democratic and democratic states and governments that respected and trampled on human rights. The relation between a regime and its subjects was considered to be an internal matter of the state: where nobody from outside, let alone official bodies, could interfere with. That is why in the 19th century "weak spots" of the then international system were sought after in those areas that were not covered by absolute sovereignty of the state. One of such areas was, for instance, high seas so that fighters against slavery, unable to contribute to the abolishment of it outside the borders of their state, tried at least to prevent slave trade, which afforded an opportunity to stop ships that were transporting slaves on the high seas and set the captured people free. The idea of human rights had and still has a bearing on numerous legal comprehensions and concepts, both in theory and in national and international legal practice. Thus, for instance, while it was considered before with regard to the execution of sentences that a man during serving his sentence became a sort of "state slave", today ... with the increasing respect of the rights of man, an emphasis is not primarily placed on the administrative-legal approach but the starting point is respect for basic principles of a legal state with regard to the legal status of a prisoner and constitutional-legal



grounds are invoked for granting an authorization for coercion and for all actions within the regime of the execution of sentence by arresting somebody.

## The law has existed before and beyond the state

It might be said that present-day theoretical presuppositions of human rights, as the highest human standard, were shaped early in the 20th century by Leon Degut: His fundamental assumption is based on the concept that the state can and have to be limited by law, both by the internal law and the international one. Following the logic of this approach, the law has to exist "before and outside the state" (the so-called „l'antériorité et l'extériorité du droit par rapport à l'Etat"). Degut explained his understanding of the limitation of the state by law in his book "The Transformations of Public Law" (Les Transformations de Droit Public, 1915) where he, among other things, theoretically "refutes" the concept of public law based on the idea of people's sovereignty, on which the traditional model of a legal state is based (Rechtsstaat). As pointed out by Degut, ...the system of public law under which all educated people lived for a century, was founded on a number of principles that were respected by many as dogmas until recently and wanted to impose them on all. Two major ideas were his essential tenets: the idea of the state sovereignty, the real holder of which, the people, was understood as the state, and the idea of the natural right of an individual, which is inalienable and is not subject to the statute of limitation, and which is opposed to the sovereign right of the state. At the same time, Degut concludes ...it is understood today that public law cannot be explained by a concept of the

delegation of sovereignty by the people. The reason is that the people's will is only a fiction, because it is in reality, whatever one does, only the will of a number of individuals. For that reason, a general obligation imposed by modern age upon those that govern is apparently in contradiction with the concept of sovereignty. Accordingly, the principle of the whole system of modern public law is reduced to the following: those who really have power do not have any subjective right to public power, but have the duty to use their power

## Nuremberg Trials as a turning point

A turning point in development of human rights comes after World War II. In that context, The United Nations Charter (1945) and Nuremberg Trials for crimes against humanity and peace (1946) played a special role. Nuremberg trials showed that instead of the subject of a state, the man appeared as an agent of the universal, international law and that states cannot count any more on their legislative sovereignty as a basis for suppression and violation of general human rights. Soon after, a number of international documents on human rights was adopted that lay basis and standards of their protection and realization, among others being the UN Universal Declaration of Human Rights (1948); European Convention for the Protection of Human Rights and Fundamental Freedoms (1950); the UN International Covenant on Civil and Political Rights (1966); the UN International Covenant on Economic, Social and Cultural Rights (1966), etc.

In that respect, the modern state is also based on the principle of the rule of law which implies a conceptual integration of the traditional principle of the legality of legal state with contemporary standards of the realization of human rights of a welfare state.

for organizing public services and to ensure and control their work.

Degut's theory of transformation of public power (as the right to command) into a responsible public service had as a consequence that the principle of legality, as the supreme principle of traditional legal state, yielded its place to the principle of human rights, as the highest standard of a contemporary welfare state. Thus, it is as an institutional guarantee of the exercise and protection of human rights and social justice at the political level, that ideas of civil disobedience as a political act appear, which is, inter alia... directed and justified by political principles, that is by the principle of justice governing the constitution and social institutions in general. ■