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Vsebina/Contents

Political Participation of Immigrants through Voting and Representation: The Case of Norway[1]

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Abstract

As immigrants are often under-represented in the political arena, in recent years, political participation of immigrants has become one of the most significant issues in many immigrant receiving countries in Europe. Based on secondary data, this paper has examined the political participation of immigrants in Norway through discussions of immigrants' voting turnouts and representation in Norwegian local and national level elections. The analysis has showed that immigrants had a lower turnout and lower representation rate in both previous Norwegian local and national elections, when compared to native Norwegians. Indeed, voting turnout was significantly low in the case of non-naturalized immigrants with Asian, African, Latin American, and Eastern European backgrounds. For instance, whereas total voting turnouts were 59 percent and 61 percent respectively in the 2003 and

[1] This paper is an output from Author's course final paper for the module ' *Emigration and Immigration: A Northern European Perspective*' that was submitted to the University of Stavanger Norway during his second semester study in Joint European Master in Migration and Intercultural Relations.

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2007 local elections, in the case of immigrants these rates were only 25 percent and 28 percent respectively. On the other hand, in the case of representation, the analysis revealed that though immigrants had some representation in municipalities, at the national level their representation was almost negligible. There have been only 3 immigrant origin representatives in Norwegian Parliamentary history who were directly elected. Therefore, this paper has concluded that immigrants are underrepresented in Norwegian politics, considering the total immigrant population, voters, and their proportionate participation rates.

Keywords: Norwegian Immigrants, Political Participation, Voting Turnout, Representation

Introduction

Immigrants and their children comprise a growing group of society's members in many European countries. However, they are under-represented in the political arena of many European countries. It was been shown that immigrants and their descendents were not considered as potential citizens for a long time in many European immigrant receiving countries, as such, they were not expected to be politically active in those host societies. In this regard, political and collective affairs were not of their concern as they were treated as guests, and were expected to work and to be active only in economic roles (Martiniello, 2005). However, since the 1970 the voting right of non-citizen has emerged as a political agenda in many European countries; especially in local level election for EU and non-EU national (Groenendijk, 2008).

In Norway, currently, migration and ethnic relations have emerged as an important topic of debate, especially the issue of immigrants' political inclusion into this host society. Indeed, it showed that whereas Norway had traditionally been a migrant sending country during the late nineteenth and the first decades of the twentieth century, it turned into a significant receiving country after the Second World War (Bergh and Bjørklund, 2010). Hence, there has been an increase in immigration in Norway in the recent decades and Norway has become an ethnically diversified country like other Scandinavian countries. However, it has been argued that this increased ethnic diversity is a challenge for Norway because this small country has always had a homogenous population and relatively low levels of social and political conflict when compared to other Scandinavian countries (Bengtsson et al 2010). Nevertheless, like many others European countries[3] Norway considered some category of third countries non-citizen immigrant's political participation, especially in the local level elections, e.g. in Municipality. However, it was not until 1983 when Norway offered voting rights to foreign nationals and since then, immigrants who had at least continuously three years legal residence, enjoyed voting rights as well as the right to compete as candidates in municipal election (Bergh and Bjørklund, 2010). Immigrants who have Norwegian citizenship are enjoying full political rights like other citizens. Thus, in national election, immigrants with Norwegian citizenship can participate like the native Norwegian (ibid).

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[3] Sixteen European countries such as Belgium, Denmark, Estonia, Finland, Hungary, Ireland, Lithonia, Luxembourg, the Netherlands, Portugal, Slovakia, Slovenia, Spain, Sweden, six cantons in Switzerland, and the United Kingdom offered to some category of third countries non-citizen immigrant's participation in local election (Groenendijk, 2008:3).

The main objective of the paper is to examine the political participation of immigrants in Norway. In order to explore political participation, the voting turn out and representation of immigrants in Norwegian previous local (municipality) and national (parliament) elections were examined. It is worth mentioning that this study used the term immigrants to mean people who were born outside Norway or whose parents were born outside Norway. Because in Norway the lexical definition of immigrants are used i.e., the place of birth is the main indicator of the definition of immigrant (Brunborg, 2009). In attempting to answer the research objective, the paper first discusses briefly meaning and dimensions of political participation, and the immigration history in Norwegian society focusing on the number of immigrant voters. It then examines the voting and representation patterns of immigrants in some previous Norwegian Elections. Finally, concluding remarks are drawn based on the findings.

Methodology

This paper on the one hand, discusses the history of immigration in Norwegian society based on several authors' discussions in different books, journals and academic papers. On the other hand, the data used for examining voting and representation of immigrants in the Norwegian elections is collected from the secondary sources that include several available electoral statistical sources such as the Statistics Norway, International Migration Report (SOPEMI report for Norway), and some other academic documents about Norwegian Municipality and Parliamentary Elections. These electoral data mainly highlighted the political participations of immigrants with background of Asia, Africa, Latin America and Eastern European, Western Europe, North America, and Oceania living in Norway. Therefore, this paper mainly focuses on these groups of immigrants.

Political Participation: Meaning and Dimension

It is shown that political participation is voluntary activities where people are involved directly or indirectly to influence the political outcome. In this regard, De Rooij (2011) formulated a definition of political participation by analyzing Brady (1999) and Verba et al (1995). According to her, "political participation is voluntary activities of ordinary people who are directed towards influencing directly or indirectly political outcomes at various levels of the political system". She argued that these activities could be grouped into types, or modes, which are characterized by different dimensions that influence the choice of individuals between certain acts of participation. Therefore, De Rooij (2011) highlights that in present time two types of political dimensions are observed and those are shaping the pattern of political participation. The first dimension, which indicates pattern of political participation, that is associated with cost; some activities are costly and some others are less costly (De Rooij, 2011). For instance, political activities like voting in election, boycotting certain products or signing petition are identified as less costly activities, whereas contacting politicians, working in community groups, or demonstrating are identified as costly activities (ibid). The second dimension mainly indicates two types of political participation: conventional and unconventional. Here, conventional political activities are voting, campaigning, working in political party or association, conduct with politicians or governments etc. However, the activities like boycotting certain products, signing petitions, taking part in public demonstrations are examples of unconventional political participation (ibid).

On the other hand, Martiniello (2005) has addressed political participation as the active dimension of citizenship that introduces

individual in various ways to become part in the management of the collective affairs of a certain political community. Like the above-mentioned De Rooij's idea, Martiniello also classified political participation into conventional and unconventional. As he points out: "Unlike a lot of political science research, political participation cannot be restricted to conventional forms, such as voting or running for election. It also covers other and less conventional types of political activities, such as protests, demonstrations, hunger strikes, boycotts etc" (ibid).

Moreover, Richardson (1983, as cited in Thomas et al, 2012) recognized political participation as a foundation of democracy. She defines participation as "citizens taking part in the formulation and/or implementation of policy decisions". Richardson (ibid) argues that practically political participation is being expressed through indirect and direct participation. While direct participation happens with face-to-face interaction among the government official and their consumers, indirect participation involves with voting and pressure group membership, which is usually done by citizens with a view to affect the policy decision.

Therefore, the aforementioned discussion indicates that political participation is one kind of action by the people where they involved with different types of political activities, which can be divided into conventional, and unconventional, high cost activities and low cost activities, and direct and indirect participation. This paper attempts to highlight voting turnout and representation of immigrants that are included into conventional political participation. Indeed, among these two types of political participation, first one, i.e. voting turnout falls under low cost activities, in contrast, political representation is under high cost activities.

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History of Immigration in Norwegian Society

It is shown that Norway has traditionally been a country of emigration and has been considered as a late comer in immigration (Borchgrevink & Brochmann, 2003). For instance, until late nineteenth and the first decades of the twentieth century, it was mainly a migrant sending country. However, it turned into a significant receiving country after the Second World War since it emerged as an economically developed industrialized nation (Bergh and Bjørklund, 2010). And in recent time, it has experienced increased immigration and has become an ethnically diversified country like other Scandinavian countries. Norway experienced the same pattern of immigration wave like Sweden and Denmark- labour migration during the 60s and 70s, asylum seekers in the 80s and 90s, and a new wave of immigration started by the labour migration in the 2000s (Bengtsson et al, 2010).

During the 1960s, the first group of immigrants arrived in Norway as labourers from the third world countries. In this case, the largest group of migrants was from Pakistan followed by immigrants from Turkey (Bergh and Bjørklund, 2010). In 1970, the numbers of immigrant people reached about 3500 and that was roughly 0.1 percent of the Norwegian population. Later, in spite of restrictive immigration policies, statistics show that Norway received a large number of immigrants in the last decades. That was mainly caused by refugee immigration, asylum seekers and family reunification (ibid). In this connection, the changing situation of Europe in the 1990s was so vital. For instance, during this time the Cold War was over, Eastern Europe entered into democratic development due to the collapse of Soviet Union. Likewise, political and economic integration in the Western part happened and several tensions after Cold War happened like Balkan war (Brochman and

Kjeldstadil, 2008). Consequently, number of immigrants increased during this time in Norway.

In present time, statistics Norway (2011a) has estimated that a total of 420000 immigrants from the non-Nordic countries immigrated to Norway between 1990 and 2009. Among them 26 percent came as labour immigrants and another 26 percent were refugees whilst 11 percent arrived as students with residence for pursuing education. Besides, 23 percent came with family reunification with someone already in Norway and 16 percent accepted residence as they had established a family. The same source also indicates that in present time the total immigrant population is 600900 persons, that is, 12.2 percent of the total population of Norway. Among this total number of non-Western immigrant, Pakistani is the largest immigrant group who are just after Poles and Swedish. As illustrated in table 1 below, one can see that the Poland and Sweden comprise the largest migrant groups in Norway. However, among the foreign national with non-Western background, Pakistani is the largest immigrant group in Norway. There are further a large number of people from Iraq, Somalia, Vietnam, Iran, Turkey, Philippines, and Kosovo.

Table 1: Top ten foreign nationalities in Norway (2011)

Country Name	Number of Immigrants
Poland	60610
Sweden	34108
Pakistan	31884
Iraq	27 827
Somalia	27 523
Vietnam	20 452

Iran	16 957
Turkey	16 430
Philippines	14 797
Kosovo	13 303

Source: Østby (2013:18)

With the increase in the number of immigrants, there has also been an increased growth of immigrant's eligible voters in Norway. According to the SOPEMI report for Norway (2010), the main causes behind these increased numbers of immigrant voters are recent high immigration trends and age distribution of immigrants. Voters from immigrants with the background of Asia, Africa and South-America increased by 45 percent from 1999 to 2003 and 45 percent during 2003 to 2007 (SOPEMI report for Norway, 2010). In total, immigrant voters have increased by 50000 people between Local Election 2003 to 2007. Thus, in 2007 election, a total of 280000 immigrants were eligible to vote which constitute 7.7 percent of total Norwegian voters. Among the immigrant background voters, in this election 143000 were Norwegian citizens whilst foreign citizens were 137000 (Aalandslid, 2009). Besides, immigrants from Asia were the highest in number (100000) followed by Western European (60,000) and Eastern European background (40,000) (ibid). On the other hand, in recent local elections 2011, there were a total of 386700 immigrant persons entitled to vote that comprised 10.2 percent of total voters (SOPEMI report 2011). Compared to the elections in 2007, this is an increase of 106700 persons. Thus, immigrant voters are increasing, where the highest increasing rate have seen among the immigrant from Asia.

Results and Discussion

Immigrants' Political Participation in Norwegian Local Elections

Voting Turnout

Table 2 (below) presents election data about voting turnout of migrants in the last three different municipal elections of Norway. The general impression of this table is that migrants' electoral participation in local elections in Norway has been low. For instance, it shows that [Table 2] whereas overall electoral participation was 59 percent in the 2003 local election, 62 percent in 2007, and 65 percent in the election of 2011, in the case of immigrants with foreign citizenship, it was only 38 percent, 34 percent and 36 percent respectively. Besides, in the case of naturalized immigrants, i.e., Norwegian citizens with immigrant background, the turnout was 41 percent in 2003, 40 percent in 2007, and 43 percent in 2011. Thus, Norwegian citizens with immigrant background had a higher turnout than that of foreign citizens; however, while compared to the total turnout this electoral participation was low.

Table 2: Voting turnout in local elections among immigrants in Norway

Electoral Turnout	Local Election		
	2003	2007	2011
Total	59	62	65
Immigrant with Foreign Citizenship	34	36	32
Male/Female	33/35	34/39	29/35
Naturalized Immigrant	41	40	43
Male/Female	41/41	39/42	42/44

Source: Author's own elaboration based on SOPEMI report for Norway (2010, 2011) & Statistics Norway (2011b)

However, it is noteworthy that among the immigrant voters [Table 2], female electoral turnout rate was higher than that of male. For instance, among the immigrant voters with foreign citizenship, female had 35 per cent voting turnout in 2003, 39 per cent in 2007, and 35 percent in 2011, whereas men had 33 per cent, 34 per cent, and 29 per cent respectively. Similarly, women turnout rate was also highest among the naturalized immigrant voters in 2007 and 2011; only in the case of 2003 election, there was no difference between men and women in electoral participation.

Nevertheless, there was also a variation in migrant electoral participation in terms of immigrants' country background. It is evident that [Table 3] Norwegian immigrants with Western background had higher electoral participation than that of non-Western. For instance, Norwegian citizens with immigrant background from Western Europe and North America and Oceania voted 64 percent in 2003, 64 percent in 2007, and 60 percent in 2011 election. In the case of Norwegian citizens from Asia, Africa, Latin America and Eastern Europe, this participation rate was 36 percent, 37 percent, and 40 percent respectively. Likewise, immigrant voters with foreign citizenship from Western Europe, North America, and Oceania voted 39 percent in 2003, 42 percent in 2007, and 34 percent in 2011. However, the turnout was 25 percent, 28 percent, and 30 percent respectively in the case of Asia and others. If the voting turnout is analyzed according to the individual country, it has shown that immigrants from Sri Lanka had the highest turnout among the non-Western immigrants in 2003 (57 percent), in 2007 (51 percent), and in 2011 (57 percent) election (Statistics Norway, 2011c). In the case of immigrants with Western background, the highest turnout was for Germans (51 percent) in 2003 and for Germans and Danish (48 percent) in 2007 and for Danish citizens (73 percent) in 2011 election (ibid).

Table 3: Voting turnout in local elections based on immigrants' country background

Immigrants' Background	Local Election		
	2003	2007	2011
Immigrants with Norwegian Citizenship			
Western Europe, North America, and Oceania	64	64	60
Asia, Africa, Central- and Latin America and Eastern Europe	36	37	40
Immigrant with Foreign Citizenship			
Western Europe, North America, and Oceania	39	42	34
Asia, Africa, Central- and Latin America and Eastern Europe	25	28	30

Source: Author's own elaboration based on SOPEMI report for Norway (2010, 2011) & Statistics Norway (2011b).

Therefore, the aforementioned discussion reveals that immigrants have lower electoral participation in terms of voting turnout; especially immigrants with non-Western background that is immigrants from Asia, Africa, Latin America and Eastern Europe have lower participation rate compared to immigrant from Western countries.

Representation

In this study, migrant representation in politics is explained by identifying their representation among nominated candidates and elected candidates in the local elections of Norway. First, Table 4 reviews that representation of migrants in Norway. The table presents statistical information of the two recent elections of Norway. Elections under the review are local election of 2007 and local election of 2011.

Table 4: Nominated and elected immigrant representatives in municipal elections

Year of Election	Number of Candidates	Number of Migrant Candidates		Total Elected	Elected Migrant Candidates	
		Total	Asia & others non-Western[4]		Total	Asia & others non-Western
2007	62500	1800 (2.9%)	1026	11000	223 (2%)	140
2011	59500	2100 (3.5%)	1596	10952	268 (2.4%)	180

Source: Author's own elaboration based on SOPEMI report for Norway 2010 and 2011, and Statistics Norway (2011b).

Above table shows that in the Norwegian election 2007, there were 1800 nominated candidates with a migrant background (2.9 percent of the total candidates) standing in the elections; out of which 223 were elected. It is worth mentioning that the majority of these immigrant candidates (1026) and elected immigrant representatives (140) were from Asia, Africa, Eastern Europe and South America. On the other hand, Norway had in total 2100 migrant candidates (3.5 percent of the total) in the 2011 election where majority had the non-Western background-Asia, Africa, Eastern Europe and South America. With regard to elected

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[4]   This category included immigrant with background of Asia, Africa, Eastern Europe and Latin America

candidate, in this election, among the total migrant elected candidate (268), majority (180) had the Asia and others non–Western background.

Even though the nominated and elected immigrant candidates had different countries of origin, some countries had the highest representation. For instance, in 2007 election [Table 5], nearly half of the candidates were from seven countries. These include Iran (100 candidates), Bosnia- Herzegovina (77 candidates), Pakistan (59 candidates), Iraq (56 candidates), Sri Lanka (50 candidates), Somalia (48 candidates), and Turkey (43 candidates). On the other hand, the largest nationalities [Table 5] that elected in the Norwegian local election 2007 were Iranian (20), Pakistani (18), Iraqi (8), Sri Lankan (8), Somali (8), and Turkish nationals (6). In terms of Gender dimension, based on a single country of origin, there was a huge gender gap recognized. For instance, in the case of 2007 election, a large number of the candidates with background of Asia and Africa were Male [Table 5]. This is also evident in the case of Muslim countries' migrant candidates and elected candidates. For example, in the 2007 election, most of the migrant candidates with Muslim country background- Pakistan, Iran, Iraq, Turkey- were male.

Table: 5: Nominated and elected immigrants[5] by country and gender in local election 2007

Country	Nominated Migrants (Number and Percent)			Elected Migrants (Number and Percent)		
	Male	Female	Total	Male	Female	Total
Iran	64 (6.2%)	36 (3.5%)	100 (9.7%)	14 (10%)	6 (4.3%)	20 (14.3%)
Bosnia-Herzegovina	43(4.2%)	34 (3.3%)	77 (7.5%)	3 (2.1%)	2 (1.4%)	5 (3.5%)
Pakistan	44 (4.3%)	15 (1.5%)	59 (5.8%)	12 (8.6%)	6 (4.3%)	18 (12.9%)
Iraq	39 (3.8%)	17 (1.6%)	56 (5.4%)	4(2.9%)	4 (2.9%)	8 (5.8%)
Sri Lanka	36 (3.5%)	14 (1.4%)	50(4.9%)	5 (3.6%)	3 (2.1%)	8 (5.7%)
Somalia	34 (3.3%)	14 (1.4%)	48 (4.7%)	5 (3.6)	3 (2.1%)	8 (5.7%)
Turkey	31 (3.0%)	12 (1.2%)	43(4.2%)	5(3.6)	1 (.75%)	6 (4.3%)
Others	263 (25.6%)	330 (32.2%)	593 (57.8)	28 (20%)	39 (27.9)	67 (47.8%)
Total	554 (53.9%)	472 (46.1%)	1026 (100)	76 (54.4%)	64 (45.6%)	140 (100)

Source: Author's own elaboration based on the data from Aalandslid (2009).

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[5] Immigrant with background of Asia, Africa, Latin America and Eastern Europe are presented in the Table 5.

Moreover, with regard to the political party, data on previous elections shows that the main two Norwegian political parties from where most of the migrants were nominated belonged to Labour Party and Socialist Left Party. However, the Norwegian Labour Party had nominated significantly more candidates than any other political party in the elections. For instance, in 2007 election, 78 migrants were nominated from the Labour party on their candidates list, followed by the Socialist Left Party (25); Conservative Party (10); Progress Party(7), and Liberal Party (6) (Aalandslid, 2009:131).

Taken as a whole, this section has delineated the fact that, migrants in Norwegian local elections have lower representation. This scenario is highlighted in the Figure 1. First the Figure 1 shows that in the 2007 election migrant voters that entitled to vote were 7.7 percent (SOPEMI Report for Norway, 2010:70) of the total eligible voters. However, migrant nominated candidates and elected candidates were 2.9 percent and 2 percent respectively [Table 4]. Second, Figure 1 also highlighted that in total 10.2 percent (SOPEMI Report for Norway, 2011:66) of the migrants in Norway had the right to vote in the local election 2011. However, their representation among the nominated candidates and elected candidates were 3.5 percent and 2.4 percent only [Table 4]. Thus, immigrants are underrepresented in the Norwegian Local politics.

Figure 1: Immigrants' political participation in Norwegian local elections (%)
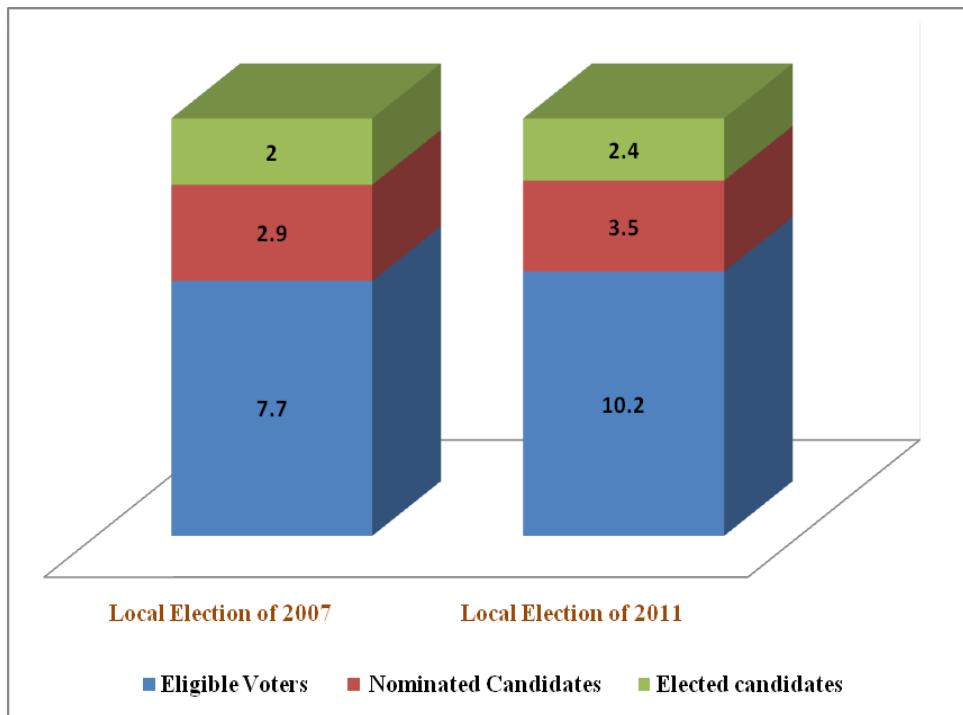
Sources: Author's own elaboration based on the data of SOPEMI report
for Norway (2010 & 2011).

Apart from the above examination, if we compare migrant representation with the number of immigrant population of Norway, we are also able to conclude that there is a significant under representation of immigrant in Norwegian Local politics. For example, it already showed that the total share of immigrant population was 12.2 percent in 2011. But as presented in Figure 1, the nominated candidate was 3.5 percent and elected representative was 2.5 percent only. Nevertheless, the situation of migrant under political representation in Norwegian society

is also evident in the investigation of Bergh and Bjørklund (2010:134). According to their calculation, in Norway, proportionately the immigrant elected representative should be 208 for the case of non-Western immigrants. Nevertheless, we find it [Table 4] 140 in the election 2007 and 180 in the election of 2011.

Immigrants' Political Participation in Norwegian National Elections

Citizenship is a precondition to participate in the Norwegian national election, i.e., parliamentary elections. It should be noted that unlike most Western European countries, the Norwegian Parliament- the *Storting*- is elected for a four-year term. This section reviews the available electoral data in order to present the current situation of migrant political participation in the national elections of Norway through analyzing immigrants' voting turnout and representation.

Voting Turnout

Table 6 (below) presents electoral data about voting turnout of Naturalized immigrants, i.e., Norwegian Citizens with an immigrant background, in the last two national elections (Parliamentary election) of Norway that held in September, 2009 and September, 2013 respectively. It shows lower voting turnout of immigrants like the previously discussed local elections. Whereas in the national election 2009 [Table 6], the total voting turnout was 76 percent, it was only 52 percent among Norwegian citizens with an immigrant background. Thus, the electoral turnout rate of immigrants is 24 percent lower than that of total electoral turnout in this election. On the other hand, 53 per cent of Norwegian citizens with an immigrant background voted in the national election of 2013. However, this turnout among those immigrant was

much lower, a difference of 25 percent, from that of total turnout (78 percent).

Table 6: Electoral turnout in percent among the naturalized immigrants

Electoral Turnout		National Election	
		2009	2013
Total Turnout		**76**	**78**
Turnout of Naturalized Immigrants	**Total**	**52**	**53**
	Male/Female	52/52	50/55
	Western Europe	**76**	**76**
	Male/Female	74/78	76/76
	Eastern Europe	**44**	**47**
	Male/Female	43/45	45/49
	North-America and Oceania	**74**	**64**
	Male/Female	76/72	60/67
	Asia, Africa, South and Central America	**51**	**51**
	Male/Female	51/50	49/53

Source: Author's own elaboration based on the data of Statistics Norway (2009, 2013).

However, the above table shows that voting turnout varies considerably by immigrants' country of background. In general, we find the highest participation rates among the immigrants with Western European backgrounds (76 percent in both elections) closely followed by North-America and Oceania (74 percent in 2009 and 64 percent in 2013). The turnout for those with an Asian, African, South and Central American background was much lower (51 percent both in 2009 and 2013). Nevertheless, there was also a variation in migrants' electoral participation in national elections in terms of their country of birth. For

instance, in the last national election of 2013, according to the Statistics Norway (2013) among the immigrants with European background, German, Danish, and Swedish had the highest participation of all immigrant groups (81, 81, and 75 percent respectively) which was close to the total electoral turnout. Besides, among the immigrant group, Croat, Macedonian, and Kosovan turnout was much lower than that of total migrants' turnout of the national election of 2013, with just below 40 percent. On the other hand, among the migrants with the background of Asia, Africa, South- and Central America, the highest electoral participation rates in the 2013 national election were from Sri Lanka, Somalia, Eritrea, and Philippines, each of which had almost a 60 per cent turnout (ibid). In this election, among this immigrant group, the lowest turnout was from Iran and China that was below 40 percent (ibid).

Moreover, with regard to gender dimension, it is evident from the table 6 that in most of the cases women had the higher participation than that of men. For instance, in the national election of 2009, the participation rate was the same for men and women, with 52 per cent. Likewise, female voters with a background from Western Europe, Eastern Europe had a higher participation than males from their same country background. Indeed, in the 2013 election, fifty-five per cent of women with an immigrant background voted compared to 50 per cent of men. In this election, except of the Western European migrants, among others- Eastern Europe, North, South and Central America, Oceania, Asia, and Africa- female had the highest participation than that of men voters of their regions; Western European men and women voters had equal participation. However, in both elections among all migrant groups, females with a background from Western Europe and North America and Oceania had the highest participation while females from Asia, Africa, and Eastern Europe had the lowest. Nevertheless, some

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countries women had a lower voting participation. For instance, female voters with a background of Kosovo, Iran, Bosnia-Herzegovina, Ethiopia, India, and Afghanistan had lower participation than that of their male voters in 2013 election and female voters from Pakistan, India, Iran, Iraq, Morocco, Kosovo, and Bosnia-Herzegovina had a lower turnout than from their male voters (Statistics Norway, 2013).

Thus, immigrants have lower electoral participation in terms of voting turnout in the Norwegian National Elections; especially immigrants with Non Western background that is immigrants from Asia, Africa, Latin America and Eastern Europe have lower participation rate compared to immigrant from Western countries. However, most of the cases, female migrants voters have the higher turnout than the male migrants do.

Representation

The data regarding immigrant candidates in Norwegian national elections are not available in the existing electoral data source- SOPEMI Report for Norway and Statistics Norway. However, it has shown that in the Norwegian parliamentary election history only three immigrant candidates were directly elected[6]. Table 7 focuses on these three elected immigrant representative. Among them, *Afsan Rafiq,* with a background of Pakistan, was the first non-western representative who was elected as a candidate of the conservative party in the Norwegian parliament in 2001. The second immigrant background elected parliamentary member was *Saera Tithi Khan* of Bangladeshi origin who was elected in 2005 election as a Labour Party candidate. The third one is Pakistani origin Hadia Tajik who was elected in the election of 2009 as a candidate of the Labour party.

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[6] This calculation is up to 2009 election.

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Table 7: Elected Member from Immigrant Community in Norwegian
Parliament

Name	Gender	Political Party	Year of Election	Background
Afshan Rafiq	Female	Conservative Party	2001	Pakistani Norwegian
Saera Tithi Khan	Female	Labour Party	2005	Bangladeshi Norwegian
Hadia Tajik	Female	Labour Party	2009	Pakistani Norwegian

Source: Authors' own elaboration based on the data of Bergh and
Bjørklund (2010) and Predelli (2011).

Apart from these three elected parliamentary members, a small number
of immigrants also participated in Norwegian Parliament as deputies;
who were not directly elected representative but recruited as second in
command of elected members as their replacement (Bergh and
Bjørklund, 2010:136). Among these immigrants politician, *Athar Ali* from
Red Electoral Alliance, *Shabaz Tariq* and *Khalid Mahmood* from Labour
Party, and *Aktar Chaudhry* from Socialist Left Party are mentionable,
who served Norwegian Parliament for a definite period (ibid). Besides, a
few immigrant political personalities served the national government
through achieving political position in the executive branch (ibid). For
instance, *Ramin-Osmundsen*, a Caribbean woman, was the first black
minister who was appointed as minister for children and equality in
October 2007 (Predelli, 2011:198).

With regard to immigrants' representation in the Norwegian Parliament,
though the above discussion indicates there are a few successes, but in

terms of immigrant population, these examples are not significant to become a perfect representation. This lower political representation of immigrants is also evident in the study of Bergh and Bjørklund, (2010). They explored that the Norwegian immigrant people who have Asian, African and Latin American background constitute 5.2 percent of the total population. Therefore, according to their calculation immigrants' representation in Norwegian parliament should be 9 among the total 169 parliament representatives. But this is not shown in the Norwegian National election history as only 3 representatives achieved this position in the history and that never been exceed number one (ibid). Thus, these findings indicate that there is a significant under-representation of immigrant in Norwegian national politics.

Conclusion

This paper aimed to explain the political participation of immigrants in Norway through analyzing migrants' voting turnout and representation in local and national elections of Norway. Accordingly, in conclusion, with regard to the research objective, the findings of this study indicate the following. First, concerning political participation in the local elections, based on the findings, we may conclude that their political participation is very low; they are politically less active and under-represented, in Norway. Our findings showed that immigrant had on average 20 to 30 percent lower electoral participation than that rest of the population in the previous local elections. In particular, their participation is significantly low in the case of non-naturalized immigrant with the background of Asia, Africa and Latin America and Eastern Europe. However, it is worth mentioning that in both cases, immigrants with Western and non-Western background, women had a higher turnout in the last Norwegian local elections. Besides, we are also able to conclude that there is a significant under-representation of immigrant

in Norwegian local politics when compared to native Norwegians. Indeed, the analysis have shown that though immigrants have some success in the local elections with regard to elected candidates, compare to the total immigrant population, immigrant voters, and immigrants proportionate participation rate, it is clear that immigrants are under-represented in Norwegian local politics. Second, with regard to the political participation in the national elections, our analysis showed that the electoral turnout rate of immigrants is 24 percent and 25 percent lower than that of total electoral turnout in the last two national elections respectively. Furthermore, in the national level, their representation is very negligible as we found only 3 immigrant's origin representatives in Norwegian Parliamentary history that ever directly elected in the Norwegian parliament. Thus, in light of Bergh and Bjørklund (2010) it has been arguable that though immigrants in Norway have some representation in the local political level, but at national level, i.e., in Norwegian parliament, their representation is very much negligible.

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Pay reward system management and staff performance in Nigeria: a study of the Delta state civil service

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Abstract

This study examines pay reward system management and staff performance in Nigeria: using the Delta sate civil service as a focus. The data utilized in this study were obtained from both primary and secondary sources. While the primary data were derived from focus group discussions, the secondary data were obtained from relevant textbooks, journals and government documents. The findings of the study indicate that the incongruence of the pay reward system of the Delta state civil service and the central guiding principles of fairness, costs of living and moderation, the in-grained culture of poor performance and the dysfunctional employee mode of entry have negatively impacted on the performance of staff. The study made some useful recommendations including the exigency of a fair, moderate, dynamic pay reward system that should be reflective of the prevailing societal costs of living, the dismantling of the culture of poor performance and a merit-based employee entry practice.

Key words: Pay Reward System, Management, Staff Performance, Nigeria.

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Introduction

Reward systems are arguably at the heart of employee performance. This assertion is premised on the understanding that reward systems have the potency of engendering higher levels of performance in organizations through the stimulation and direction of employees along the path of goal accomplishment (Ejumudo, 2011). As a matter of fact, employees are the most critical of all organizational resources and their capacity to function and meet the expected standards is a function of both their inward potentials and the outward environment in which they operate. This nature-nurture perspective of explaining the indicators of employee performance underscores the indispensability of reward systems as integral part of organizational environments. In this light, it is instructive to assert that well rewarded employees are much likely to feel valued and cherished by their organizations.

Despite the arguably important nexus between reward systems and employee performance in both public and private sector organizations, it is worrisome to note that the much-desired employee performance that is a critical input for sustainably increasing organizational productivity is largely absent and consequently a constraining factor to the actualization of organizational goals and objectives. For instance, while Akerele (1991) blamed the low productivity level of Nigerian workers on several factors, particularly the failure of employers to provide adequate compensation for hard work, Markova and Ford (2011) emphasized that the real success of organizations originate from employees willingness to use their creativity, abilities and know-how in the direction of their organizations' growth and development path in response to the favourably stimulating and encouraging reward practices. This study examines the relationship between the pay reward

system management and staff performance in the Delta State Civil Service.

Statement of the Problem

In the face of the importance of an integrated sustainable pay reward system management and practice in the performance of employees in both public and private sector organizations, it is disheartening to note that pay reward systems and practices in the Nigerian public sector are largely disconnected from the demands of fairness, prevailing realities and moderation. The environment created by this reward system and practice has the potency of constituting a cog in the much-desired process of initiating and sustaining the attraction, motivation and retention of a team of competent, efficient, goal-driven, proactive and value-adding human resource in organizations and institutions. This study examines the relationship between the pay reward system management and practice and staff performance in the Delta state civil service.

Objectives of the Study

The objectives of the study are to:

i.   Examine the relationship between pay reward system management and staff performance in the Delta state civil service.

ii.   Assess the relationship between pay reward practice and staff performance in the Delta state civil service.

iii.   Make useful recommendations that will engender an integrated   sustainable pay reward system management and practice in the Delta state civil service that will be cognisant of the dynamics of the prevailing economic realities and costs of living.

Research Questions

i.   Is there any relationship between the pay reward system management and staff performance in the Delta state civil service?

ii. Is there any relationship between the pay reward practice and staff performance in the Delta state civil service?

Reward System: A Conceptual Understanding

Reward systems emphasize the importance of considering all aspects of compensation as an integrated and coherent whole. All the elements of reward-base pay, pay contingent on performance, competence or constitution, employee benefits and non-financial rewards-are deliberately linked together so that they are mutually supportive. Reward systems also refer to all the employer's available tools that may be used to attract, retain, motivate and satisfy employees (Armstrong, 2012). This encapsulates the totality of investment that an organization makes in its people and everything its employees value in the employment relationship. In a simplistic parlance, the notion of reward systems mean that there is more to rewarding people than throwing money at them (World at Work, 2010). It essentially connotes that the monetary values in the reward package still matter, but they are not the

only factors as Murlis and Watson (2011) rightly articulated. Reward systems are based on building a much deeper understanding of the employee agenda across all elements in employment relationships.

Reward System Management: A Conceptual Clarification

Reward system management is concerned with the formulation and implementation of strategies and policies that aim to reward people fairly, equitably and consistently in accordance with their value to the organization (Armstrong, 2012). It deals with the design, implementation and maintenance of reward practices that are geared to the improvement of organizational, team and individual performance. Reward system management is an integral part of a human resource management (HRM) approach to managing people. It supports the achievement of the organizational strategy in the sense that it addresses longer term issues relating to how people should be valued for what they do and what they achieve and it is integrated with other HRM strategies, especially those concerning human resource development.

Reward system management is concerned with developing a positive employment relationship and psychological contract and adopting a 'total reward' approach which recognizes that there are a number of ways in which people can be rewarded (Cascio, 2012). It embraces both financial and non-financial rewards and recognizes the integration of the two core elements in order to maximize the effectiveness of reward policies and practices. Reward system management is premised on a well-articulated philosophy- a set of beliefs and guiding principles that are consistent with the values of organizations and accepts HRM as investment in human capital from which a reasonable return is required. It focuses on the development of the skills and competencies of

employees in order to increase the resource based capability of organizations and it is an integrated process which can operate with flexibility (Andrew, 2005).

Strategic Aims of Reward System Management

The overall strategic aim of reward system management is to develop and implement the reward policies, processes and practices required to support the achievement of organizational goals by helping to ensure that it has the skilled, competent, well-motivated and committed people it needs (Mintzberg, 2011). The philosophy underpinning the strategy is that people should be rewarded for the value they create. The objective is therefore to create reward processes that are based on beliefs about what the organization values and is prepared to pay for. The reward strategy will be driven by the need to reward the right things to convey the right message about what is important in terms of expected behaviours and outcomes (Federick, 1986).

Brown (2011) asserts that reward strategy is ultimately a way of creating value and recognizing that effective reward system management encapsulates the process of clearly defining goals that are linked to organizational objectives, designing pay and reward system management programmes that are tailored to the needs of organizations and their people in a consistently integrated fashion.

The basic purpose of reward system management is thus to support the macro organizational strategy, align reward policies and processes to corporate needs and provide a sense of purpose and direction and a framework for reward planning (Quinn, 2010). The criteria for an effective reward system management are that it should link reward plans to corporate goals; reflect and help to enact organizational values; be clear on the goals but flexible in achieving them; be justified in terms

of how it will help to meet business needs; take account of the resources available and contain achievable plans for implementation which will establish priorities that are incremental.

Pay Reward System

The debate as to whether money motivates is still on-going. There is however the contention that money can take on varying degrees of importance because it has the potential of serving sundry needs (Bright, 2012). More importantly, pay reward system is a product of an organization's philosophy and policy that provide guidelines for the implementation of reward strategies and the design of incentives and packages. This understanding explains why the policy direction and the level of rewards of an organization is an indicator of its pay reward system whether the company is a high payer, is content to pay average. Pay reward system that is an out-growth of policy refers to the 'pay stance' of an organization.

Pay reward system is a function of the inter-play between the extent to which the organization demands high levels of performance from its employees, the degree to which there is competition for good quality people, the traditional posture of the company, the organization culture and the level of commitment to the dynamics of a competitive high pay (Atiomo,1984). Pay reward systems are therefore externally competitive and internally equitable, but may have to sacrifice its ideals of equity to the realism of the market place. They also involve an integrated approach that relates pay to individual, team or organizational performance and encompass processes that encourage flexibility in response to fast-changing conditions (Anikpo, 1994). The three major determinants of pay reward systems are pay equity, pay level and pay administration practices.

Staff Performance: A Conceptual Understanding

Staff Performance is a multi-dimensional construct, the measurement of which varies depending on a variety of factors (Bates and Holton (2009:13). It can be simply understood to mean the record of outcomes achieved among staff. Kane (2010:23) argued that performance is something that employees leave behind and that exists apart from the purpose. Bernadin et al (2010) also opined that performance is the outcome of work because they provide the strongest linkage to the strategic goals of organizations, customer satisfaction, and economic contribution. This refers to outputs/outcomes (accomplishments) and it is about doing the work as well as being about the results achieved. Staff performance should therefore be regarded as behaviour – the way in which organizations, teams and individuals get their work done.

Campbell (2009) posited that staff performance is behaviour and should be distinguished from the outcomes, because they can be contaminated by system factors. A more comprehensive view of staff performance is achieved if it is defined as embracing both behaviour and outcomes of employee. This is well articulated by Brumbach (2010:10) who asserted that performance means both behaviours and results. Behaviours emanate from the performer and transform performance from abstraction to action. Not just the instruments for results, behaviours are also outcomes in their own right – the product of mental and physical effort applied to tasks – and can be judged apart from results.

The above understanding of staff performance leads to the conclusion that when managing the performance of teams and individuals both inputs (behaviours) and outputs (results) should be taken into consideration. This is the so-called 'mixed model' (Hartle, 2010).

Pay Reward System Management and Staff Performance

Managing staff performance through effective pay reward system management is a strategic and integrated approach to delivering sustained growth and development in organizations by improving the performance of the people who work in them and by developing the capabilities of teams and individual contributors (Armstrong and Baron, 2012). This pay reward system-staff performance linkage is strategic in the sense that it is concerned with the broader issues facing organizations if they are to function effectively in their environments and with the general direction in which they intend to go in order to achieve longer-term goals. It is integrated because it links different aspects of human resource management, especially organizational development and reward in order to achieve a coherent approach to the management and development of people (Hulin and Water, 1971). Ensuring sustained higher levels of employee performance through competitive pay reward system is a way of achieving organizational goals. This process is owned and driven by line management.

The pay reward systems bring about high productivity of workers and in turn help the organization to accomplish its goal. Locke and Latham (2013) argue that an individual's motivation is enhanced when feedback on performance is available, that is the extent to which the individual is committed to pursuing the goal even when things get rough. Goal commitment is likely to be enhanced when goals are made public and when they are set by the individual rather than imposed externally.

According to Humble (2012), a major aspect of management by objectives is the intension that the process should attempt to harmonize individual and organizational goals. In order for the organization to achieve its goals there is need to integrate the personal goals with the

goals of the organization and this can be done by an effective reward system that brings about employees' high productivity.

Without adequate pay reward system, current employees are likely to leave and it will also be difficult to engage new people. The outcome of pay dissatisfaction may detract from the objective of enhancing organizational productivity and suggest a decline in the quality of work life. In severe cases, pay issues may lower employee performance, increase grievances or cause workers to quit (Andrea, 2012). Poorly remunerated jobs can also lead to absenteeism and other forms of employee withdrawal. Even over-payment can harm the organization and its people, causing anxiety, guilt and discomfort as Thompson (2013) explicitly stated.

Public Service Reward System in Nigeria

From the colonial period to date, there have been series of reviews in terms of grading and wage structures as well as other conditions of services in the public service of Nigeria. These reviews were effected either by unilateral revision of rates of pay by employers, by series of tripartite provincial wages committees or through ad-hoc fact-finding committees and commissions of enquiry set up by government. Some of these are listed below:

Adebo Wages and Salaries Review Commission (1970-1971)

This Commission was headed by Chief S.O. Adebo. It looked into wages and salaries as affected by the cost of living and the development of the national economy. With wide terms of reference covering review of wages and salaries in the public service, rationalization and harmonization of pay and conditions of employment between the public

and private sectors, consideration of the need to establish a system of constant review and harmonization of remunerations in the public services, the commission was said to have gone beyond its terms of reference and recommended a new 20-grade salary structure. The commission also defined the role and responsibilities of permanent secretaries and handled issues of management of statutory corporations, productivity, prices and incomes policy, and the requirements for better industrial relations. It also recommended the establishment of a public service review commission. Furthermore, it reduced the wage zones to three, raised the minimum wage rates per zone and gave some percentage increases to the established and monthly rated staff (OHSF, 1988).

The above first phase was characterized by a multifarious grading and pay structure based on the traditional British Civil Service concept of classes, viz: administrative, professional, clerical, technical, skilled and unskilled, etc. There were then more than 600 cadres having arbitrary relationship with the work contents of the various posts. The several salary scales could not be scientifically related to one another and the differentials in pay amongst the various levels in the promotional ladder were invariably too insignificant to make promotion meaningful to the recipients. During this period, the review machineries (e.g., the provincial wages committee, 1937 and the Whitley Council, 1948) did not function efficiently and failed, either for reasons or their composition or political complication. It is relevant to note that the grading referred to here "laid emphasis on academic attainments which seldom have any direct bearing on the output requirements of the positions. The logic in the old system was that if a capable person was employed as judged by the academic performance, it allowed that his/her services would provide an equitable return on the employer's investment in terms of his/her salary" (OHSF, 1988).

Udoji Public Service Review Commission (1974)

Specifically, the commission examined, among others things, the organization, structure and management of the public services; investigate and evaluate methods of recruitment and conditions and undertake the re-grading of all posts in the services, establish scales of salaries corresponding to such grades. The commission was thus confronted with a fundamental question of how to design a reward system that would meet the needs of the dynamic and expanding Nigerian economy. In implementing the white paper on the Udoji recommendations, the extremely powerful top bureaucracy under the Gowon regime, spurred by huge revenue surpluses from oil, decided to facilitate the implementation of the handsome remuneration package (Yahaya and Akinyele, 1992). The more fundamental aspects of the report were to be implemented as soon as conditions were conducive', which turned out to be never. Thus, throughout the nearly three decades of its post-independence life, the Nigerian Civil Service had to be contend with major institutional and structural problems which, in no small measure, combined not only to drastically weaken its capacity to perform but also its creditability in the face of both government and the general public (FMI, 1974).

1988 Civil Service Reforms

The 1988 Reform was instituted against this background. The rationale for the Reforms becomes obvious from the myriad of problems which had bedevilled the Civil Service and which had severely constrained its efficacy.

Issues and Problems of the Public Service Reward System in Nigeria

The public service reward system in Nigeria has been plagued with sundry problems including wage determination by wage tribunals, unrealistic pay indicators, gap between the public and the private sectors and economic mismanagement and erosion of pay by inflationary trend.

Wage Determination by Wage Tribunals

Wage determination by wage tribunals may be a reflection of the manipulation by the elite in the Nigeria society, apart from the fact that it could be unilateral in approach. Moreover, wage tribunal system may not be consultative enough and could consequently fail to capture the different determinants that should be considered in arriving at a pay system that is both rewarding and objective. Wage tribunal system appears to be fiat-like in approach and the final product may not be a comprehensive and holistic representation of the realities on ground.

Unrealistic Pay Indicators

The indices used in determining pay could be unrealistic and faulty. Any pay system that does not take into cognizance the demand and supply implications of the economic system of any society lacks the potencies of actualizing a pay reward system that will be a critical input in the productive output or outcome of that society.

Gap between the Public and the Private Sectors

The difference in the pay system of the public sector when juxtaposed with that in the private sector may be unrealistic and disturbing considering the fact that they are operators in the same socio-economic environment. The operating authority in the public sector in ensuring a reasonable measure of comparability between public and private sectors seem to be also handicapped by inadequate control of the private sector by relevant authorities. It is gathered that there are pays which cannot be related to the economy of the country and the presence of many such pays render the public sector pay incomparable in any sense.

Erosion of Pay by Inflationary Trend

In the civil services of Nigeria, salary and wages have been mainly handled centrally at the federal level (Yahaya and Akinyele, 1992). The major problems are its inappropriateness as a tool for coping with inflation. In this context, the pay reward system is conservative to the extent that it does not reflect the changing inflationary trend. The financial capacities of civil servants are consequently largely eroded because of the dwindling purchasing power of their pay.

Theoretical Framework

For purpose of this study, the equity theory of Adam and the expectancy theory of Vroom were adopted. According to Adam (1964), people make comparisons between themselves and other in terms of what they invest in their work (input) and what outcomes they receive from it. Their senses of equity or fairness or applied to their subjective view of conditions and not necessarily to the objective situation. The theory states that when people perceive an equal situation, they experience "equality tension" which they attempt to reduce by appropriate behavior. This behavior may be to act positively to improve their

performance and seek to improve rewards, or mat be to act negatively, for instance, working more slowly (on the grounds of being under rated or under paid). Managers should be advised to reflect on the idea of equity theory especially in recognizing that subject perceptions are extremely powerful factors in motivation. According to Jaque (2011), questions of equitable payment in relations to discretion or autonomy available to an individual in the job are key factors in achieving a sense of fairness at work.

The expectancy theory, on the other hand, provides a guide for understanding the condition under which an economic incentive system (such as performance, contingent rewards) might be successful (Vroom, 1964). A key point of this theory is that an individual's behaviour is formed not on objective reality, but on his or her subjective perception of the reality. The core of the theory relates to how a person perceives the relationship between three things, effort, performance and rewards. Vroom also explains three factors which stimulate an individual to put effort into things or work which is based on the individual perception of the situation. These includes: expectancy, that is to extent of the individual's perception or believes that a particular act will produce a particular outcome, instrumentality that is the extent to which the individual perceive that effective performance will lead to desired rewards and valence, that is the strength of the belief that attractive reward potentially available. Vroom also distinguished "valence" from value, by defining the formal in terms of the anticipated satisfaction the individual hopes to obtain from the outcome or reward, and by defining "Value" in terms of the actual satisfaction obtained by the individual.

As stated by Vroom the three factors expectancy, instrumentality and Valence combine together to create a driving force which eventually motivates an individual to put in effort, achieving a level of performance

and obtain rewards. Vroom opined that force was a multiple of expectancy and valence. The expectancy theory takes a compressive view of the motivation process, underscores the importance of individual perceptions of reality in the motivational process and shows that individuals will only act when they have a reasonable expectancy that their behavior will lead to the desired outcomes.

The utilitarian value of Adam's equity and Vroom's expectancy theories is evident in their relevance in explaining the relationship between pay reward system management and staff performance in the Delta State Civil Service.

Research Methods

This study adopted a qualitative case study method. This research method, according to Yin (2003), has three aspects viz: investigation of a contemporary phenomenon within its real life context, the existence of boundaries between the phenomenon and the real life context and the use of multiple sources of evidence. The qualitative case study method also lends itself to exploratory, descriptive and explanatory methods. Yin emphasized that exploratory research attempts to find out about a situation, while the descriptive and explanatory research types respectively seek to know "what happened" and how and "why it happened." This study which examined pay reward system and staff performance in the Delta state civil service utilized both primary and secondary sources of data.

Primary Data

The primary data utilized in this study were derived from focus group discussion sessions conducted by the researcher. Whether to test ideas

for new projects, to uncover attitudes to volunteering or understand the needs of the community, focus groups are a straightforward way for research into topical issues that can benefit from the vast ideas and experiences of experts and significant others from different or related fields of study. Focus groups have proved to be a highly insightful research technique for engaging a group of people with a question, product or idea. Bringing together a group to discuss a particular topic provides a more natural setting than one-to-one interviews, as it allows participants to share their ideas and experiences and through discussion new strands of thought can emerge (Stone, 2013). This qualitative research method can generate rich data in a less resource intensive manner than interviewing. Using focus group discussion technique to engage with questions of local, national or global significance can form part of the design process of a wider survey, or it can uncover the opinions of key stakeholders.

The design, size and facilitation of a focus group can be flexible, although a key to its success is having clear aims and objectives and keeping it enjoyable and useful for the participants so as to ensure the information gathered is the most useful. Focus groups in this study were structured in a manner that the researcher interacted with the participants so as to allow conversations to flow and develop, rather than to encourage expected answers. To enable these conversations to occur, it is important to clearly plan the focus group sessions, create a topic guide and think carefully about the facilitation of the session or sessions (Charleson, 2012).

In order to ensure the fruitful use of the focus group discussion (FGD) technique, a topic guide was planned in advance and the areas for discussion were outlined with key ideas and questions to be discussed. The topic guide was constructed with some degree of flexibility because

the topics may be covered in a different order. To guarantee robust and insightful discussion sessions, the mix of individuals that participated was carefully determined by the researcher who facilitated during the discussion sessions. The importance of this approach is evident in the fact that more interesting ideas can emerge from a diverse range of individuals, as their experiences and attitudes may be broader as Bolt (2011) rightly articulated.

Three sessions were conducted with three different groups made up of six (6) participants each. There is no optimal number of participants advocated in the literature, but in order to fully involve every participant and avoid uncontrollable discussion sessions, Frich-Lyon, (1981) recommended 8-12 participants, Viassof (1990) recommended 6-12 participants, Oke and Oluwadare (2002) recommended 5-8 participants and Andrew (2010) recommended 6-8 participants. In this study, the researcher used six (6) persons.

The three groups were made up of civil servants and political public servants. While the first group comprised of directors in the office of the head of service, the second and the third groups were made up of permanent secretaries and commissioners on the board of the Delta state civil service commission. The three FGD sessions were conducted in three different days during the month of May, 2014. Before the FGD commenced, the researcher discussed fully the issues with the participants to ensure they clearly understood them. The discussion was guided by the selected topic pay reward system management and staff performance in the Delta state civil service and it was introduced by the researcher as the facilitator. Different questions relevant to the above topic were asked and the discussions took place in a friendly and productive manner with an observer in each of the three focus group discussion sessions. According to Woods (2012), it may also be helpful to

include observers in addition to the facilitator, either for writing notes or 'sparks' who take a role in discussion offering opposing arguments to encourage new ideas into the group if necessary. Also, the focus group discussions were recorded in order to ensure that the data captured can be analyzed later. This can be achieved through detailed note taking, although a preferred option is to record the session, so that a transcript of what was said can be written up later. Digital recorders are usually available for hire from your university. It should be noted transcription takes considerable time to carry out. A debrief of the session with the facilitators and any observers is also useful as they may have further insights (Opara, 1984).

Secondary Data

The secondary data in this study were derived through the content analysis instrument. This instrument was utilized in collecting relevant data from texts, journals, newspapers and magazines in an analytical manner that is fruitful for the study. Content or textual analysis enables a researcher to carry out an in-depth analysis of existing data and to provide explanation for them in a manner that is useful and fruitful as Richard (2012) rightly emphasized.

Data Analysis

Analyzing focus group discussions involve firstly revisiting your aims and objectives and looking through the detailed notes or a full transcript if you have had the time to produce one. The analysis is aimed at identifying key themes and points of consensus or disagreement as well as noting useful quotations which reflect the purposes of your research (Woods, 2012). In this study, all the notes taken at the focus group discussion sessions were read and transcribed. The transcribed versions

of the focus group sessions were compared with the notes taken during FGD sessions to fill the identified gaps. The consensus in the opinions and the commonality in the ideas expressed and presented during the focus group discussion sessions constituted the basis for answering the research questions raised in this study. This process was supported with the qualitative data generated in the study through in-depth content analysis of cognate text books and journals (Richard, 2012) premised on the thematic discourse reward system management and staff performance in the Delta state civil service.

Data Presentation

In Nigeria, the civil service is the bedrock of the executive arm of government and, by implication, the nerve centre for the implementation of governmental policies. The Nigerian civil service is therefore responsible for the management of governmental machinery and me execution of the functions and duties that public administration demands. The strategic importance of the Nigerian civil service is evidently not subject to controversy primarily because of the pivotal position that it occupies in the Nigerian society. In fact, the notable importance of the Nigerian civil service may have accounted partly for the numerous commissions that have been set up to deal with the reward system affecting the governmental sector. The Udoji public service review commission (1974), for instance, addressed itself to reform measures that would enable both the federal and state governments to assume not only constructive roles in planning and administering development programmes. A key area addressed in the reform is the poor reward system. The commission was thus confronted with a fundamental question of how to design a reward system that would meet the needs of the dynamic and expanding Nigerian economy.

Available data obtained during the focus group discussion sessions with directors in the office of the head of service of Delta State, some permanent secretaries in the service and commissioners on the board of the civil service commission of the state reveal that the indispensability of the state civil service is not in doubt despite the growing concern about its poor and abysmal performance. This agrees with the contention of Peters and Pierre (2007: 2) that although the failure of the public sector has its own negative consequences for government and society, yet; it is the major point of contact between citizens and the state. The Nigerian civil service has, in fact, come under severe attack for its performance dilemma despite the gargantuan of reforms in the sector (Ejumudo, 2011).

The focus group discussion sessions also indicated that, in the face of the somewhat disappointingly low performance of the Delta State civil service and the poor service delivery record, the reward system is quite poor and its response to the changing economic realities is weak and slow. The discussants generally agreed that the poor reward system management in the Delta State civil service is a reflection of the generic trend that is obtainable and discernable in the Nigerian civil service. They were also of the opinion that while there is a weak relationship between the pay reward system and staff performance in the Delta State civil service, the relationship is not significant. This assertion was based largely on their argument that the real problematic issue is the worrisome and disturbing prevailing environment and culture of abysmally poor performance in the civil service, that the poor pay reward system is part of. They added that the reviews so far implemented in the Delta State civil service produced only a token effect considering the fact that the general attitude of civil servants in Delta State did not change in the face of such pay reward system reviews.

The following tables representing the pay reviews in the Delta State Civil Service between 1993 and 2011 indicates that the pay reward system is not only quite poor and its response to the changing economic realities weak and slow, it is also in tandem with the informed views expressed by the various participants in the three focus group discussion sessions:

Consolidated public service salary structure (CONPSS)
Effective 1993

Pay	Grade level
01	4356
02	4440
03	4560
04	5088
05	5760
06	7020
07	8748
08	12624
09	14568
10	17232
12	19416
13	21358
14	24276
15	25700
16	29112
17	31662

Source: National salaries, income and wages commission, Abuja.

Harmonised public service salary structure (hapss)
Effective 1st may, 1996

GRADE LEVEL	PAY	INCREMENT RATE
01	7500	3144
02	7725	3285
03	7919	3359
04	8228	3140
05	9103	3343
06	11612	4732
07	14522	5774
08	18240	5616
09	21026	6458
10	24284	7052
12	28584	9168
13	31585	10227
14	34601	10325
15	48977	23277
16	62355	33243
17	66927	35265

Source: National salaries, income and wages commission, Abuja.

Consolidated public service salary structure (conpss)
Effective 1999

Pay	Grade level	Increment rate
1	8437.50	937
2	8497.94	4433
3	8552.09	772
4	8877.17	958
5	9831.24	728
6	11752.38	140
7	15683.76	1161
8	19517.23	1277
9	22498.25	1472
10	25984.09	1700
12	30012.99	1428
13	33164.67	1579
14	36331.05	1730
15	51334.20	2357
16	65602.98	3247
17	70253.44	3326

Source: National salaries, income and wages commission, Abuja.

Consolidated public service salary structure (conpss)
Effective 1st january, 2004

PAY	GRADE LEVEL	INCREMENT RATE
01	12808.13	4371
02	12930.85	4433
03	13058.52	4506
04	13572.58	4695
05	15139.98	5308
06	18066.13	6454
07	26988.66	11305
08	34092.23	14575
09	39601.80	17103
10	46044.39	20060
12	53161.10	23149
13	56096.08	22932
14	64835.23	28534
15	88579.28	37245
16	98112.57	32510
17	109404.62	39151

Source: National salaries, income and wages commission, Abuja.

Harmonised publicservice salary structure (Hapss)
Effective january-may 2007

PAY	GRADE LEVEL	INCREMENT RATE
01	15600	2796
02	16032	3102
03	16440	2976
04	18288	4716
05	20664	5525
06	25044	6978
07	30576	3588
08	42768	8676
09	49392	9791
10	60000	13956
12	67704	14543
13	76032	19936
14	78336	13501
15	90312	1733
16	111703	13591
17	120298	10894

Source: National salaries, income and wages commission, Abuja.

Consolidated public service salary structure (conpss)
Effective from july 2010

GRADE LEVEL	PAY	INCREMENT RATE
01	17,073.14	1827
02	17,350.44	1827
03	17,586.94	1827
04	18,422.81	1827
05	20,875.19	900
06	25,451.75	900
07	40,642.53	900
08	52,507.12	900
09	61,671.16	900
10	72,386.61	900
12	83,495.65	900
13	93,183.57	900
14	102,914.50	900
15	135,603.03	900
16	169,127.29	900
17	296,566.83	900

Source: National salaries, income and wages commission, Abuja.

Consolidated public service salary structure (conpss)
Effective 23rd march, 2011

GRADE LEVEL	PAY	INCREMENT RATE
1	18,900.00	1826.86
2	19,177.23	1826.79
3	19,413.76	1826.82
4	20,249.64	1826.83
5	21,775.19	900.00
6	26,351.75	900.00
7	41,542.54	900.01
8	53,407.13	900.01
9	62,571.17	900.01
10	73,286.61	900.00
12	84,395.65	900.00
13	94,083.57	900.00
14	103,814.50	900.00
15	136,503.04	900.01
16	170,027.28	900.00
17	297466.83	900.00

Source: National salaries, income and wages commission, Abuja.

The focus group discussion participants equally emphasized that the poor performance culture in the Delta State civil service manifest in sundry ways including poor response to deadlines on official assignments, inability to skilfully handle official responsibilities, absenteeism, lateness to work and truancy. The momentary token effect of pay reviews in the Delta State civil service has not over-time significantly reduced the level of the poor performance indicators mentioned above. Although, the discussants noted that the poor reward system management culture in the Delta State civil service has

contributed to the existing climate of poor performance that has largely permeated the civil service, they opined that the relationship between the pay reward system management and staff performance in the service is weak.

Data Analysis

The central aim and objective of the focus group discussions was to identify the key areas of consensus or disagreement among the discussants. The out- come of the three focus group discussions on different aspects of the central theme "Pay Reward System Management and Staff Performance in the Delta State Civil Service" shows that the pay management practices are largely a deviation from acceptable principles that demands linking pay with the changing economic realities such as inflation. All the discussants agreed that there is a poor level of commitment by the Delta State Government to the dynamic trend in the pay reward system. There was also a commonality of opinion among the discussants on the culture of poor performance that has largely stifled the potential effects of the pay reviews executed so far in the Delta State Civil Service.

In a similar vein, there was convergence of opinion by the discussants on the poor level of staff performance mainly due to the persisting culture of lackadaisical attitude to work and the enduring environment of poor performance in the Delta State civil service. In sum, the consensus in the opinions and the commonality in the ideas expressed and presented during the focus group discussion sessions constituted the basis for answering the research questions raised in this study. This process corroborated and modestly re-enforced the qualitative data generated in the study through in-depth content analysis of cognate text books and

journals premised on the thematic discourse "Pay Reward System Management and Staff Performance in the Delta State Civil Service".

Consequent upon the data presented and analyzed above, the two research questions in this study-is there any relationship between the pay reward system management and staff performance in the Delta state civil service and is there any relationship between the pay reward practice and staff performance in the Delta state civil service are partly and insignificantly sustained and accepted.

Summary of Findings

This study came up with some valuable findings. Such findings became possible through the use of selective utilization of focus group discussion and in-depth library and documentary sources of information. First and foremost, the study revealed the existence of poor pay reward system and poor pay reward system management in the Delta State civil service. The study also revealed that the poor pay reward system and poor pay system management are not significantly responsible for the low level of staff performance in the Delta Sate civil service. The study further show that the major reason for the low level of staff performance in the Delta Sate civil service is the persisting and enduring environment and culture of poor attitude to work and poor performance. This culture of poor performance has largely manifested in sundry ways including: poor response to deadlines on official assignments, inability to skilfully handle official responsibilities, absenteeism, lateness to work and truancy.

Conclusive Remarks and Recommendations

Reward systems are arguably central to employee performance. This assertion is premised on the understanding that reward systems have

the potency of engendering higher levels of performance in organizations through the stimulation and direction of employees along the path of goal accomplishment. And, in so far as employees are the only resource that can deliberately frustrate the accomplishment of organizational goals, the total environment of work should be adequately rewarding. In fact, employees are the most critical of all organizational resources and their capacity to function and meet the expected standards is a function of both their inward potentials and the outward environment in which they operate. In this light, it is instructive to assert that well rewarded employees are much likely to feel valued and cherished by their organizations.

To actualize the facilitating role of pay reward system management in the increasingly sustainable levels of employee performance in the Delta State civil service, there is a need for the recognition and acceptance of adequate pay reward system that relates existing pay to the dynamic trend of economic realities. Moreover, the enduring climate and culture of lackadaisical attitude to work and poor performance should be dismantled and altered through a process of re-orientation that will be engineered by the Delta State Government and top management of the civil service. Once a regime of genuine commitment from both government and top management is in place and discernable, other employees are largely likely to give more than a token support to the new environment of work.

Essentially too, the genuine adoption and holistic application of a multi-dimensional approach that will embody a fair, moderate, dynamic pay reward system that should be reflective of the prevailing societal costs of living, the dismantling of the culture of poor performance and a merit-based employee entry practice.

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Medetnična integracija in pravice manjšin – pogled z vidika sociologije prava[8]

Dejan Valentinčič[9]

Povzetek

Medetnični odnosi, upravljanje različnosti in gradnja dovolj homogene družbe so vprašanja, s katerimi se morajo spopadati vse države na svetu. V Evropi in ostalih zahodnih državah je aktualno predvsem vprašanje uspešne integracije priseljencev. Večina držav sicer ima tudi avtohtone manjšine (nekatere pa tudi domorodna ljudstva), a za te velja, da so že uspešno integrirane, grozi jim že asimilacija. Bistveno večje težave so danes in bodo zagotovo tudi v prihodnosti s sodobnimi migranti. Sociologija prava je pomembna znanstvena disciplina, ki s sociološkega vidika preučuje pravno znanost. Njeno področje je zelo široko, zato znotraj te panoge ne najdemo posebne pozornosti namenjene sociološkim analizam pravnih zaščit manjšin. V prispevku se ukvarjamo z vprašanjem, ali bi sociologija prava z analogijo iz širših področij lahko podala relevantne odgovore tudi glede dilem o urejanju pravnega položaja avtohtonih manjšin in priseljencev.

Ključne besede: Priseljenci, avtohtone manjšine, pravni položaj, integracija, medetnični odnosi, sociologija prava.

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Abstract

The interethnic relations, the management of the diversity and the building of the homogeneous society are the issues that all the states of the world have to deal with. A successful integration of the immigrants is a very relevant question nowadays in the Europe and in all of the western countries. Most countries have the autochthonous minorities (and some of them also the indigenous people) that are already mostly integrated and are threatened with the assimilation. Today and certainly also in the future the main question will be the integration of immigrants. The sociology of law is an important scientific discipline which is dealing with the law from the sociological aspect. It has very broad research field and that is why there has not been any special attention given to the sociological analysis of the legal protection of the minorities. In this article we are dealing with the question if the sociology of law combinated with the analogy of broader fields could give any relevant answers to the dilemmas about the regulation of the legal protection of minorities and immigrants.

Keywords: Immigrants, autochthonous minorities, legal protection, integration, interethnic relations, the sociology of law.

Uvod

V Sloveniji približno petino populacije predstavlja prebivalstvo neslovenskega etničnega izvora. Čeprav madžarska, italijanska in romska skupnost predstavljajo le slabo desetino tega deleža se je Republika Slovenija ob osamosvojitvi odločila, da jim in le njim podeli poimensko ustavno priznanje in posebne kolektivne pravice. To vzbuja nezadovoljstvo pri prebivalstvu (oz. delu prebivalstva), ki izvirajo iz

ostalih republik bivše Jugoslavije. Le-ti namreč predstavljajo bistveno višji delež prebivalstva Slovenije, a jim posebne pravice niso dodeljene, saj ne izpolnjujejo kriterija avtohtonosti.

V Sloveniji ima vprašanje manjšinskih pravic drugačne in širše dimenzije kot v ostalih državah. Ključna politična zahteva manjšinskih narodnih skupnosti iz drugih republik nekdanje Jugoslavije je ustavno priznanje njihovega manjšinskega statusa ter podelitev kolektivnih manjšinskih pravic (predvsem zagotovljeni poslanski sedeži, pa tudi pravice s področja šolstva, kulture, medijev in jezika).

Združenja narodov in narodnosti nekdanje Jugoslavije v Sloveniji so od osamosvojitve do danes na pristojne organe Republike Slovenije naslovile že številne zahteve, da hočejo posebno ustavno priznanje ter posebne kolektivne manjšinske pravice, podobno kot jih v Sloveniji uživata madžarska in italijanska narodna skupnost. V Sloveniji deluje kopica društev pripadnikov narodov nekdanje Jugoslavije, ki so organizirana po narodnostnem ključu. Društva so nato po narodnostnem ključu povezana tudi v zveze društev. Vse zveze pa so nato povezane v Zvezo zvez kulturnih društev konstitutivnih narodov in narodnosti nekdanje SFRJ v Sloveniji EXYUMAK. Nekatere pobude so pripravile posamične etnične zveze, nekatere zveze društev skupaj. Uradno zahtevo Republiki Sloveniji po priznanju srbske etnične manjšine je pred časom napovedala tudi Republika Srbija. Zveza srbske diaspore Slovenije je avgusta 2013 zaradi te tematike pripravila tudi protest pred kulturnim ministrstvom, srbskim veleposlaništvom in ljubljansko mestno hišo. Najbolj odmevna pobuda je bila 14. oktobra 2003, ko je takratna Koordinacija konstitutivnih narodov in narodnosti v Republiki Sloveniji na celodnevni okrogli mizi Evropske komisije proti rasizmu in nestrpnosti (ECRI) v Ljubljani pripravila poseben skupni tekst poimenovan Javna

pobuda, kjer so zahtevali nominalno poimensko uvrstitev vseh narodov v ustavo ter posebne kolektivne manjšinske pravice.

Za druge države to ni tako značilno, v Sloveniji pa je to v ospredju pred vsemi ostalimi zahtevami. Razloge za to lahko delno najdemo v sistemu manjšinskih pravic, ki jih Slovenija podeljuje madžarski in italijanski narodni skupnosti, kar pri ostalih skupnostih vzbuja občutek neenakopravnosti, delno pa ker so te skupnosti v slovensko družbo že dobro integrirane in si želijo ohranjati identiteto na višjem nivoju.

V tem delu se z definicijo, kaj je to sploh manjšina ter kriteriji za pripadnost manjšini ne ukvarjamo, saj bi to preseglo namen tega dela, ki je po dolžini omejeno. Omenimo le, da splošno sprejete definicije manjšine ni. Enako velja tudi za kriterije uvrščanja v manjšino. Omenimo le, da se kriteriji običajno delijo na subjektivni kriterij (občutek pripadnosti) in objektivne kriterije (npr. številčna podrejenost, nedominanten položaj, državljanstvo …) (Capotorti 1979, str. 6).

Tudi slovenski model svoje definicije nima, a iz značilnosti družbenih skupin, ki jim je bil status manjšin dodeljen, gre razbrati, da gre za populacije z naslednjimi značilnostmi (Medvešček in Hafner-Fink v: Komac in Medvešček (ur) 2005, str. 13):

- Prepoznavna jezikovna in kulturna različnost od večinskega naroda,
- Strnjen in omejen poselitveni prostor,
- Dolgotrajno in permanentno bivanje na zgodovinskem poselitvenem prostoru,
- Državljanstvo Republike Slovenije,
- Želja in hotenje po ohranitvi podedovanih jezikovnih in kulturnih značilnosti

- Želja in hotenje pripadnikov po posedovanju statusa manjšine.

Kakšen model podeljevanja manjšinskih pravic je najustreznejši, pa ni vprašanje, ki se poraja le v Sloveniji, ampak je to globalna dilema. Enako velja tudi za način integracije priseljencev in njihovih potomcev v družbe gostiteljice. V tem delu nas zanima predvsem pogled sociologije prava na ta vprašanja. Gre za disciplino, ki se ukvarja z bistveno širšimi vprašanji, a nas zanima, ali bi se preko analogije dalo iz tega pridobiti relevantne koncepte tudi za vprašanja integracije in varstva manjšinskega prebivalstva. Ob tem zajemamo tako področje individualnih pravic (podeljevanje delovnih dovoljenj, azila, statusa begunca, dovoljenj za bivanje, pravice do združitve družine, podeljevanja državljanstev; kar so izjemno aktualna vprašanja migracijske politike vseh razvitih držav) kot kolektivnih manjšinskih pravic (ustavno priznanje, zagotovljena mesta v izvoljenih organih, pravica do učenja maternega jezika, pravica do ohranjanja kulture …; kar so aktualna vprašanja v vseh državah glede avtohtonih manjšin, v nekaterih državah, med njimi tudi Sloveniji, pa tudi glede pravic novejših priseljencev in njihovih potomcev).

Sociologijo prava je kot sociološko poddisciplino nemogoče popolnoma ločiti od ostalih socioloških poddisciplin, zato se bodo v delu koncepti sociologije prava prepletali z ostalimi sociološkimi poddisciplinami in občo sociologijo.

Seminarska naloga poskuša odgovoriti na sledeče **raziskovalno vprašanje**: *»Ali nam sociologija prava lahko ponudi kakšne relevantne koncepte glede upravljanja z medetničnimi odnosi, integracijo manjšinskega prebivalstva in podeljevanja manjšinskih pravic?«*

V prispevku so uporabljene različne raziskovalne metode: opis, analizo in interpretacijo primarnih in sekundarnih virov, primerjalno metodo, metodo kompilacije in sintetično metodo.

Slovenski model varstva manjšin

Slovenija se je osamosvojila s Temeljno ustavno listino o samostojnosti in neodvisnosti Republike Slovenije (Ur.l. RS št. 1/1991), kjer je že v prvem stavku poleg volje slovenskega naroda navedena tudi volja »prebivalcev Republike Slovenije«, kar se, glede na to, da se slovenski narod omenja posebej, jasno nanaša na prebivalce drugih narodnosti. Temeljna listina nadalje v 3. členu določa »Republika Slovenija zagotavlja varstvo človekovih pravic in temeljnih svoboščin vsem osebam na ozemlju Republike Slovenije, ne glede na njihovo narodno pripadnost, brez sleherne diskriminacije, skladno z ustavo Republike Slovenije in z veljavnimi mednarodnimi pogodbami. Italijanski in madžarski narodni skupnosti v Republiki Sloveniji in njunim pripadnikom so zagotovljene vse pravice iz ustave Republike Slovenije in veljavnih mednarodnih pogodb« (Ur.l. RS, št. 1/1991).

V Temeljni listini so bile posebne manjšinske pravice torej napovedane le za madžarsko in italijansko narodno skupnost ter deloma romsko skupnost, ne pa tudi za druge na slovenskem ozemlju živeče manjšinske narodne skupnosti.

Že prej, v času priprav na osamosvojitev je skupščina sprejela Izjavo o dobrih namenih (Ur. l. RS, št. 44/1990), kjer pripadnikom narodov nekdanje Jugoslavije ni bil obljubljen poseben položaj, zagotovljeno pa jim je bilo, da se jim položaj, ki so ga imeli Jugoslaviji ne bo poslabšal. Ker glede tega ni bilo pripomb je bilo to očitno ocenjeno kot ustrezno.

Neslovensko etnično prebivalstvo v Socialistični Republiki Sloveniji so v času osamosvajanja predstavljali v največjem številu pripadniki drugih narodov takratne Jugoslavije, ki so se iz ekonomskih razlogov na ozemlje Slovenije priseljevali v preteklih desetletjih. Poleg njih so na ozemlju Slovenije živeli tudi pripadniki tradicionalnih narodnih skupnosti, katerih avtohtono naselitveno ozemlje je segalo tudi na ozemlje Slovenije (Madžari, Italijani, Nemci, deloma tudi Srbi in Hrvati). Poleg njih so na tem ozemlju živeli tudi Romi, v minimalnem številu pa še pripadniki več drugih narodov.

Tabela 1: Narodnostna sestava Slovenije po popisu leta 1991:

	ŠTEVILO PREBIVALCEV	DELEŽ PREBIVALSTVA (%)
SKUPAJ	1913355	100
Narodno opredeljeni	1845022	96,43
Slovenci	1689657	88,31
Italijani	2959	0,15
Madžari	8000	0,42
Romi	2259	0,12
Albanci	3534	0,18
Avstrijci	126	0,01
Bolgari	168	0,01
Bošnjaki	/	/
Čehi	315	0,02
Črnogorci	4339	0,23
Grki	21	0,00
Hrvati	52876	2,76
Judje	37	0,00
Makedonci	4371	0,23

Muslimani	26577	1,39
Nemci	298	0,02
Poljaki	196	0,01
Romuni	115	0,01
Rusi	167	0,01
Rusini	57	0,00
Slovaki	139	0,01
Srbi	47401	2,48
Turki	142	0,01
Ukrajinci	210	0,01
Vlahi	37	0,00
Drugi	1021	0,05
NARODNO NEOPREDELJENI	25978	1,36
Opredelili so se kot Jugoslovani	12075	0,63
Opredelili so se kot Bosanci	/	/
Regionalno opredeljeni	5187	0,27
Drugi	8716	0,46
Niso želeli odgovoriti	/	/
Neznano	42355	2,21

Vir: Statistični urad RS

Programske določbe Temeljne listine je kasneje ohranila tudi Ustava Republike Slovenije (Ur. l. RS št. 33/1991). Ustavodajalec (skupščina) se je ob nastanku samostojne države odločil za različen sistem varstva različnih skupin prebivalstva neslovenskega etničnega izvora. Ohranil se je zelo visok nivo kolektivnega varstva madžarske in italijanske narodne

skupnosti, ki so jim bile posebne pravice zagotovljene v 64. členu ustave[10]. Slovenija tema narodnima skupnostma daje zelo visok nivo kolektivnih manjšinskih pravic, ki je nato natančneje opredeljen še v številnih, preko osemdeset drugih zakonov in podzakonskih predpisih (trenutno pa je v pripravi še poseben krovni zakon, ki bi urejal položaj italijanske in madžarske narodne skupnosti). Da Slovenija tema narodnima skupnostma daje visok nivo manjšinskega varstva še dodatno velja zaradi dejstva, ker sistem varovanja madžarske in italijanske narodne skupnosti zajema vse prebivalce narodnostno mešanega ozemlja in ne le pripadnikov narodnih skupnosti – npr. obvezni dvojezični osebni dokumenti tako za pripadnike manjšinskega kot večinskega prebivalstva, obvezno učenje jezika manjšine tudi za pripadnike večinskega naroda, obvezna uporaba narodnih simbolov narodnih skupnosti; poleg dvojezičnega poslovanja upravnih in sodnih organov ter javnih in zasebnih uradov ter ustanov, dvojezične

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[10] Na teritoriju, kjer sta poseljeni madžarska in italijanska narodna skupnost sta manjšini namreč nekoč predstavljali celo večino prebivalstva in nikakor ni bilo samoumevno, da sta ti območji pripadli Jugoslaviji, Prekmurje pa še prej Kraljevini SHS. Pomemben razlog je verjetno bil tudi ta, da so bili v času vnosa teh določil v novo slovensko republiško ustavo z Italijo ravno v fazi sprejemanja Osimski sporazumi (sprejeti 1975), v Avstriji pa so ravno sprejemali Zakon o narodnih skupnostih (sprejet leta 1976). Jugoslavija in Slovenija kot njen del je torej morala pokazati širokogrudnost, da bi nato lahko zahtevala recipročnost od sosednjih držav. Poleg tega so glede manjšinskih pravic na Jugoslavijo zagotovo pritiskale zahodne države in Jugoslavija jih je zaradi odvisnosti od zahodne ekonomske pomoči ni mogla ignorirati. Deloma pa je bil razlog brez dvoma tudi ta, da so na slovenskem ozemlju ostali skorajda izključno komunistični ideologiji zvesti pripadniki predvsem italijanske manjšine in jih je režim štel za lojalne. Ob procesu osamosvajanja je bila takšna ureditev očitno splošno sprejeta kot primerna, poleg tega pa bi zmanjševanje že obstoječih pravic zagotovo povzročilo zelo negativne reakcije mednarodne skupnosti in lahko celo ogrozilo osamosvojitev, zato je Slovenija enak sistem manjšinskega varstva ohranila tudi naprej.

toponomastike in javnih obvestil. Poleg tega je v Sloveniji v veljavi tudi t.i. manjšinski veto - zakoni, drugi predpisi in splošni akti, ki zadevajo uresničevanje v Ustavi določenih pravic in položaja zgolj narodnih skupnosti, ne morejo biti sprejeti brez soglasja predstavnikov narodnih skupnosti. Slovenija torej uveljavlja pozitiven koncept varstva manjšin, ki predvideva obveznost in odgovornost celotne družbe ter zlasti državnih organov za uresničevanje in ustvarjanje pogojev za uresničevanje manjšinskih pravic. Takšen pristop je skoraj unikaten, zelo redke države razumejo manjšinske pravice tako široko.

Posebne pravice, a ne na enako visokem nivoju so bile v 65. členu ustave zagotovljene tudi romski skupnosti. V tem členu ustave je tudi določeno, da romsko problematiko ureja poseben zakon. Ta je bil nato dejansko sprejet leta 2007 (Zakon o romski skupnosti v Republiki Sloveniji, Ur. l. RS, št. 33/2007). Slovenija je s tem postala edina država na svetu, kjer vprašanja romske skupnosti ureja tudi poseben področni zakon. Ta Rome deli na avtohtone in neavtohtone. Podeljene so jim posebne manjšinske pravice, a ne na enakem nivoju kot Italijanom in Madžarom. Trdimo lahko, da so trenutno Romi socialno najbolj izključen del slovenske družbe. Država si že od svojega nastanka neuspešno prizadeva, kako to spremeniti.

Ostale narodne manjšine poimensko niso navedene, posebej relevantni členi v ustavi zanje pa so 61. člen, ki zagotavlja svobodno izražanje pripadnosti k svojemu narodu ali narodni skupnosti, gojenje in izražanje svoje kulture in uporabo svojega jezika in pisave; 62. člen, ki še posebej zagotavlja, da ima vsakdo pravico, da pri uresničevanju svojih pravic in dolžnosti ter v postopkih pred državnimi in drugimi organi, ki opravljajo javno službo, uporablja svoj jezik in pisavo na način, ki ga določi zakon ter 63. člen, ki kot protiustavno prepoveduje vsakršno spodbujanje k narodni, rasni, verski ali drugi neenakopravnosti ter razpihovanje

narodnega, rasnega, verskega ali drugega sovraštva in nestrpnosti ter spodbujanje k nasilju in vojni; vsi v zvezi s prvim stavkom prvega odstavka 5. člena ustave, ki zagotavlja, da država varuje človekove pravice in temeljne svoboščine na svojem ozemlju ter 14. členom, ki prepoveduje vsakršno diskriminacijo.

Čeprav druge narodne manjšine poleg Madžarov, Italijanov in Romov niso poimensko navedene ne moremo trditi, da jih država sploh ne priznava. Glede statusa in položaja pripadnikov narodov nekdanje Jugoslavije sicer ni bil sprejet poseben zakon, a ostala relevantna zakonodaja omogoča financiranje njihovih kulturnih dejavnosti (v lanskem letu so zadevna društva prejela približno 270.000 evrov), soudeležbo države pri prostovoljnem učenju njihovih maternih jezikov in kultur, v proceduri je tudi predlog, da bi pouk maternega jezika lahko uveljavljali kot izbirni predmet. V šolah se novo priseljenim učencem nudi tudi učiteljice, ki obvladajo njihov jezik za lažjo integracijo teh otrok. To je v primerjavi z ostalimi evropskimi državami nadpovprečna skrb. Nedvomno pa bistveno manjša kot za madžarsko in italijansko manjšino (Kržišnik Bukić, 2008).

Omeniti pa velja še nekaj drugih, številčno izredno majhnih, a avtohtonih etničnih skupnosti, ki so ob osamosvojitvi živeli in še danes živijo v Sloveniji: omenimo predvsem nemško (ki je sestavljena iz dveh skupin – kočevskih Nemcev oz. Kočevarjev ter Nemcev oz. Staroavstrijcev, za katere se je v teku sprejemanja ustave debatiralo o možnosti, da bi se jih vključilo vanjo) ter Jude. Dodajmo še, da so v določenih segmentih na slovenskem avtohtoni tudi Hrvati in Srbi. Srbi so se na ozemlju Slovenije v večjem številu pojavili okoli leta 1530, ko so v begu pred Turki naselili Belo krajino, hrvaško prisotnost pa lahko zaznamo na obmejnem pasu v Beli krajini in Primorju, kamor so se skozi stoletja doseljevali s sosedskega prostora. Zatorej je relevantno razmišljanje, ali je slovenska

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skupščina, ki pri oblikovanju modela manjšinskega varstva zagotovo ni upoštevala kriterija številčnosti narodnih skupnosti, ampak je prednost dala drugim kriterijem, res manjšinsko varstvo utemeljila zgolj na načelu avtohtonosti. Glede na zgoraj navedeno lahko trdimo, da temu ni bilo čisto tako, saj so tudi nekatere avtohtone skupnosti ostale brez zaščite. Menimo, da sta bila pomembna kriterija tudi kontinuiteto manjšinskega varstva iz Socialistične Republike Slovenije ter kriterij strnjene poselitve in kulturne prepoznanosti v okolju.

Do danes se je etnična struktura slovenske družbe že nekoliko spremenila. Popis leta 2011 je bil zaradi varčevanja le registrski in podatkov o narodnosti sestavi ne vsebuje. Zadnji popis, kjer so bili ti podatki zbrani je iz leta 2002. Rezultati so bili naslednji:

Tabela 2: Narodnostna sestava prebivalstva po popisu leta 2002:

	ŠTEVILO PREBIVALCEV	DELEŽ PREBIVALSTVA (%)
SKUPAJ	1964036	100
Narodno opredeljeni	1766982	89,97
Slovenci	1631363	83,06
Italijani	2258	0,11
Madžari	6243	0,32
Romi	3246	0,17
Albanci	6156	0,31
Avstrijci	181	0,01
Bolgari	138	0,01
Bošnjaki	21542	1,10
Čehi	273	0,01
Črnogorci	2667	0,14
Grki	54	0,00

Hrvati	35642	1,81
Judje	28	0,00
Makedonci	3972	0,20
Muslimani	10467	0,53
Nemci	499	0,03
Poljaki	140	0,01
Romuni	122	0,01
Rusi	451	0,02
Rusini	40	0,00
Slovaki	216	0,01
Srbi	38964	1,98
Turki	259	0,01
Ukrajinci	470	0,02
Vlahi	13	0,00
Drugi	1548	0,08
NARODNO NEOPREDELJENI	22141	1,13
Opredelili so se kot Jugoslovani	527	0,03
Opredelili so se kot Bosanci	8062	0,41
Regionalno opredeljeni	1467	0,07
Drugi	12085	0,62
Niso želeli odgovoriti	48588	2,47
Neznano	126325	6,43

Vir: Statistični urad RS

Pri popisu iz leta 2002 lahko opazimo, da je delež in število prebivalstva, ki se narodnostno opredeljuje za Slovence padel (a ne toliko kot bi pričakovali). Padlo je število obeh ustavno priznanih manjšin, Madžarov

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in Italijanov, število Romov pa se je povečalo (predvideva se, da je dejansko število Romov v Sloveniji je precej višje). Preseneča precejšen padec števila Hrvatov in Srbov. Tudi število Črnogorcev in Makedoncev se je zmanjšalo, povečalo pa se je število Albancev. Nekoliko popisne zmede je pri priseljencih muslimanske veroizpovedi iz Bosne. Na popisu 1991 so se večinsko opredelili kot Muslimani, na popisu leta 2002 pa sta bila dodatno uvedena še pojma Bošnjak in Bosanec. Število teh, ki so se opredelili kot Muslimani se je sicer zmanjšalo, a če seštejemo vse tri kategorije se je njihovo število precej povečalo. Nezanemarljivo je tudi število teh, ki se niso želeli opredeliti ter teh, ki leta 2002 niso želeli odgovoriti. Splošno je razširjeno predvidevanje, da je pri popisu iz leta 2002 8,9 % prebivalstva, ki se ni želelo opredeliti ali podatki zanje niso znani večinoma narodnostno pripada narodom nekdanje Jugoslavije. Težko je z gotovostjo podati razloge, zakaj je temu tako. Deloma se mogoče niso želeli izpostaviti, tudi iz strahu pred diskriminacijo, deloma se prebivalci muslimanske veroizpovedi iz Bosne niso vedeli kako opredeliti, deloma pa je to mogoče tudi posledica želje po čim večji integraciji v Slovenijo, ki jo štejejo za svojo domovino ter so se od osamosvojitve do leta 2002 njihove identifikacije že začele spreminjati in so jih še oblikovali.

Ta trend je le še okrepil zahteve pripadnikov narodov nekdanje Jugoslavije, da tudi njim pripada drugačen manjšinski status.

Ob koncu dodajmo še, da je Slovenija ratificirala oba najpomembnejša dokumenta Sveta Evrope, ki ščitita pravice manjšin: Okvirno konvencijo SE za zaščito manjšin (leta 1998) in Evropsko listino o regionalnih in manjšinskih pravicah (leta 2000). Oba dokumenta prepuščata državam podpisnicam diskrecijsko pravico do opredelitve manjšin, ki naj spadajo v okvir manjšinske zaščite, ki izhaja iz teh dokumentov. Slovenija je ob deponiranju Evropske listine generalnemu sekretarju Sveta Evrope

sporočila, da sta na ozemlju Slovenije regionalna oz. manjšinska jezika italijanščina in madžarščina ter da se bodo določbe od prvega do četrtega odstavka 7. člena smiselno uporabljale tudi za romski jezik. Svetovalni odbor, ki skrbi za nadzor nad implementacijo nad Okvirno konvencijo je Slovenijo že večkrat opomnil, tako na neustrezno/preozko pojmovanje upravičencev do varstva manjšin, kot na neustrezno/pomanjkljivo opredelitev avtohtonosti. Pripomnimo še, da je Delovna skupina za manjšine pri OZN Slovenijo leta 2001 uvrstila v skupino držav, ki zastopajo stališče, da manjšine v dani državi obstajajo le, če jih ta opredeli s svojim zakonom.

Opozorimo še na dejstvo, da je državni zbor leta 2011 soglasno sprejel Deklaracijo Republike Slovenije o položaju narodnih skupnosti pripadnikov narodov nekdanje SFRJ v Republiki Sloveniji (DePNNS, Ur.l. RS, št. 7/2011), v kateri je bila podana zelo močna politična opredelitev. V 3. členu deklaracije je navedena tudi utemeljitev za zdajšnjo ureditev: *»Pripadniki navedenih narodnih skupnosti [Albanci, Bošnjaki, Črnogorci, Hrvati, Makedonci in Srbi - 2. točka Deklaracije] uživajo vse individualne pravice, ki so za državljanke in državljane določene v Ustavi, posebej pa imajo pravico do lastnega narodnostnega samopoimenovanja in samoorganiziranja na narodnostni podlagi, s čimer lahko uživajo in razvijajo kulturo svojega naroda, negujejo svoj jezik in pisavo, ohranjajo svojo zgodovino, si prizadevajo za organizirano prisotnost v javnosti ter v sodelovanju s pripadniki večinskega naroda in drugih narodnih skupnosti prispevajo k multikulturnosti Slovenije. Republika Slovenija ne le priznava, temveč takšno dejavnost tudi spodbuja, hkrati pa si bo prizadevala za uveljavitev pravnih okvirov, ki bi zagotovili materialne in druge oblike podpore njihovemu delovanju«.*

Za tem je vlada Republike Slovenije maja 2011 sprejela tudi Sklep o ustanovitvi, sestavi, organizaciji in nalogah Sveta Vlade Republike

Slovenije za vprašanja narodnih skupnosti pripadnikov narodov nekdanje SFRJ v Sloveniji.

Teorija medetnične integracije

Integracija velja za sredinsko pot med asimilacijo, kjer so se pripadniki manjšin prisiljeni popolnoma stopiti v večinsko družbo in ne morejo ohraniti (nobenih) svojih značilnosti ter multikuluralizmom, ki ga razumemo kot stanje, kjer se manjšinam ni potrebno popolnoma nič prilagoditi večinski družbi, ampak še naprej živijo svoje ločeno življenje. Na tem mestu zgolj na kratko povzemamo koncepte nekaterih teoretikov in raziskovalcev, ki bodo sicer v doktorski nalogi obširneje predstavljene, primerjane, problematizirane in bo iz njih izpeljan lasten jasen koncept, ki bo služil kot osnova za izvedbo empirične raziskave.

Genov (2008, str 27-28) medetnično integracijo opredeljuje kot širjenje in utrjevanje idej in politik vrednot, norm in vedenjskih vzorcev med etničnimi skupnostmi v večetničnih družbah. Istočasno pa koncept integracije po njegovem utira pot spoštovanju in varstvu različnosti etničnih skupnosti. Genov pravi, da je splošno vprašanje integracije v raziskovalni literaturi večinoma obravnavano kot spopad identitet ali spopad za oblast nad naravnimi viri (to drugo velja predvsem pri avtohtonih manjšinah) (Ibid, str 28). Kot nujne pogoje za uspešno integracijo Genov (2007, str 97-98) ocenjuje enakost na štirih nivojih:

- Ekonomskih priložnosti za vse etnične skupine (dostop do služb, posebej visoko kvalificiranih in enaka možnost zasebne podjetniške iniciative),

- Pravic in možnosti za politično udeležbo (enaka zakonodaja v izvajanju aktivne in pasivne volilne pravice in enaka možnost za ljudi iz različnih narodnosti za zasedanje mest v institucijah),

- Udeležbe v kulturno življenje (potrebno znanje skupnega jezika in deljenja skupnih kulturnih institucij),

Vrednostno-normativne identifikacije z družbo (to je možno ko delijo tradicije, razumevanje skupnih izzivov in skupno prihodnost).

Bös (v Genov 2004, str 228) integracijo opredeljuje le kot prvo od štirih stopenj asimilacije. Po njegovem integracija pomeni družbeno-strukturno stopnjo asimilacije, kateri sledi akulturacija, ki je kulturni nivo asimilacije, tej identifikacija, ki je psihološki nivo, četrta stopnja asimilacije pa je amalgacija, to so mešani zakoni in posledično tudi biološka združitev. Nadalje trdi, da sta asimilacija in multikulturalizem dva ekstremna koncepta družbe, asimilacija, ki teži k družbi kot monolitnem bloku, multikulturalizem pa k družbi sestavljeni iz popolnoma ločenih subdružb. Oba koncepta ocenjuje kot zgrešena in trdi, da je dejanski pojav, v katerem se nahajajo vse sodobne družbe neoasimilacija, to je, da si posamezne skupnosti v družbi postajajo vse bolj podobne. Meni, da je v sodobni kompleksni družbi koncepta asimilacije in multikulturalizma skorajda nemogoče razločiti. To je po njegovem obojestranski proces, ki spreminja članstvo tako v večini kot manjšini. Iz enega modela heterogenosti se prehaja v drug model heterogenosti (Bös v Genov 2004, str 240). Bös terminološko integracijo opredeljuje kot strukturno asimilacijo in jo loči od akulturacije, ki jo opredeljuje kot kulturno asimilacijo (Ibid, str 227).

V doktorski nalogi bomo obema konceptoma pritrdili. Strinjamo se z Genovovim opisom vsebine medetnične integracije. Kot relevantno jemljemo tudi Genovovo teorijo, da je za uspešno integracijo potrebna

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enakost na štirih nivojih (ekonomske priložnosti, možnost politične udeležbe, udeležba v kulturnem življenju in vrednostno-normativne identifikacije z družbo). Pritrjujemo Bösovemu izhodišču, da sta asimilacija in multikulturalizem dva ekstremna koncepta družbe, asimilacija, ki teži k družbi kot monolitnem bloku, multikulturalizem pa k družbi sestavljeni iz popolnoma ločenih subdružb, integracija pa predstavlja vmesno pot.

Med slovenskimi raziskovalci velja kot zanimivo omeniti Beštrovo, ki (v Komac 2007, str 108) integracijo opredeljuje kot vmesno možnost med (prisilno) asimilacijo, po kateri asimiliranci ne ohranijo nobene svoje značilnosti več in ekstremnim multikulturalizmom, pri katerem so samozadostne skupnosti povsem ločene od preostalega prebivalstva. Integracija je zato po njenem vključevanje in sprejemanje priseljencev v družbo ter prilagajanje obstoječih družbenih struktur novim situacijam, ki so posledica migracij. Integracija mora biti večsmeren proces, ki zahteva medsebojno prilagajanje priseljencev in sprejemne družbe. Priseljenci v tem procesu sprejmejo nekatera pravila in norme, ki veljajo v novi družbi, večinska kultura pa mora odpreti svoje institucije, jih prilagoditi novi situaciji in zagotoviti priseljencem enake možnosti za sodelovanje v njih, kot jih imajo preostali prebivalci. Proces integracije naj bi privedel do tega, da bi družbeni sistem (tudi) po vključitvi posameznikov ali skupin deloval kot povezan in notranje koheziven sistem, ki pa je v kulturnem pogledu heterogen in v katerem imajo posamezniki in skupine enake možnosti ne glede na svojo etnično in kulturno pripadnost (Ibid).

Sprejemamo Beštrine predpostavke, da priseljenci v procesu integracije sprejmejo nekatera pravila in norme, ki veljajo v novi družbi, večinska kultura pa mora odpreti svoje institucije, jih prilagoditi novi situaciji in zagotoviti priseljencem enake možnosti za sodelovanje v njih, kot jih

imajo preostali prebivalci. Cilj je, da sistem še naprej deluje kot notranje povezan in imamo vsi posamezniki in skupine enake možnosti.

Dekleva in Razpotnik (2002, str 24) navajata »»Z integracijo mislimo na povezovalne procese migrantov z imigrantskim okoljem v skupno celoto, na različnih nivojih življenja, z njihovim prilagajanjem kodom, pravilom in pričakovanjem imigrantskega okolja«. Ob tem v primerjavi z asimilacijo dodajata: »Če kot pripadniki večinske družbe zahtevamo asimilacijo priseljencev, torej da naj ti sprejmejo naše kulturne standarde in se nam prilagodijo, potem v ozadju zagovarjamo stališče, da je kultura etničnih manjšin manjvredna v odnosu do večinske, da je za življenje v dotični družbi manj uporabna, manj primerna ali ogrožajoča.« (Ibid, str 49).

Pritrjujemo tudi Deklevi in Razpotnikovi, da je cilj integracije skupna celota na različnih nivojih življenja. Ob tem dodajamo, da se delno strinjamo z njima, da zagovarjanje asimilacije pomeni, da kulture manjšin smatramo za manjvredne v primerjavi z večinsko, a vendarle zagovarjamo stališče, da je to vprašanje bistveno bolj kompleksno in bo razdelano v teoretičnem poglavju doktorske naloge.

Integracijo definiramo kot vključitev priseljencev in njihovih potomcev v večinsko družbo na takšen način, da še vedno ohranijo svojo identiteto, v kolikor sami to želijo (v nasprotnem primeru bi to pomenilo segregacijo). Za uspešno integracijo pa so se priseljenci in njihovi potomci pripravljeni odpovedati delu svoje identitete ter sprejeti del identitete večinskega prebivalstva v zameno za to, da so sprejeti kot enakopraven del družbe. Integracija je vseživljenjski in dvosmeren proces, tudi večinsko prebivalstvo ne more ostati nedotaknjeno, prisiljeno je sprejeti del kulture priseljenskih etničnih skupin.

Ključno vprašanje je, kako globoka mora ta obojestranska akulturacija[11] biti, da lahko integracijo ocenimo kot uspešno ter družbo kot enotno delujočo. Ker ne moremo izpeljati enotnega modela za vse družbe, je potrebno postaviti poseben koncept, ki ga bomo aplicirali na slovenski družbi.

Kot najbolj naravno, logično in obojestransko sprejemljivo mejo postavljamo sledečo: priseljenci in njihovi potomci se morajo toliko prilagoditi, da spoštujejo državno ureditev in pravni red države gostiteljice oz. nove domovine, da Slovenijo sprejemajo kot svojo domovino in državo spoštujejo, da se naučijo jezika večinskega prebivalstva ter da se dovolj seznanijo z njihovo kulturo, da jo v dovoljšnji meri razumejo za normalno funkcioniranje v novem okolju.

Večinsko prebivalstvo pa se mora manjšinskemu prilagoditi vsaj toliko, da neslovensko prebivalstvo dojema kot enakopravno in ga ne diskriminira. Spoštovati mora njihove človekove pravice in temeljne svoboščine, ki so standard v moderni demokratični, pravni in socialni državi ter spoštovati njihovo identiteto in jim jo omogoča ohranjati vse do takih razsežnosti, ki še omogočajo normalno in enotno delovanje družbe.

V Sloveniji opažamo prepletanje različnih vidikov prepletanja kulturnega sožitja večinskega in manjšinskega prebivalstva. Od priseljencev se jasno pričakuje, da se naučijo slovenskega jezika, del prebivalstva tudi z nenaklonjenostjo sprejema javno izpostavljanje njihovih kultur. Opažamo pa tudi, da so umetnikom pripadnikom manjšinskih kultur široko odprta vrata pri umetniškem ustvarjanju in so tudi prejemniki

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[11] Kot ena od začetnih stopenj integracije.

Akulturacija je proces prilagajanja posameznikov kulturi družbe, v katero so se priselili.

najvišjih kulturnih nagrad, da obstajajo tudi kulturne skupine, ki jih sestavljajo slovenski umetniki, a pri ustvarjanju črpajo iz kulturnih temeljev drugih narodov nekdanje Jugoslavije (npr. glasbena skupina Zaklonišče prepeva iz Nove Gorice svoje avtorske skladbe ustvarja v srbskem jeziku), da politična stranka Socialnih demokratov na svoje prireditve vabi folklorne skupine iz območja nekdanje Jugoslavije, da tam nastopajo, da imajo etnična društva priseljencev in njihovih potomcev tudi številne mlade člane, ki so etnično Slovenci … Glede na takšne različne pojave, se nam torej zastavlja vprašanje, kakšna je dejanska integracije priseljencev in njihovih potomcev v slovensko družbo?

Koncept integracije bo zelo podrobno razdelal v doktorski disertaciji, v tem delu le grobo povzemamo kaj pojem sploh pomeni in zajema, saj širša obravnava zaradi omejenega prostora ni mogoča. V tem delu nas zanima predvsem povezava med uspešnostjo integracije manjšinskega prebivalstva in njihovim pravnim statusom. Prevladujoča ureditev je, da posebne kolektivne manjšinske pravice pripadajo avtohtonim manjšinam, ki so strnjeno in omejeno naseljene, priseljenci in njihovi potomci pa lahko uživajo le individualne pravice (ki v bistvu niso posebne manjšinske pravice, ampak gre za obče človekove pravice). Prevladujoče je prepričanje, da so tradicionalne manjšine že dobro integrirane in potrebujejo posebne kolektivne manjšinske pravice, da se ne bi asimilirale. Za novodobne manjšine pa naj bi veljajo, da jim asimilacija ne grozi, saj je težava že njihova uspešna integracija, zato zadostujejo individualne pravice, ki bi spodbujale njihovo integracijo. A obstajajo tudi drugačni pogledi.[12] Takšen drugačen pogled prevladuje tudi med

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[12] Kot zanimivost navedimo, da so po drugi svetovni vojni v italijanski ustavodajni skupščini zagovarjali stališče, da pride varstvo manjšin v poštev samo za manjšine, ki še niso integrirane. Za Slovence Videmske pokrajine so dokazovali, da so povsem integrirani, saj so na plebiscitu leta 1866 vsi glasovali za Italijo in v prvi svetovni vojni je bil alpinski bataljon Val Natisone edina enota, ki ni imela nobenega dezerterja. Zato so jim odrekali

pripadniki narodov nekdanje Jugoslavije v Sloveniji, ki odločno in kategorično zahtevajo kolektivne manjšinske pravice. To je brez dvoma njihova osrednja programska točka vse od osamosvojitve do danes.

Sociologija prava in pravice manjšin

Kaj je sociologija prava in kdo so njeni predstavniki?

Sociologija je ena najmlajših družboslovnih znanstvenih disciplin. Razvila se je v drugi polovici 19. stoletja. Obča sociologija se je posvetila preučevanju skupnih značilnosti družbenih odnosov, oblikam združevanja in kulturi (Igličar 2004, str. 11). Iz splošne sociologije so se postopoma razvile številne podzvrsti. Sociologijo prava bi najkrajše lahko definirali kot tisti del sociologije, ki se ukvarja predvsem s pravnimi odnosi, torej s tistimi dejanskimi družbenimi odnosi, v katere posegajo in jih sooblikujejo pravne norme. Sociologija prava mora izhajati iz spoznanj, ki jih daje obča sociološka teorija ter pri pojasnjevanju prava kot družbenega pojava uporablja sociološke metode (Ibid.).

Kot ključne klasike, ki so očetje sociologije prava lahko navedemo predvsem E. Ehrlicha, M. Webra, G. Gurvitcha, N. Luhmanna, J. Habermasa, Durkheima, Duguita, Iheringa in Hecka (Igličar v Žun 2014, str. 21).

Na slovenskem je bil začetnik sociologije prava Anton Žun, ki je bil po primarni izobrazbi pravnik, imel tudi odvetniško pisarno, a se je nato

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zaščito v okviru slovenske manjšine, ki naj bi pripadala le Slovencem v Tržaški in Goriški pokrajini (Valentinčič 2012, str. 27).

preusmeril v sociologijo ter tudi bil eden od utemeljiteljev študija sociologije na Filozofski fakulteti v Ljubljani. Nasledil ga je Jože Goričar, ki je v petdesetih letih prejšnjega stoletja predaval tako na filozofski kot pravni fakulteti v Ljubljani. Njegovo delo je nekaj časa nadaljeval Peter Jambrek, ki ima tako pravno kot sociološko izobrazbo. Zadnja desetletja pa je glavni teoretik in raziskovalec sociologije prava na slovenskem Albin Igličar, ki je na Pravni fakulteti v Ljubljani predmet Sociologija prava postavil in razvil v zdajšnji obliki ter je tudi avtor številnih publikacij s tega področja.

Na kratko si poglejmo nekaj ključnih pogledov slovenskih raziskovalcev glede sociologije prava in s tem povezano tudi obče sociologije in ostalih socioloških podzvrsti.

Jambrek (1997, str. 71) poudarja, da »Sociologijo prava ne zanimajo samo pravne norme, ki so predmet pravnih znanosti, ampak družbeno ravnanje ljudi, na katero vplivajo pravo in politične ustanove kot dejavniki družbenega prisiljevanja in družbenih sprememb. /…/ Posebne sociologije imajo torej vse značilnosti sociologije nasploh. Njihovi problemi in predmeti, metoda in teorija so povsem sociološki. Njihova posebnost je v tem, da praviloma preučujejo le določen izsek ali pojav, ne pa družbe v celoti«. Opozarja, da si sociologija prava pomaga na primer z občo sociološko teorijo o družbenih spremembah in razvoju, o odločanju, vodenju in družbeni kontroli in družbeni moči (Id, str. 74).

Igličar (2009, str. 48) povzema Goričarja, da naj sociologija prava ugotovi, kako vpliva ustrezna globalna družba na pravo kot odvisno spremenljivko. Sledi tudi Žuru, ki je sociologijo prava razdelil na genetično (preučuje socialne izvore prava) in operacionalno (preučuje socialne učinke prava) (Ibid.). Poudarja, da mora sociologija prava analitično in ne strukturalno razčlenjevati pravo – to pomeni, da mora biti pri sociološkem vidiku prava ves čas v ospredju njegov realni in ne

idealni vidik (pri tem povzema Molnarja, str. 481). Gurvitcha pa navaja pri njegovi trditvi, da pravo vedno povezuje zahteve ene strani z dolžnostmi druge (Igličar 2009, str. 57). Povzema Goričarja (Igličar v Žun, 2014, str. 20, po Goričar 1968), da je pravo odvisna spremenljivka, družba pa neodvisna spremenljivka. Obča sociologija se je posvetila raziskovanju skupnih značilnosti družbenih odnosov, oblik združevanja in kulture pa se je posvetila obča sociologija (Ibid.). Poudarja, da mora sociologija prava izhajati iz spoznanj obče sociološke teorije ter uporabljati sociološke metode pri pojasnjevanju prava kot družbenega pojava (Id, str. 21, po Lukić 1975).

Isti avtor povzema Petersa (Igličar 2009, str. 382, po Peters 2007, str. 81) in pravi tudi, da imajo pravne norme v družbenem življenju dvojno funkcijo: sredstvo socialne kontrole (družbenega nadzora) in razreševanja konfliktov (zagotavlja določeno stabilnost, omogoča predvidljivost) in so dejavnik družbenih sprememb (inovacijska funkcija).

Začetnik preučevanja sociologije Žun (1964, str. 5) navaja, da je sociologija najbolj splošna znanost o družbi in kot takšna teoretična osnova vseh drugih družbenih znanosti. Ločuje, da obča sociologija preučuje socialne odnose, sociologija prava pa tisto področje socialnih odnosov, ki ga sestavljajo pravni odnosi (Žun 2014, str. 20). Posebej tudi opozarja, da sociologija prava ni isto kot sociološka teorija prava (sociologija prava je sociološka znanstvena disciplina, metem ko je sociološka teorija prava del pravne vede) (Žun 2014, str. 97).

Sociologija prava se ukvarja predvsem z vprašanji odnosa med pravom in državo, značilnostmi pravnih norm in načel, pravičnostjo, legitimnostjo oblasti, birokracijo, interesno podlago prava, političnimi strankami, civilno družbo, zakonodajnim postopkom … Posebno pozornost pa je sociologija prava vedno posvečala ekonomskim determinantam prava – delu, lastninskim odnosom, razredom …V naslednjem podpoglavju nas

bo zanimalo predvsem, ali se da iz teh širših kontekstov kakšne koncepte, načela in ugotovitve primerno uporabiti tudi pri vprašanjih urejanja pravnega statusa manjšin.

Sociologija prava in manjšinske pravice

Za začetek velja navesti kar Webra (1947, str. 152), ki pravi, da je moč enaka verjetnosti, da bo eden od osebkov določenega družbenega odnosa uveljavil svojo voljo kljub nasprotovanju drugega osebka, ne glede na sredstva, od katerih je odvisna ta verjetnost. To je zelo jasno izhodišče tudi za odnose manjšina / večina, kjer se jasno predpostavlja, da ima manjšina zelo omejeno družbeno moč in je torej odvisna od volje večine. Moč večine je torej potrebno pravno regulirati in tako omejiti, da onemogočimo, da bi večina zlorabila svojo prevlado nad manjšino.

Jambrek (1997, str. 159) navaja, da je odnos moči institucionaliziran, če ravnaje obeh strani določajo posebna pravila, če je torej družbeno pričakovan in pripoznan ter če se dogaja v okviru organiziranih skupin. /.../ Odnosi oblasti so torej pravni urejeni, sorazmerno trajni, njihovo izvršljivost pa zagotavljajo posebni državni organi. Jambrek (Id, 159-160) ponavljajoče odnose ločuje na simetrične (uravnotežene) in nesimetrične (neuravnotežene). Simetrični so, ko obe strani izmenoma ali skupaj odločata in izvršujeta odločitve, nesimetrični pa ko ena večkrat kot druga. V tem primeru ima ena nadrejen, druga pa podrejen položaj. A Jambrek poudarja, da če je razmerje sorazmerno trajno ima tudi podrejena stran vedno vsaj nekaj možnosti vplivati na nadrejeno stran.

Igličar (2009, str. 21) pa povzema nemško formalno in relacionistično sociologijo, ki deli družbene odnose na dve skupini: tiste, ki ljudi

povezujejo oz. približujejo (konjuktivni odnosi) in tiste, ki ljudi oddaljujejo (disjunktivni odnosi). Prva zajema odnose integracije (glavni tipi: socializacija, kooperacija, akomodacija in asimilacija), druga dezintegracije (tekmovanje, nasprotovanje in konflikt) – pravi, da se v dejanskem družbenem življenju v konkretnih odnosih med ljudmi omenjeni čisti tipi odnosov prepletajo.

Ob tem velja citirati tudi Dahla (1997, str. 12), ki pravi, da bosta brez zunanjih omejitev katerikoli posameznik ali skupina posameznikov tiranizirala druge. Ob tem citira Hamiltona: »Dajte vso oblast mnogim in zatirali bodo manjšino. Dajte vso oblast parim in zatirali bodo večino« (Ibid). Dahl (Id, str. 16 in 40) nadaljuje še, da »večine in manjšine ocenjujemo z istim merilom. Za objektivnost presoje netiranskosti vladajoče skupine ni ključna njena številčnost – netiranskost oz. tiranskost se presoja po tem, ali taka skupina vsiljuje grob poseg v »naravne pravice« državljanov ali ne«. Ob tem povzema Jeffersona ob njegovi prvi inavguraciji, da volja večine, čeprav vedno prevlada mora biti razumna, če naj prevlada. Zato Dahl tukaj (Id, str. 40) uvede koncepta absolutne suverenosti večine in absolutnih pravic manjšin. To pomeni, da v demokraciji oblast pripada večini (Dahl tukaj seveda misli politično večino, kot rezultat volitev, a v realnem življenju je tako tudi pri etničnih odnosih – večina prevlada), ki ima pravico do izvajanja obstali, a tudi manjšina ima svoje zagotovljene pravice (v političnem svetu do nadzora nad delom večine in predstavljanja svojih alternativ, pri etničnih odnosih pa vsaj do samoohranitve in razvoja svoje identitete), ki jih večina ne sme krniti.

Iz tega lahko torej že izpeljemo prvi povzetek, da so koncepti sociologije prava glede razdelitve družbene moči in oblasti aplikativni tudi na področje medetničnih odnosov. Čeprav večina prevladuje je jasno, da mora imeti tudi manjšina določen vpliv na večino, če so odnosi relativno

trajni. Seveda pa to ne daje ekskluzivnega odgovora kateri model manjšinskega varstva je edini pravilen. Iz tega izhajajo le načela, ki jim je potrebno slediti, dejanska aplikacija pa je potem stvar vsake družbe.

Posebej tega manjšinskega vprašanja se v svojem delu dotika Jambrek (1997, str. 183-184), ki pravi: »Večinsko (majoritetno) načelo ni niti samoumevno, niti edino možno. Večinski interes se že po definiciji ne more uveljaviti tedaj, če ima določen manjšinski interes pravico veta, če je torej priznan za tako pomembnega, da se nobeno manjšinsko stališče ne more preglasovati. Taka ureditev se uveljavlja v sodobnih družbah ne glede na njihov družbenoekonomski sistem kot sredstvo za varovanje etničnih, kulturnih in rasnih manjšin pred nasiljem skupine, ki je številčno močnejša in ki torej vedno znova lahko z večinskim načelom legitimira svojo voljo. Manjšinska pravica veta torej ne predpostavlja niti ne terja enotnosti interesov in ustreznega soglasja. Upošteva le dejstvo, da je ustrezna, na primer etnična skupina notranje tako povezana, da pomeni nekakšen interesni organizem, ki se v večinskem sistemu, katerega sestavni del je, lahko prilagaja le en bloc, ne pa različno od primera do primera«.

Kot že navedeno v drugem poglavju ima Slovenija tudi dejanski pravni manjšinski veto, ko predstavniki italijanske in madžarske narodne skupnosti lahko blokirajo sprejemanje vseh predpisov, ki se dotika zgolj njih. Je pa takšna ureditev zelo redka.

Zelo pomembno vprašanje, ki mu je sociologija prava v preteklosti posvetila veliko pozornosti je vprašanje družbenih konfliktov (sociologija prava se je tukaj sicer bolj kot z etničnimi razlogi ukvarjala z ekonomskimi, razrednimi in slojnimi razlogi za konflikte, a spet bomo

iskali relevantne aplikacije), ki je relevantno tudi za naše področje preučevanja.

Jambrek pri tem navaja Dahla (Jambrek 1997, str. 192, po Dahl 1971, str. 105): »Obstajajo torej konflikti, ki jih kompetitivni politični sistem le s težavo upravlja ali pa jih sploh ne more obvladovati. Katerikoli spor, zaradi katerega velik del prebivalstva države misli, da kak drug segment prebivalstva resno ogroža njegov način življenja ali njegove najvišje vrednote, ustvari krizo kompetitivnega sistema. Kakršenkoli bi že bil izid konflikta, zgodovinska dejstva dokazujejo, da sistem verjetno razpade v državljanski vojni ali pa se sprevrže v hegemonijo ali pa se zgodi oboje«. Ob tem opozarja tudi (Id, str. 193, po Dahl 1971, str. 115-116), da če je država razdeljena na večinsko in manjšinsko subkulturo, potem so pripadniki večine manj motivirani popuščati manjšini, ker lahko vedno sami oblikujejo večinsko koalicijo. Pripadniki manjšine pa zato ne vidijo možnosti, da bi se osvobodili izpod politične nadvlade večine; torej tudi nje le malo spodbuja k popuščanju.

Žur (2014, str. 109) kot pomembnejše oblike socialnih konfliktov navaja razredne konflikte, konflikte družbenih vlog, statusne konflikte, slojne konflikte, industrijske konflikte. V širši okvir socialnih konfliktov pa bi lahko uvrstili tudi nacionalne in meddržavne konflikte. Pravi, da bi se morala sociologija prava ukvarjati predvsem s konfliktom med pravno normo in socialnim dejstvom (Id, str. 110).

Naloga prava je torej, da formalizira takšne odnose, ki vsem skupnostim nudijo vsaj minimalen občutek samoizpolnitve ter možnosti življenja po njihovih željah. Tako Jambrek (2007, str. 319) trdi: »Koristi dveh oseb ali skupin so nasprotne, nezdružljive, neskladne, protislovne tedaj, če eden lahko uveljavlja svoje interese oz. zadovolji svojo potrebo ali frustracijo le na račun drugega«. Cilj pravične pravne regulative pa je seveda, da temu ni tako, ampak ravno obratno. Zanesljivo merilo demokratične

legitimnosti prava je sorazmerno število ljudi, ki imajo pozitiven odnos do pravnih norm, ki se torej strinjajo in soglašajo s pravno predvidenimi vzorci ravnanja (Id, str. 217). Jambrek (Id, str. 216) nadalje še pravi, da je »osnovno merilo avtonomnosti (neodtujenosti) in demokratičnosti prava po našem mnenju intimno prepričanje ljudi, da so njihove življenjske koristi istovetne s cilji, ki jih zasleduje pravno pravilo, da je torej ravnanje, ki ga pričakuje in zahteva pravo, tudi z njihovega osebnega vidika razumno in pravično«.

Razlog za konflikte so seveda navzkrižja interesov. Igličar (2009, str. 52) izhaja iz pravičnosti, ki naj bo podlaga za urejanje družbenih odnosov. Po Erlichu povzema, da naj juristi pri oblikovanju pravnih načel poskušajo uveljaviti najprej skupne družbene interese (Ibid.). Kot konflikte Igličar (Id, str. 214) definira s sociološko teorijo takšne napetosti v družbenih odnosih, ki ob sprostitvi privedejo do spremembe v družbeni strukturi. Kolikor do takšnih napetosti vodijo različni interesi udeležencev konflikta, lahko govorimo o interesnem konfliktu. Ob tem Igličar (Ibid.) ločuje objektivni interes konfliktov (uresničenje enega interesa je mogoče le na škodo drugega interesa) in subjektivni interes konfliktov (ko je nekdo prepričan, da obstaja objektivno nasprotje v interesih).

Isti avtor navaja tri načine reševanja konfliktov (Igličar 2009, str. 216):

- Dominacija: en interes popolnoma prevlada nad drugimi;
- Reorientacija: ponujajo se alternativne poti za uresničevanje interesov, ki se ne morejo uveljaviti na običajen način;
- Kompromis: delna uveljavitev vseh interesov ki so v konfliktu – ne more potekati brez dogovarjanja in sporazumevanja.

Sociologija je osrednjo pozornost namenjala predvsem razrednim konfliktom ter ostalim konfliktom, ki izhajajo iz ekonomskih odnosov.

Osrednji teoretik tega je bil Karl Marx, katerega delo so kasneje dopolnjevati številni tudi zelo znani sociologi. Zelo prisotno je bilo prepričanje, da so (potencialni) ekonomski konflikti osrednja težava naše družbe in da če se reši ekonomsko vprašanje, bo avtomatično rešeno tudi narodno vprašanje. Danes lahko z gotovostjo postavimo trditev, da je bilo takšno razmišljanje vsaj pomanjkljivo, če ne napačno. Narodna vprašanja so še naprej izjemno aktualna (že večkrat omenjena integracija priseljencev, pa tudi sobivanje v večnacionalnih državah – npr. Bosna in Hercegovina, kakor tudi težje po samostojnosti nekaterih narodov – npr. Škotska, Katalonija …). Tudi v državah, ki so se v preteklosti z drugačnim družbenim sistemom lotile reševanja ekonomskih vprašanj (bivše komunistične države) nikakor niso rešile narodnega vprašanja, ampak je bilo to neprestano aktualno, po demokratizaciji pa se je še zelo razplamtelo (npr. BiH, Kosovo, Makedonija, Čečenija, Ukrajina, Abhazija, Južna Osetija, Gorski Karabah, baltske države …).

Sociološki opus s področja medetničnih konfliktov nikakor ni tako obsežen kot za področje razrednih in ostalih ekonomskih konfliktov. A opazimo lahko, da gre za zelo podobne koncepte, le razlogi za konflikte so različni, mehanika dogajanja pa zelo sorodna. Zato lahko iz analize razrednih konfliktov najdemo veliko načelnih usmeritev tudi za upravljanje medetničnih konfliktov. Določene podrobnosti, kolikor je mogoče na tem omejenem prostoru, so bile prikazane z gornjo analizo nekaterih konceptov slovenskih in tujih sociologov prava.

Pri medetničnih odnosih pa je potrebno pri vseh pravnih regulacijah izhajati iz zapletenosti in večplastnosti identitet. Prav identitete namreč predstavljajo osnovo za medetnične odnose in potencialne konflikte. Prav vprašanje identitete je zaradi tako izrazite individualnosti, ki se sicer nato pretaka še v kolektivne identitete težko pravno zamejiti.

Tišljar (v Naterer in Fištravec 2012, str: 12) pravi, da »svojemu narodu lahko pripadamo z različno intenzivnostjo. Nekdo, ki je šele prišel v državo, od drugod, ali majhen otrok, ki še ni dolgo deležen nacionalne vzgoje, bo sicer sprejel nekaj nacionalnega prepričanja (drugače bi moral oditi), vendar prepričanje ne bo zelo intenzivno. Ta oseba te identitete ne razume dobro ali pa se zaveda, da je imela prej neko drugo identiteto (in jo še ima) in ne ve, katera je pomembnejša ...Ta oseba ima slabo razvito nacionalno identiteto, tu bo pripravljena živeti in brezpogojno žrtvovati nekaj svojega časa, kaj več pa ne. Nekdo drug, ki že dolgo časa živi znotraj svojega naroda in je vzgojen v duhu narodne identitete (šola, zgodovina, književnost, vrednote ...), bo že čutil ljubezen do svojega naroda in bil ponosen nanj«.

Ob tem poudarja tudi, da z vključevanjem v nove skupine identitet starih zapuščenih skupin ne izgubimo, čeprav stopnja pripadnosti nekoliko slabi. Normalno je, da že obstoječim identitetam dodajamo nove. Z dodajanjem nove se ne izenačujejo stare. Primarni znak identitete je jezik, ki ima dve enakovredni osnovni funkciji: sporazumevalno in identitetno. Ko sta ti funkciji v spopadu, je pomembnejša identitetna (pogosto namerno govorimo svoj manjšinski jezik, čeprav vemo, da nas ne razumejo, kar naš namen ni komuniciranje, ampak izražanje svoje identitete). Nova identiteta nujno zahteva nov identitetni jezik, ki je različen od vseh ostalih. Če gre za identiteto skupine, ki je sestavljena iz več različnih podskupin, mora biti ta jezik nevtralen. Ta jezik bo izražal novo pripadnost. Ta jezik morajo pripadniki nove skupnosti sprejeti na nivoju čustev (ne samo razumsko) in ga imeti za svojega (Id, str.. 35).

Vprašanja identitet in medetničnih odnosov so aktualna že skozi vso novejšo zgodovino. V sodobnem času je najbolj pereče vprašanje razvitih zahodih držav uspešna integracija priseljencev v njihove družbe. Izkazalo se je, da so vse države to vprašanje v preteklosti močno podcenile in so

se zdaj znašle z velikim deležem priseljenskega prebivalstva v njihovih družbah. Ta delež je že tako velik in da se ga ne da več ignorirati in ni obvladljiv, saj poskusi integracije nikakor niso bili uspešni. Haralambos in Holborn (2001, str. 681) glede tega vprašanja navajata Castelsa in Millerja, ki trdita, da zdaj mnoge države nimajo druge izbire, kot da se sprijaznijo z obstojem raznolikosti etničnih skupin znotraj svojih državnih meja. Marginalizacija in izolacija etničnih skupin je le prispevala h krepitvi njihove etnične identitete in njihova kultura je za je za nekatere manjšine postala mehanizem odpora. To pomeni, da bi kulturne in jezikovne razlike obstajale še cele generacijo, tudi če bi se resno trudili odpraviti vse oblike diskriminacije in rasizma.

Vpliven pristop v raziskovanju odnosov med etničnimi skupinami, model imigrant – gostitelj, ki je odnose skušal obravnavati kot odnose med dominantno »gostiteljsko« družbo in majhno imigrantsko skupino, se danes izkazuje kot zelo pomanjkljiv in neuspešen. Ta model je prevzel optimističen pogled. Ti sociologi so menili, da se bodo imigranti privadili na način življenja v gostiteljski družbi in se vanjo asimilirali. Konflikti naj bi se sčasoma umirili ali celo izginili. To je zelo podobno funkcionalističnemu pogledu na družbo. Ti sociologi menijo, da sta za gostiteljsko družbo značilna osnovni konsenz in skupna kultura. Imigranti naj bi to začasno zmotili, a družba naj bi se postopoma privadila nanje in imigranti pa naj bi se družbi bolj prilagodili, kot naj bi se družba prilagodila njim (Haralambos in Holborn 2001, str. 674) Težava je nastala, ker do tega predvidenega osnovnega konsenza in skupne kulture ni prišlo.

Igličar (2009, str. 23-24) pravi, da se »pri odnosih asimilacije odpravljajo razlike v kulturah med različnimi velikimi družbenimi skupinami. Najbolj pogosto potekajo asimilacijski procesi med pripadniki različnih narodov tako, da se izenačujejo vrednote in celotni način življenja (kultura v

najširšem pomenu besede). Kadar ti procesi potekajo prostovoljno, to vodi v družbeni integracijo ter globalizacijo. Tako se širi obseg globalnih družb, kar je nujno spremljano z ustreznimi pravnimi podlagami (npr. ustanovitvene pogodbe EU). Pravne norme pri teh procesih torej integracijo bodisi omogočajo in pospešujejo (npr. norma slo ustave o prenosu izvrševanja dela suverenih pravic na institucije EU), kadar poteka prostovoljno, bodisi preprečujejo nasilne asimilacijske procese (npr. Zakon o tujcih, Zakon o samoupravnih narodnih skupnostih, Zakon o romski skupnosti v RS …)«.

Namen zgornje predstavitve je bil predvsem opozoriti na dejstvo, da Slovenija ne spremlja resno razvoja identifikacij priseljencev in njihovih potomcev v državi. Za spreminjanje pravnih ureditev je najprej potrebno podrobno poznavanje dejanske situacije. Za neavtohtone manjšine v Sloveniji ni dejansko znano, kako sami ocenjujejo svojo integracijo v slovensko družbo in kakšna ta dejansko je, kako so se poistovetili s slovensko državo, kakšen odnos imajo do jezika in kulture ter predvsem kako ohranjajo svojo izvorno identiteto, kako se te identifikacije spreminjajo skozi čas in med generacijami. V resnici niti ni povsem jasno, ali gre pri teh narodnih skupnostih tudi za dejanske politične skupnosti (kot npr. Slovenci v Argentini, kjer se narodna zavest skozi generacije le minimalno spreminja in čutijo še zelo močne povezave do izvorne domovine), ali za že precej asimilirane skupnosti, ki ohranjajo le še določene kulturne posebnosti (kot npr. Slovenci v Franciji, kjer posamezniki slovenskega izvora, od druge generacije dalje, praktično niso več nosilci slovenske narodne zavesti ter do Slovenije ne gojijo intenzivnih čustev, ampak so že precej asimilirani v francosko družbo, ohranjajo le še zavedanje o izvoru njihovih prednikov).

Vprašanje podelitve posebnih kolektivnih pravic pripadnikom narodov iz drugih republik nekdanje Jugoslavije je v Sloveniji že zelo dolgo aktualno

vprašanje in bo brez dvoma tudi v prihodnje. Poleg organizacij omenjenih narodov so se v zvezi s tem že oglasili tudi na mednarodnem parketu (npr. ECRI), v novejšem članu pa takšna reforma vse več zagovornikov dobiva tudi med prepoznavnimi slovenskimi javnimi osebnostmi (npr. sicer zelo sporen, a vpliven mislec v pravni in politični sferi Ciril Ribičič se je v zadnjem času vsaj dvakrat javno zavzel za to – prvič v juniju na konferenci Svetovnega slovenskega kongresa, kjer je spremembo ustave v tej smeri označil kot eno najpomembnejših vprašanj v današnji Sloveniji, drugič pa kot avtor gostujočega peresa v dnevnem časopisu Delo 17. julija letos.

Sklep

Iz navedenega lahko torej zaključimo, da sociologija prava nikakor ne more ponuditi odgovora, kakšna ureditev manjšinskih pravic bi bila edina prava, lahko pa z analogijo na druga področja, s katerimi se je sociologija prava bolj intenzivno ukvarjala izluščimo določena jasna načela katerim konceptom mora zakonodajalec slediti, če so njegov cilj dobri medetnični odnosi.

Dejstvo je, da Slovenija ni etnično homogena družba, upravljanje različnosti bo torej vedno predstavljalo izziv. Pri dilemah o spremembah ustave, ki naj se jo že pregovorno spreminja s tresočo roko, bo potrebno pazljivo preučiti dejstvo, da je podeljevanje posebnih kolektivnih manjšinskih pravic narodnim skupnostim zelo vezano na teritorialno načelo (npr. dvojezični javni napisi, jezik manjšine priznan kot uradni jezik, različni modeli manjšinskih šol, zagotovljeno politično predstavništvo na lokalni ravni …) in bi bile torej neizpolnljive za

manjšine, ki niso strnjeno naseljene. Postavlja se vprašanje, ali je mogoče obe vrsti narodnih manjšin formalno izenačiti, po obsegu pravic pa ne. V kolikor bi to ocenili kot neprimerno je še posebej potrebno upoštevati dejstvo, da pri manjšinskem pravu (enako kot v pravu nasploh) velja načelo nezmanjševanja že pridobljenih pravic. Države, ki tradicionalno naseljenim manjšinah priznavajo širok krog pravic, kot to velja tudi za Slovenijo, so torej pri reformi manjšinskega prava še bolj omejene. Širjenje posebnih kolektivnih manjšinskih pravic na manjšine, ki ne zadostujejo teritorialnemu načelu strnjene in omejene poselitve, pa bi nujno odprlo tudi vprašanje spremembe zagotovljenih pravic tradicionalnih manjšin. To pa bi zagotovo izzvalo nezadovoljstvo in proteste tistih manjšin, ki te pravice uživajo, kot tudi mednarodne skupnosti (ali vsaj Italije in Madžarske).

Postavlja se tudi vprašanje, ali nepriznavanje posebnih kolektivnih pravic lahko enačimo z etnično diskriminacijo. Prebivalci neslovenskega etničnega izvora so bili že v preteklosti in so tudi danes še izvoljeni na najvišje politične funkcije v državi na lokalnem in nacionalnem nivoju (poslanci, ministri, župani, občinski svetniki), zasedajo najvišje menedžerske funkcije v gospodarstvu, visoke akademske pozicije, najbolje pa so zastopani v kulturni sferi, kjer jim je tudi široko odprt prostor za ustvarjanje, ki je eksplicitno povezano z njihovim etničnim izvorom in življenjem kot pripadnikov etnične manjšine v Sloveniji (glasba, film, televizija, knjige, gledališče). Država in lokalne skupnosti vedno finančno podpirajo tudi različne programe, ki pomagajo pri integraciji priseljencev in njihovih potomcev ter programe, ki spodbujajo njihovo umetniško ustvarjanje. Ocenimo torej lahko, da neprisotnost etničnih skupin iz območja nekdanje Jugoslavije v slovenski zakonodaji ni posledica nestrpnosti do tega dela prebivalstva, ampak je zgolj posledica specifične zgodovinske in družbene situacije, v kateri se je Slovenija znašla ob demokratizaciji, osamosvojitvi in prizadevanjih za mednarodno

priznanje, ko se je odločila na pravnem nivoju za posebno zaščitno treh skupnosti ter splošno zaščito ostalih.

V kolikor bi se odločili spremeniti ustavna določila o varstvu narodnih manjšin obstaja več možnosti, na kakšen način bi lahko to udejanjili. Glede na pogojenost nekaterih manjšinskih pravic z načelom strnjene in omejene teritorialne naselitve bi bilo vključevanje novih manjšin v 65. člen, ki določa pravice Madžarov in Italijanov problematično. Ustreznejše bi bilo za 65. členom dodati nov člen. Pri tem bi se pojavilo vprašanje, ali naj se nove ustavno priznane narodne manjšine poimensko navede[13], ali naj se člen oblikuje splošno, brez navedbe poimenovanj, kar bi pustilo vrata odprta za lažje uvajanje tudi novih narodnih manjšin, v kolikor bi se zaradi migracijskih procesov v prihodnosti pokazala ta potreba. Pretresti je potrebno tudi vprašanje, ali je sprememba ustave dejansko potrebna, ali zdajšnji členi 62.-64. zadostujejo in se, v kolikor bi se za to pojavila potreba, na tej podlagi lahko sprejelo povsem ustrezno zakonodajo, ki bi se dotikala teh narodnih manjšin.

Igličar (2009, str. 293) z vidika sociologije prava ustave sodobni držav definira kot v pravnem smislu najvišji splošni pravni akt v državi, v političnem smislu postavlja ustava temelje demokracije, v splošnem družbenem (sociološkem) smislu pa ustava spada med homeostatične mehanizme, ki zagotavljajo družbeno stabilnost. Ustavo opredeljuje kot najpomembnejše stičišče politike in prava, nastopa kot najbolj političen element v pravu in najbolj pravni element v politiki. Iz tega torej jasno izhaja, da spreminjanje ustave s preglasovanjem (pa čeprav je v državnem zboru potrebna dvotretjinska večina) ni modro dejanje, ampak je v tako pomembnih zadevah potrebno iskati družbeni konsenz. Tudi pri

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[13] Kot je bilo npr. predlagano v Javni pobudi iz leta 2003, ki jo je predlagala Koordinacija Zvez in kulturnih društev konstitutivnih narodov in narodnost razpadle SFRJ v Republiki Sloveniji.

vprašanjih o reformi manjšinskih pravic v Sloveniji bo potrebno upoštevati tako pravice manjšin, kot njihove legitimne interese, kot dojemanje problematike s strani večinskega prebivalstva ter predvsem upoštevajoč kriterij normalnega delovanja države.

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