

Middlesex University Research Repository

An open access repository of

Middlesex University research

<http://eprints.mdx.ac.uk>

Sargeant, Malcolm ORCID: <https://orcid.org/0000-0002-6366-853X>, Radevich-Katsaroumpa, Elena and Innessi, Alessandra (2018) Disability quotas: past or future policy? *Economic and Industrial Democracy*, 39 (3) . pp. 404-421. ISSN 0143-831X [Article]
(doi:10.1177/0143831X16639655)

Final accepted version (with author's formatting)

This version is available at: <https://eprints.mdx.ac.uk/18801/>

Copyright:

Middlesex University Research Repository makes the University's research available electronically.

Copyright and moral rights to this work are retained by the author and/or other copyright owners unless otherwise stated. The work is supplied on the understanding that any use for commercial gain is strictly forbidden. A copy may be downloaded for personal, non-commercial, research or study without prior permission and without charge.

Works, including theses and research projects, may not be reproduced in any format or medium, or extensive quotations taken from them, or their content changed in any way, without first obtaining permission in writing from the copyright holder(s). They may not be sold or exploited commercially in any format or medium without the prior written permission of the copyright holder(s).

Full bibliographic details must be given when referring to, or quoting from full items including the author's name, the title of the work, publication details where relevant (place, publisher, date), pagination, and for theses or dissertations the awarding institution, the degree type awarded, and the date of the award.

If you believe that any material held in the repository infringes copyright law, please contact the Repository Team at Middlesex University via the following email address:

eprints@mdx.ac.uk

The item will be removed from the repository while any claim is being investigated.

See also repository copyright: re-use policy: <http://eprints.mdx.ac.uk/policies.html#copy>

Disability quotas: past or future policy?

Alessandra Innesti, Legal consultant, UK, Elena Radevich-Katsaroumpa Tomsk State University, Russia and Malcolm Sargeant Middlesex University, London, UK

Abstract

This article considers the issues associated with the use of quota systems for the employment of workers with a disability. It examines the use and experiences of such quotas in Italy, Russia and the United Kingdom. Italy has a long established quota for the employment of such workers, whilst the modern Russian system it is a more recent innovation. In contrast the UK abandoned its quotas in the 1990s. We draw on the experiences of the three countries to consider generally whether the use of quotas is either an acceptable means of encouraging employers to take on disabled workers, or is necessary to achieve this objective.

Introduction

This paper is concerned with considering the use of employment quotas as a means of providing employment for workers with a disability. We use a comparative method in order to assess the legislative approach to the disability quota systems of Italy, the Russian Federation (Russia) and the United

Kingdom (UK). The adopted approach is an evolutionary one seeking to capture the dynamics of the legislative trajectory in these three contrasting countries. The choice of these countries is influenced by so called 'the most different nations design' strategy in comparative studies (Dogan and Pelassy, 1990: 126-131). The differences between Italy, the Russian Federation and the UK are not limited only by a divergence of legal traditions as well as political, cultural and socio-economic conditions. In our case the distinction in legislative attitude to the disability quota system is even more important. Thus, in contrast to modern Russia which introduced quotas for disabled people in a context of a market economy only a few decades ago, Italy and the UK first adopted disability quota schemes in the 1940s but they are very distinctive in their trajectories. Italy, for example, continues to adopt and develop a quota scheme, whilst the UK abolished it two decades ago on the ground of its ineffectiveness. It is suggested that comparative analysis of the disability quotas' experience in these three contrasting countries will help to identify whether a disability quota system is a replacement for or a useful addition to the social model (Oliver, 2013: 1024-1026) approach favoured by disability campaigners.

In this paper we firstly consider the problems associated with intra country comparisons on this subject, particularly in regard to the definition of disability and the availability of reliable statistics. We then consider the use of quotas

within the context of disability and how this fits in with the medical and social models of disability and the wider approach to tackling discrimination based upon disability. Next we consider the trajectories of quota policies in the three countries leading to discussion and conclusions about their utility in assisting people with disabilities in the employment sector. Our conclusion is that it is not possible to show the effectiveness or otherwise of quota policies in isolation from other policies but that quota policies for encouraging the employment of people with disabilities do not encourage the view that the disabilities should not be an impediment to workers openly competing in the labour market on the same basis as those without disabilities.

There are problems with intra country comparisons in this context, particularly with the definition of disability in national legislation and the numbers of people regarded as having a disability or impairment. The lack of a generally accepted definition, in combination with differences in national policies regarding disabled people, has led to the situation where each Member State has its own systems for defining the population of disabled people (European Commission, 2004: 16).

Theoretically distinctions between definitions and accordingly national systems for defining the number of the disabled may be explained by different models of disability which are taken as the basis by the legislators. Usually two

basic approaches to disability are identified: the so-called medical model and the social one. The former has a long history and was prevalent for the majority of the 20-th century. As a sociological approach it was developed in the 1950s by the American sociologist Talcott Parsons who thought that ‘accredited impairment, whether physical, sensory or intellectual, is the primary cause of “disability”’ (Parsons, 1951: 442).

In contrast to the medical model, the social model of disability ‘locates the “problem” of disability within society as opposed to on the individual’ (Moore, 2002: 402). Its origins go back to the 1960s but Michael Oliver (Oliver, 1983), a British academic and disability activist, was the first theorist who made the distinction between these models explicit (Giddens and Griffiths, 2006: 281). He has attached particular importance to social and environmental barriers when defining disability as ‘all the things that imposed restrictions on disabled people; ranging from individual prejudice to institutional discrimination, from inaccessible public buildings to unusable transport systems, from segregated education to excluding work arrangements and so on’ (Oliver, 1996: 33). Since its appearance in the literature the social model has influenced significantly both disability studies and official policies on disability issues, although from 1990s onwards it has attracted some critique because of ignoring actually existing

medical problems that many disabled have to manage with (Shakespeare and Watson, 1997: 298).

Analysis of legal definitions of disability in examined countries shows that although there are some distinctions in wording and differing levels of detail between countries, on the whole they interpret disability within the context of the medical model and associate it with the same key features: 1) impairment of different types that 2) substantially affects an individual's ability to carry out normal activities.

Thus, in Italy, for example, the widest definition of a disabled person is included in art. 3 of the Law No. 104/92. It provides that a disabled person is someone who has a physical, mental or sensory impairment, whether stable or progressive, which is related to learning, relationship or work organisation problems and results in a process of social disadvantage or marginalisation. According to official statistics (ISTAT, 2009: 13-111), more than 3 million people in Italy (5% of the population) are classified as disabled. In terms of employment, approximately 16% of working age disabled people are employed, compared to 55.1% of working-age non-disabled people (ISTAT, 2014), showing a 39.1% employment gap. Taking into account the lack of statistical certainty partly because of an approach which relies upon a medical model and the problem of having old statistics, some consider that at the moment in Italy

probably there are more than 4 million disabled people rather than 3 million as ISTAT certified ten years ago (Angeloni, 2010: 40-43).

In Russia, a person with a disability (rus. *invalid*) is legally defined as 'an individual who has a health problem involving persistent disorders of bodily functions due to disease, trauma, or defects, leading to limited capability and calling for their social protection' (Section 1, Federal Law 'On Social Protection of People with Disabilities in the Russian Federation' of 1995). According to official statistical data, at present slightly less than 13 million people (about 10% of the population) are officially regarded as disabled in Russia, including 3.8 million of working-age (about 30% of the total number of disabled) (Federal State Statistics, 2015). In employment terms, about 28% of working-age disabled people are in employment (Ministry of Labour, 2015), although unofficial data suggests that it might be half as much (Bel'kova, 2012: 4). This is compared to some 75% of working-age population in general (Ministry of Labour, 2013) so creating about 47% employment gap.

In the UK disability is now defined (although there was a different definition in the Disabled Persons (Employment) Act 1944 which introduced the disabled quota system) as having a physical or mental impairment and where the impairment has a substantial and long-term adverse effect on an individual's ability to carry out normal day to day activities (Section 6(1), Equality Act 2010).

Over 11.6 million people are regarded as having a limiting long term illness, impairment and disability (almost 20% of the population) and some 5.7 million of those are of working age. In employment terms some 46.3% of working-age disabled people are in employment compared to some 76.4% of working-age non-disabled people, so creating a 30.1% employment gap (UK Office for Disability, 2014: 1).

Despite any commonalities in the definitions, the statistical outcome differs greatly between these three countries, with 5% of the population being regarded as disabled in Italy, compared to 10% in Russia and almost 20% in the UK. This is reflected in the percentage of disabled people of working age who are regarded as being in employment with just 16% in Italy, 28% in Russia and 46% in the UK.

Quotas

A quota as an obligation to employ a specific number or proportion of persons of a particular group and is traditionally examined within the concept of affirmative action. In broad terms, the American term 'affirmative action' as well as its alternative 'positive action' which is favoured in the EU context (McHarg and Nicolson, 2006: 1-2) means a policy or a programme providing access to education, employment, health care or social welfare for people of a minority

group who have traditionally been discriminated against, with the aim of creating a more egalitarian society (Mooney and Cotter, 2007: 9-10). Preferential treatment in the form of quotas or other means of positive discrimination thus targets structural or institutional discrimination which is one of the major obstacles to the equalisation of opportunities for disabled people (Degener, 2005: 93). Here we examine the subject in relation to workers with a disability, but affirmative action is not a concept confined to such workers. In the US, for example, the historical use of 'affirmative action' to overcome racial imbalances in employment and education sometimes involved using quotas to ensure the recruitment of minorities and in Europe, in recent years, there has been much discussion about applying such quotas to the employment of women at senior levels within enterprises (EIRO, 2012).

Employment quotas for those with a disability originated with hiring veterans after World War I when employers were encouraged, and in some cases obliged, to employ a specific percentage of disabled war veterans (Waddington, 1995: 111). The rationale then was compensatory, fulfilling the duty towards those who became disabled after placing their lives in danger for their own countries (Kulkarni, undated: 10). The high unemployment rate amongst disabled veterans during the inter-war years suggested that a voluntary approach was to large extent unsuccessful and led most Western

European countries to accept an obligation based quota system after World War II. These second generation quotas were ultimately extended to cover not only ex-soldiers, but also the disabled civilian population as a whole and now in the EU, for example, the majority of countries have some form of quota system for employing people with disabilities, including Austria, Belgium, Bulgaria, Cyprus, The Czech Republic, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxemburg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia and Spain. Only Denmark, Estonia, Finland, Iceland, Latvia, The Netherlands, Norway, Sweden and the United Kingdom do not have such a system (Greve, 2009: 14).

‘A consequence of this extension was that the concept of a *quid pro quo* societal duty, which had existed when the [quota] systems were exclusively targeted at veterans, was lost, and the new quotas became part of overall national social-welfare policy’ (Waddington and Diller, undated). As a result, by the 1960s they become located in an extensive network of employment welfare legislation which largely shifted the focus from the causes of impairment to the means of rehabilitation, including the establishment of special education systems, medical and vocational rehabilitation and institutionalised care. In fact, ‘for the first time, people with disabilities became rights-holders, at least in terms of welfare rights, but at the high price of exclusion’ (Heyer, 2005: 242). In the

sphere of employment, this is partly reflected in a general perception of the disability quota system as being an attitude of 'charity' towards the disabled (Hodges-Aeberhard and Raskin, 1997: 2-3) since it is based on the belief that without some form of the legislative intervention, they would not be able to get a job in the open labour market. This belief, in turn, is grounded on two related assumptions. The first one is that employers would not hire large numbers of disabled people unless they are required to do so. And the second one is that a large number of people with disabilities are unable to compete with their non-disabled counterparts for jobs on an equal basis because they are treated by employers as less valuable economically and less productive (Waddington, 2000: 34). 'The implicit assumption is that without quotas employers are turning away disabled workers, either because of discrimination, a perception that they are not as productive as non-disabled workers, or the unwillingness to bear the costs needed to accommodate disabled workers so they could be equally productive' (Mont, 2004: 20).

Much research conducted to date has shown that generally employers treat the quota system as acting against good economic sense and, as result, are disposed to resenting and circumventing it in a variety of ways (Hodges-Aeberhard and Raskin, 1997: 2-3). Thus, for example, in Austria in 2005 only 30% of companies complied with the quota of 4% and in Spain in 2008 only

some 14% of businesses employing more than 50 workers were able to meet their quotas (Greve, 2009: 14).

It is suggested that some employers appear to prefer simply to pay a fine instead of employing persons with disabilities. Others attempt to fulfill their quota obligations but the disabled workers are paid minimum rates to stay home, maintain peripheral work, or are segregated into low-level work with minimal responsibility (Stull, 2014: 107). Disabled workers who are employed within the quota system are sometimes not promoted since the quota system gives emphasises employment, rather than trying to ensure equal opportunities (IDA, undated).

In the 1970s, the employment quota approach as well as the medical (or individual/welfare model) of disability that underlies it became the target of growing criticism from a new generation of disability advocacy groups that were largely composed of and led by disabled people themselves. They doubted the assumptions which formed the basis of the employment quota system and the entire medical model which relies on the assumption that disability is the result of a defect or ailment in an individual that makes him or her unable to function in society or to compete in the labour market. Instead of this, a fundamentally different understanding of disability was proposed which is now known as the social model of disability (Kelemen, 2011: 202). The social model redirects

attention from individual impairments to ‘the defects in the design of the built environment or transport systems that restrict [his or her] social inclusion’ (Oliver, 2013: 1024-1026). Within the social model ‘measures of disability would focus particularly on the physical, social and economic disabling barriers experienced by disabled people and the impact of antidiscrimination policies’ (Barnes and Mercer, 2006: 36).

There is some contradiction between the maintenance of quota systems and the shift towards antidiscrimination employment policies (Greve, 2009: 14) since ‘quotas coincide only to a limited extent with the principle of equal access and equal chances for all or with the social model of disability’ (Fuchs, 2014: 3). However, many countries, including those in the EU, have developed a biopsychosocial model which attempts to integrate both models of disability (Parkin et al., 2011: 8) and emphasises measures aimed at the prevention of discrimination in addition to quota systems (Fuchs, 2014: 3). Non-discrimination legislation, whilst contributing to the safeguarding of disabled persons who are in the labour market, is not effective in promoting entry into the labour market (IDA, undated; Nagae, 2015: 73). Moreover, frequently disabled people themselves are in favour of the quota systems, identifying ‘the problem with such schemes as weak enforcement and lack of sanctions for employers who

do not meet their obligation, rather than with schemes per se' (Waddington, 2000: 34).

Country comparisons

Quota systems in the three countries considered here are not the only means by which the state attempts to tackle discrimination against employment discrimination concerning disabled workers. There are also other anti-discrimination measures in place which, of course, make it more difficult to judge the effectiveness of that part of the policy that includes a quota system. In Italy and the UK quotas were introduced in the post Second World War 1940s whereas in Soviet Russia they existed from the mid-1960s. In Italy the quota system transitioned in 1999 to a focus on effective placement, rather than just a compulsory placement model. Laws were further introduced (as late as 2012) widening the scope of the quota system as well as providing much needed protection against disability discrimination. In modern Russia the quota system has also developed since the Soviet era. Notwithstanding the notable lack of consistency in the reforms policy, eventually they were aimed at expanding the scope of the disability quota system on the one hand and introducing the additional control measures for employers on the other. Some supplementary steps to discourage discrimination on the basis of disability were taken very

recently as well. In contrast to the continuing quota trajectory for Italy and Russia, the UK abandoned its quota system in favour of a general anti-disability discrimination law in 1995. Its quota system fell into disrepute as a consequence of employer hostility, disability campaigner's scepticism and ineffective enforcement. Indeed, some of these characteristics are a common feature for all three countries, particularly the opposition of employers and the lack of effective sanctions and a reluctance to enforce them. More importantly is the question as to whether the various policies are more akin to a medical approach to disability rather than a social model one.

Here we consider in more detail the trajectory of the measures adopted in each country in order to understand the role of the quota system.

Italy

Italy introduced the first measures to assist disabled people after the Second World War (1948) when the Republic Constitution came into force. Integration at work of the disabled was promoted by way of Law No. 482/68 on compulsory hiring and Law No. 118/71 laying down provisions for injured workers and some categories of disabled workers (La Macchia, 2009) which represented the first attempt to bring together the main provisions protecting people with disabilities. This law was intended to offer protection by requiring private and public sector employers to hire a certain number of disabled workers, irrespective of their

reduced ability to work in relationship to the employers' actual needs. However, such an approach was soon considered dated and deemed as illogical by both employers and employees, for it drew on the concept of "disability" as a permanent—and somehow degrading—impairment, which was overcome over the years. Dissatisfaction with this state of affairs led to a number of amendments to relevant provisions.

Law No. 68 of 12 March 1999 on the rights of people with disabilities (Cinelli and Sandulli, 2000: 125-163) changed the approach adopted to deal with access to employment and social integration for this category of workers (Battafarano and Fontana, 2001). The new provisions, which were really a compromise between the wishes of government and the demands of disabled people, provided for a number of initiatives aimed at employment promotion and job creation (Santoro Passarelli and Lambertucci, 2000: 1351). The new law marked a shift from 'compulsory hiring' to 'effective placement', through which the disabled are involved in job-searching, as well as employers and social partners who assist in accessing employment. Providing 'effective placement' was the underlying principle for the whole body of law enacted in 1999. Here, 'effective' meant employing disabled workers in the most suitable occupation, by assessing their ability to work and evaluating their skills and potential. The obligation placed upon the employer to hire disabled workers — alongside the

administrative sanctions to be paid in the event of non-compliance with such a requirement—has nevertheless remained untouched, in order to safeguard their rights in terms of social assistance.

Article 3 of Law No. 68/1999 extended the number of employers obliged to hire disabled people to those with more than 15 employees. In moving away from compulsory hiring to effective placement, certain requirements are no longer enforceable, nor are penal sanctions resulting from non-compliance with these obligations. Failing to hire disabled workers is not a criminal offence, but just produces liability for compensation. It is significant in this connection that the employer, who is under the obligation to hire disabled workers, is liable for any damages resulting from an unjustified failure to hire them. Such liability, resulting from the employer breaching his or her obligation to recruit disabled workers, continues to apply until the end of the obligation.

Law No. 92/2012 introduced some major amendments to ensure the dignity of disabled workers by reducing abuses towards them, increasing job opportunities, and easing their entry into the labour market (Giovannone and Innesti, 2012: 431). It made a major amendment by widening the number of workers serving as a starting point to calculate the compulsory quota of disabled workers. The new provisions established that, for the purposes of determining the number of positions reserved for disabled persons, all salaried

workers should be included, as well as all those employed under limited-term contracts.

Thus in Italy, although there is legislation to promote the employment of people with disabilities, there are important deficiencies. The majority of employers are more willing to be sanctioned and pay a fine than to hire a person with an impairment of any sort. Effectively, it is sufficient to present a self-declaration to dispense with the statutory obligation to recruit people with disabilities. A change of mentality is required. As well as more effective penalties and subsidies for employers, the integration of disabled people should be seen as an opportunity and not only as an obligation.

Russia

Strictly speaking, in Russia, the quota scheme for the disabled existed even in the Soviet period (Bliss, 1997: 269). Initially, the quotas, at the rate of up to 2% of the workforce of the enterprise, were introduced in 1965 for the disabled veterans of World War II. In 1976 they were extended to all the disabled (Zhavoronkov, 2014: 144).

In the period of so called *perestroika*, the particular vulnerability of disabled people in the course of economic reforms (Tkachenko et al., 1997: 86) as well as the low effectiveness of the established quota scheme which did not

imply any effective sanctions in the case of non-compliance (Dunn, Dunn, 1989: 226) (Phillips, 2010: 69) has led to the transformation of the plain disability quota system into the levy-grant one. From 1990, if the enterprise with 20 or more employees did not fulfill the quotas which rate was increased from 'up to 2%' to 'at least 5%', it had to reimburse some state expenses on job placement program for the disabled and financial aid to them. Besides the disability quota system, tax benefits for hiring disabled people as an additional measure to promote their employment were stipulated by law.

After the dissolution of the USSR, the Russian legislator has abided by the disability quota system within the levy-grant model set by Soviet legislation but changed its scope and the quota rate. In accordance with the Federal Law 'On Social Protection of People with Disabilities in the Russian Federation' of 1995 all public and private organisations with more than 30 employees were obliged to hire at least a 3% quota of disabled people. In the case of non-compliance, the organisations had, for every disabled person who was not placed in a job, to pay a sum to the Federal State Fund of Employment. Some tax breaks for hiring the disabled were also preserved.

Within the following twenty years, the legislative provisions aimed at promotion of employment for disabled people have been changed repeatedly, but not always sequentially. Thus, in 2001 the regions were authorized to

specify the quota rate at between 2 and 4% as well as determine the rate and method of organisations' payments for failure to comply with the quotas which were to be remitted to the regional budgets. The designated purpose of these payments was not stated, which appeared to clash with the idea and aim of the levy as a means 'to encourage employers to meet their quota target, not to raise revenue' (Thornton, 1998). Moreover, most tax benefits for hiring disabled people were abolished, partly as result of their misuse by some employers who 'hired' people with disabilities without any expectations of their actual work. In return for such 'collaboration' the disabled received just a measly salary (Lupanova, 2002).

The amendments of 2004 maintained the quota limits but simultaneously established that they should be applied only to organisations with more than 100 employees. Such a considerable narrowing of the quota system's scope was under extensive criticism since many disabled people treated small and medium-sized businesses as the most likely sources of job placement (Gontmakher et al., 2009: 43) (Romanov et al., 2009: 13). Other novelties which have not got public support included the abolition of tax benefits for most specialised enterprises employing the disabled and the removal of payment for non-compliance with the quotas to the regional budgets. As a result, a light

administrative fine has become the main sanction for those enterprises which did not fill the quotas.

Afterwards, the legislator took into account some of the aforementioned considerations. Thus, in 2013 it was stipulated that, for employers with between 35 and 100 employees, the regions may establish the quota of disabled people of up to 3%. During the same year, a few additional control measures for employers as well as some toughened their responsibility for disregarding the relevant law were introduced. Such amendments, quite predictably, were not supported by employers who treated them as putting pressure on business. As a result of the strong resistance to the quota system, many disabled people hired within this scheme suffer from different types of discrimination. In some cases employers pay them just minimum wages and/or *de facto* do not allow them to exercise job duties (Kuznetsov, 2001: 108-113) (Dzhioev, 2006: 278).

Despite these problems and the statistical data which does not confirm the positive results of the quotas, one can say that in modern Russia they are treated as one of (if not the) main means to promote employment for the disabled (Novikov et. al, 2006: 10). Taking into account the relative lack of an employment-related rights mentality that can prevent not only enactment of disability discrimination legislation (Burgdorf, 1998: 5) but also its effective enforcement, it is reasonably doubtful that, at least, at the present stage non-

discrimination provisions may be perceived as the only measure for resolving the issue. Nevertheless, the state acknowledges their importance as an additional policy solution. It is confirmed, in particular, by the amendments to the Federal Law of 1995 which took effect from the beginning of 2016. According to them, a separate section providing a direct ban on disability-based discrimination in all spheres of life was incorporated into the law. Before these amendments, the Russian legislation did not contain any specific prohibitions aimed at discrimination against disabled people although there was (and still is) the principle of legal equality for everyone fixed by the Constitution of the Russian Federation of 1993 (Section 19) as well as a general ban on discrimination in the sphere of employment placed by the Labour Code of the Russian Federation of 2001 (Section 3).

The UK

Like many other countries the UK introduced measures to assist disabled servicemen in the 1940s. The Disabled Persons (Employment) Act 1944 was adopted following a government committee report (Tomlinson, 1943). Section 1(1) of the Act focussed on the impairment by defining a disabled person as 'a person who, on account of injury, disease, or congenital deformity, is substantially handicapped in obtaining or keeping employment, or in

undertaking work on his own account, of a kind which apart from that injury, disease or deformity would be suited to his age, experience and qualifications’.

Private sector employers of 20 or more were required to employ at least a 3% quota of registered disabled people. Public employers were not bound by the Act but agreed to accept the same responsibilities. Registration as a disabled person was an individual’s choice but only those who were registered could benefit from the advantages of being included in the quota (Doyle, 1993: 83). Employers were required to keep records of their operation of the quota. If they employed less than the quota, they had to give preferential treatment to disabled applicants. Employers were not permitted to recruit non-registered disabled employees without a permit from an office of the Employment Services, in theory issued only where there were insufficient registered disabled people to fill the positions in question. An employer acting contrary to this law, in taking or offering to take into employment a person not registered as disabled, committed an offence and was liable to a fine.

Such a piece of legislation can be regarded as a blunt instrument which did not take into account the make-up of the working population in firms of different sizes and occupational groups (Bolderson, 1980:184-186). Mostly, however, there seemed to be a lack of willingness of successive governments to enforce the legislation. It was the government minister who was required to

decide if action should be taken against an employer who took on a non-registered person when they were below quota. Between 1949 and 1975 there were only six prosecutions which resulted in five convictions and negligible fines. It was also an offence to fail to keep, preserve or produce records and the one case that was brought in 1948 was dismissed (Thornton and Lunt, 1995: 10).

The Act declined in effectiveness during its entire period in effect, both in the number of disabled people who registered, because they saw a disadvantage in being registered, and in the number of employers who met their quota obligations. The numbers of disabled people who were registered declined to the level where it was impossible for firms to meet their quota targets. In 1950 the number of registered disabled people reached its peak at 936,196 and by 1990 it had fallen to its lowest level of 355,591. In 1994, when the system came to an end, it stood at 374,182 (Thornton and Lunt, 1995: 12). Thus a system that was introduced to help disabled people was clearly seen by the majority of such people not to offer any advantages or, at least, advantages compared to any perceived disadvantages.

The long-term decline in the numbers of people registering, it was suggested (Barnes, 1991 in Thornton and Lund 1995: 12), was a vicious circle. 'Disabled people did not register because they believed it a waste of time, and

Department of Employment policy in failing to enforce the quota simply confirmed that belief. As for employers, many were unaware of their obligations. Government research published in 1990 found that over one-quarter of respondents had not heard of the quota scheme. This was especially true of smaller employers, where over 40% of those employing between 20 and 99 employees were ignorant of the scheme (Morrell, 1990 in Thornton and Lund: 12). Given the lack of enforcement, the decline in those registering, and those who were unaware of the scheme it is no surprise that there was a steady decline in the number of employers who fulfilled their quota.

By the end of the period it was less than one in five employers who did so. The ease of obtaining a permit to employ people who were not disabled is also shown. By the 1990s the majority of employers were in receipt of such a permit.

Discussion and conclusions

In this paper we have attempted to isolate the issue of disability quotas but accept that they are only part of the overall policy adopted by the three countries considered here and by many other states. There are other important incentives for employers through the tax system or through direct financial assistance which may support the employment of people with disabilities. There is also considerable financial support for disabled people although an OECD

report (OECD, 2010) showed that there is a heavy bias towards passive spending amounting at up to 95% of disability financial support in many countries. Many countries will also have anti-disability discrimination measures which will also play an important part. In a study of the effectiveness of employment measures all these policies will be relevant and perhaps the lack of empirical research into the effectiveness of quota systems generally is because it may not be possible to isolate one policy from all the others. Despite this there is a need to critically review, as far as one can, the usefulness and effectiveness of policies such as the use of quotas, particularly if they are considered to be part of a 'medical' approach which treats disabled people as a separate group rather than attempting to integrate them into the mainstream workforce.

Perhaps the reforms carried out in Italy really focus on what is wrong with the quota system. As mentioned above the reforms introduced in 1999 by Law No. 68 on the rights of people with disabilities changed the focus of protection from compulsory hiring to 'effective placement'. Thus it adopted a much more positive approach (although the quota system was still retained) and sought to involve the disabled as well as the social partners in the process of finding suitable work for those with disabilities based upon their skills and potential. Quota systems are concerned with numbers and do not necessarily reflect

either the employer's needs for certain skills, nor the disabled workers true abilities. In post-Soviet Russia, as opposed to Soviet era, the government seemed to recognise the need for the integration of the disabled into mainstream society as a strategy which may work towards not only social but also economic goals. In the sphere of employment, the change in the state policy was reflected in the fact that notwithstanding the existence of some specialised enterprises, the legislators started to pay a lot of attention to the disability quota system as a basic tool to ensure job placement for people with disabilities in the open labour market. Interestingly enough the modern Russian quota system in a context of a market economy was fixed by law just a year after the approach was abandoned in the UK. One must be careful about comparing countries at different stages of policy development, but the attempt to develop a policy arising out of a much needed urgent requirement to help injured soldiers returning from war into a long term policy for assisting all disabled people into work can only be, at best, a partial solution.

The issue with quota systems is that they send out a mixed message both to employers and to those with a disability (Waddington and Diller, undated). On the one hand they are told that the employment of people with disabilities is desirable but, on the other hand the message is that disabled workers are unable to compete for jobs on equal terms. The quota system is based on a

medical approach as well as on obligations and sanctions. It means that a disabled person is mainly treated as a problem and not as a potential asset like other employees. Thus, employers often hire disabled people only to fulfil the legal requirements. There is also a lack of penalties for those employers who fail to hire disabled people and perhaps it is too simple for employers to be exempted from the obligation, for example in difficult economic situations. At the very least sanctions need to be strengthened, but they must be accompanied with a change in attitude towards disability. In other words they need to be part of a wider package of measures.

The Italian legislator in 1999 revolutionised the quota system adopting a much more positive and social approach to the integration at work of people with disabilities. It introduced the idea of 'targeted employment' which allowed disabled people to compete on the open labour market. The quota system introduced was part of a package of measures which included financial support for workplace adaptation, tax reductions and flexible work arrangements. Potentially, people with disabilities and the labour force in general have similar possibilities to enter or re-enter the labour market thanks to the national quota system and the labour market policy. Nevertheless, after sixteen years since this quota system became law the employment of people

with disability is still a big issue. The Italian employment rate of disabled working age is very low and the number of employers who do not meet the disability employment target and must pay a compensation fee to the specific fund has increased.

In Russia, the history of the disability quota system which can be formally divided into Soviet and post-Soviet stages confirms the widespread belief about the low efficiency of the plain quota system. An absence of sanctions and *de facto* social exclusion of the disabled are the main reasons why legislative provisions regarding quotas were mostly “paper laws” in Soviet era. In post-Soviet Russia, the disability quota scheme was transformed from the plain system into the levy-grant one but has shown quite ambiguous outcomes. On the one hand, around 380,000 disabled people are now placed within the quota system (Ministry of Labour, 2015). On the other hand, as a result of the strong resistance to the quotas which are generally considered by employers as acting against economic sense, many of them get unfavorable treatment of different kinds. It is doubtful if having quotas promotes decent employment for the disabled in a context of market competition where the efficient use of labour is considered as one of the key factors in making profits. Like the Italian situation a more holistic approach has been taken and there are some additional positive measures aimed at encouraging, as opposed to forcing, employers to take on

the disabled (tax benefits, reimbursement of expenses on the creation of specially equipped workplaces for disabled people, wage subsidies, etc.) and there seems to be a focus on access to inclusive education and vocational training for the disabled as a starting point in extending their appeal as potential employees. The UK of course abandoned quotas some 20 years ago and adopted a Disability Discrimination Act (1995) which made discrimination against disabled people in the labour market unlawful. It seems that the absence of a quota system has not disadvantaged the disabled compared to the other countries considered here.

More importantly perhaps are two particularly interesting aspects to having a quota system. Firstly, it places an obligation upon a disabled person to identify themselves as a handicapped person and, secondly, it places an obligation upon employers to specifically recruit disabled people, rather than, maybe, the most appropriate person for the vacancies being recruited for. Both of these obligations are questionable because they isolate the disabled person as someone different who needs work reserved for them because they are unable to compete with persons without a disability.

Do quota systems make a difference? The statistical differences that exist are likely to be explained by the application of the definition of disability in the countries to the population, but perhaps the most useful statistic for the

purposes of this paper is the gap in the employment rate between those without a disability and those with one. This is about 39% in Italy, 47% in Russia and 30% in the UK. What these figures show is that people with disabilities suffer a significant disadvantage in all three countries and that disabled people are much less likely to be in employment than those without disabilities (Jones and Wass, 2013: 990). They also show that countries with a quota system do not necessarily perform better in employment rates than countries without a quota system. It seems that, according to the limited data available, quota systems 'only lead to small net employment gains and at times can only be justified for equity reasons' (Fuchs, 2014: 5). A study of Spanish employers using a regression discontinuity approach also concluded that 'the impact of the quota system is rather low' and that 'the current design of this policy is not useful to promote the employment of people with disabilities' (Malo and Pagán, 2014: 62).

It is difficult to be conclusive on the evidence available and there must be some doubts about the validity of the information we can use, e.g. 'one reason for the lower relative [employment] rate in Italy – and other Southern European countries – is the relative lack of labor force participation. The barriers that raise unemployment can also serve to keep disabled persons out of the labor market in the first place, thus lowering measured unemployment. The gap between the

disabled and the non-disabled is even larger than the unemployment figures suggest because fewer disabled people are even looking for work' (Mont, 2004:

4). Importantly:

Quota legislation, even in those few countries where it is effective, risks undermining the idea that people with disabilities should be employed for the same reasons as non-disabled employees, that is for their skills and talent. Employing people because of their disability in order to avoid the fees or sanctions foreseen in many quota-based laws could lead employers to treat employees with disabilities differently, for instance, offering fewer opportunities for career development (ILO, 2014: 11).

Employment quotas send out mixed signals to both employers and to those who have a disability and in some ways are a relic of the medical model approach. On the one hand employers and people with disabilities are encouraged to believe that the participation of disabled workers in the open labour market is quite possible, whilst, on the other hand, quota systems are implemented because of the assumption that the disabled cannot compete in the open labour market:

In short, the message sent out is that most workers with a disability are less valuable economically and less productive, and that, if such workers are to be integrated in the (semi-) open labour market, employers need to be obliged to hire them. Given this inherent contradiction it is not surprising that European quota systems have in fact made little direct contribution to the employment of people with disabilities (Waddington and Diller, undated).

Quota systems exist in the majority of EU countries and other states such as Russia. The quotas vary between 2 and 7%; but these policies in the EU exist alongside implementation of the Framework Directive on Equal Treatment in Employment and Occupation 2000/78/EC in relation to disability which is concerned about achieving equality in employment and freedom from discrimination (Fuchs, 2014; 4). In many countries therefore there will be anti-discrimination legislation alongside the quota policies and it is really not possible to say which is more effective. It is possible to say that, for example, the UK does not have any worse record on the employment of people with disabilities even though it only utilises one of these two streams (quotas and non-discrimination). There does seem to be evidence that legislation requiring quotas of disabled employees may act as a catalyst for employers to adopt

policies which concern the recruitment and retention of the disabled (ILO, 2007: 24), but, according to the World Health Organisation (WHO, 2011: 241-242) ‘the assumption that quotas correct labour market imperfections to the benefit of persons with disabilities is yet to be documented empirically, as no thorough impact evaluation of quotas on employment of persons with disabilities has been performed’.

Perhaps the most self-evident statement to make after considering the approaches in Italy, Russia and the UK, and elsewhere, is that it is not possible to isolate the effect of the quota system on employment opportunities for disabled persons from other causal factors on the levels of employment or unemployment. These can include, for example, the size of the public sector and a broad range of government policies in relation to financial support for disabled people and other incentives might be relevant. Perhaps the conclusion should be that it is possible to argue that quota systems may help to increase the participation level of disabled people in the labour market, but it is the wider anti-discrimination policies that seem ‘to be more appropriate for the principle of normalization, ensuring disabled persons equal opportunities in society, because it promotes employers’ initiatives and social consciousness by means of environmental improvement, not employment obligation’ (Momm and Geiecker, 2006: not numbered).

References

- Angeloni S (2010) *L'Aziendabilità Il valore delle risorse disabili per l'azienda e il valore dell'azienda per le risorse e disabili* [The value of the disabled resources for the company and the value of the company for the disabled resources]. Milano: FrancoAngeli 21-321.
- Barnes C (1991) *Disabled People in Britain and Discrimination: A Case for Anti-discriminatory legislation*. London: Hurst and Co/University of Calgary Press; cited in Thornton and Lunt 1995.
- Barnes C and Mercer G (2006) *Independent Futures: Creating User-led Disability Services in a Disabling Society*. Bristol: Policy Press.
- Battafarano G and Fontana G P (2001) *I nuovi lavori dell'handicap: Un percorso attraverso la legge n. 68 per l'inserimento e l'integrazione lavorativa delle persone disabili* [The new jobs in disability: a path through Law 68 for the integration at work of people with disabilities]. Milano: FrancoAngeli.
- Bel'kova N M (2012) *Razvitie trudovoi zanyatosti invalidov v sovremennykh usloviyakh Rossii* [The promotion of employment for disabled people in contemporary Russia]. Doctoral thesis, Moscow, Russia.

- Bliss A J (1997) Proletariat to Perestroika: A Comparison of Labor Law in the Soviet Union and the Russian Federation [comments]. *Comparative Labor Law Journal* 18 (2): 264-314.
- Bolderson H (1980) The origins of the disabled persons employment quota and its symbolic significance. *Journal of Social Policy*: 9(2): 169-186.
- Burgdorf R L Jr (1998) Disability Rights in the USA and Abroad. *Civil Rights Journal* 3(1): 3-5.
- Cinelli M and Sandulli P (2000) *Diritto del lavoro dei disabili* [Employment law for people with disabilities]. Turin: 125-163.
- Degener T (2005) Disability discrimination law: a global comparative approach. In: Lawson A and C Gooding (eds.) *Disability rights in Europe: from theory to practice*. Oxford and Portland, Oregon: Hart Publishing.
- Dogan M and D Pelassy (1990) *How to Compare Nations*. Chatham: Chatham House.
- Doyle, Brian (1993) *Disability, discrimination and equal opportunities*. Doctoral thesis, University of Salford, Salford.
- Dunn S P and Dunn E (1989) Everyday Life of the Disabled in the USSR. In: McCagg W O, Siegelbaum L (eds.) *The Disabled in the Soviet Union: Past and Present, Theory and Practice (Series in Russian and East European Studies)*. Pittsburgh: University of Pittsburgh Press.

Dzhioev S H (2006) *Pravovye problemy sodeistviya trudovoi zanyatosti* [The legal issues of employment stimulation in Russia]. Doctoral thesis, Moscow State Law Academy, Russia.

EIRO (2012) European Industrial Relations Observatory (EIRO): report on *Compulsory Quota for Women Board Members*.

European Commission (2004) *Active Labour Market Programmes for People with Disabilities*.

Federal State Statistics Service of the Russian Federation; the figures are for the beginning of 2015. Available at: http://www.gks.ru/wps/wcm/connect/rosstat_main/rosstat/ru/statistics/population/disabilities/#.

Fuchs M (2014) *Quota Systems for Disabled Persons: Parameters, Aspects, Effectivity* (Policy Brief). Vienna: European Centre for Social Welfare Policy and Research.

Giddens A and Griffiths S (2006) *Sociology*. 5th ed. Cambridge: Polity Press.

Giovannone M and Innesti A (2012) L'attuazione del diritto al lavoro dei disabili, in La nuova riforma del lavoro [The coming into force of the employment law for people with disabilities in The new labour market reform Tiraboschi M and Magnani M. Milano: Giuffrè 431-436..

Gontmakher E et al. (2009) *Russia: on the path to equal opportunities*. Moscow: UN office in the Russian Federation. Available at: http://www.unrussia.ru/sites/default/files/doc/russia_on_the_pat_en.pdf.

Greve, Bent (2009) *The labour market situation of disabled people in European countries and implementation of employment policies: a summary of evidence from country reports and research studies* (report prepared for the Academic Network of European Disability experts (ANED)). Available at: <http://www.disability-europe.net/content/aned/media/ANED%20Task%206%20final%20report%20-%20final%20version%2017-04-09.pdf>.

Heyer K (2005) Rights or quotas? The ADA as a model for disability rights. In: Nielsen L B and Nelson R L (eds.) *Handbook of Employment Discrimination Research: Rights and Realities*. Dordrecht: Springer Science & Business Media.

Hodges-Aeberhard J and Raskin C (1997). Introduction. In: Hodges-Aeberhard J and C Raskin (eds.) *Affirmative Action in the Employment of Ethnic Minorities and Persons with Disabilities*. Geneva: International Labour Organization.

International Disability Alliance (IDA) contribution to the Office of the High Commissioner for Human Rights (OHCHR) thematic study on work and

employment of persons with disabilities (undated). Available at:
<http://www.ohchr.org/Documents/Issues/Disability/SubmissionWorkEmployment/CivilSociety/IDA.doc>.

ILO (2014) *Business as unusual: Making workplaces inclusive of people with disabilities* Geneva.

ILO (2007) *Achieving Equal Employment Opportunities for People with Disabilities Through Legislation*.

ISTAT (2009): *La disabilità in Italia* [Disability in Italy]. Rome: 13-113.

ISTAT (2014); the figures are for the beginning of 2014. Available at:
http://dati.istat.it/Index.aspx?DataSetCode=DCCV_TAXOCCU&Lang=.

Jones M and Wass V (2013) Understanding changing disability-related employment gaps in Britain 199-2011. *Work Employment and Society* 27(6) 982-1003.

Kelemen R D (2011) *Eurolegalism: The Transformation of Law and Regulation in the European Union*. Cambridge, USA: Harvard University Press.

Kulkarni M (undated) *Quota Systems and the Employment of the Handicapped. Experiences in three countries*. East Lansing: Michigan State University, University Center for Institutional Rehabilitation.

Kuznetsov D L (2001) *Kvotirovanie kak osnovnaya forma trudoustroistva invalidov v Rossiiskoi Federatsii* [The disability quota system as the main

means to promote employment for disabled people in the Russian Federation]. *Zhurnal rossiyskogo prava* 11: 108-113.

La Macchia C (2009) *Disabilità e lavoro* [Disability and Work]. Roma: Ediesse.

Lupanova V (2002) *Employment Opportunities for Disabled Russians: an overview of legislation and programs*. Available at: http://www.disabilityworld.org/04-05_02/employment/russia.shtml.

Malo M A and Pagán R (2014) Hiring Workers with Disabilities When a Quota Requirement Exists: The Relevance of Firm's Size. In: Malo M Á and Sciulli D (eds.) *Disadvantaged Workers* (AIEL Series in Labour Economics). Cham: Springer.

McHarg A and Nicolson D (2006) Justifying affirmative action: perception and reality. *Journal of law and society* 33(1): 1-23.

Ministry of Labour and Social Protection (information from 12 January 2015): Available at: <http://www.rosmintrud.ru/social/invalid-defence/251>.

Ministry of Labour and Social Protection of the Russian Federation (information from 3 April 2013). Available at: <http://www.rosmintrud.ru/docs/mintrud/migration/12>.

Momm W, Geiecker O (2006) Disability and work. In: ILO Encyclopaedia of Occupational health and Safety. Available at: <http://ilocis.org/documents/chpt17e.htm>.

Mont D (2004) *Disability Employment Policy*. The World Bank; Social Protection Unit, Cornell University.

Mooney Cotter A-M (2007) *This ability: an international legal analysis of disability discrimination*. Aldershot: Ashgate.

Moore S (2002) *Social Welfare Alive!* 3rd ed. Bath: Nelson Thornes Ltd.

Morrell J (1990) *The Employment of People with Disabilities: Research into the Policies and Practice of Employers* (research paper No. 77). London: Employment Department; cited in Thornton and Lunt 1995.

Nagae A (2015) Disability employment and productivity. *Japan Labor Review* 12(1): 56-75.

Novikov M et al. (2006) *Trudoustroistvo invalidov: integrirovannyi podkhod* [Job placement of the disabled: integrative approach]. Moscow: Perspektiva. Available at: <http://perspektiva-inva.ru/userfiles/jobs/publication/trudoustroistvo-invalidov-integrirovannyi-podhod.pdf>.

OECD (2010) *Sickness, Disability and Work: Breaking the Barriers*. Available at: http://ec.europa.eu/health/mental_health/eu_compass/reports_studies/disability_synthesis_2010_en.pdf.

Oliver M (1983) *Social Work with Disabled People*. Basingstoke: Macmillan.

- Oliver M (1996) *Understanding Disability: From Theory to Practice*. Basingstoke: Macmillan.
- Oliver M (2013) The Social Model of Disability: Thirty Years On'. *Disability and Society* 28(7): 1024-1026, for example.
- Parkin K, Corcoran J R, Denham T (2011) Introduction. In: Zaretsky H H, Flanagan S R, Moroz A (eds.) *Medical Aspects of Disability*. New York: Springer Publishing Company, 2010.
- Parsons T (1951) *The Social System*. New York, Free Press.
- Phillips S D (2010) *Disability and mobile citizenship in post-socialist Ukraine*. Bloomington, Indiana University Press.
- Rimmerman A (2012) *Social Inclusion of People with Disabilities: National and International Perspectives*. New York: Cambridge University Press.
- Romanov P et al. (2009) *Sotsiologicheskoe issledovanie problem invalidnosti i reabilitatsii invalidov v Rossiiskoi Federatsii* [Sociological Study of Disability and Rehabilitation Issues in the Russian Federation]. Available at: http://socpolicy.ru/wp-content/uploads/2012/02/book_2_correct.pdf.
- Santoro Passarelli G and Lambertucci P (2000) Norme per il diritto al lavoro dei disabili, [Regulations for the right to work for the disabled] in Nuove leggi civ. comm., 1351.
- Shakespeare T and Watson N (1997) Defending the social model. *Disability and*

Society 12: 293-300.

Stull K (2014) Employability and inclusion in a for-profit company: Serasa Experian's employability program for persons with disabilities. In: Heymann J, Stein M A, Moreno G (eds.) *Disability and Equity at Work*. Oxford, New York: Oxford University Press.

Thornton P and Lunt N (1995) *Responsibility for Disabled People: social obligation or individual responsibility*. York: University of York. Available at: <http://www.york.ac.uk/inst/spru/pubs/pdf/spreport2.pdf>.

Tomlinson G (1943) Report of Inter-departmental committee on the rehabilitation and resettlement of disabled persons. H.M.S.O.

Thornton P (1998) *Employment Quotas, Levies and National Rehabilitation Funds for Persons with Disabilities: Pointers for Policy and Practice*. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_106625.pdf.

Tkachenko A A et al. (1997) The Russian Federation. In: Aeberhard-Hodges J and C Raskin (eds.) *Affirmative Action in the Employment of Ethnic Minorities and Persons with Disabilities*. Geneva: International Labour Office.

UK Office for Disability Issues; the figures cited are for 2012. Available at:
<http://odi.dwp.gov.uk/disability-statistics-and-research/disability-facts-and-figures.php#gq>.

Waddington L (1995) A European right to employment for disabled people. In: Degener T and Koster-Dreese Y (eds.) *Human Rights and Disabled Persons: Essays and Relevant Human Rights Instruments*. Dordrecht, London : Martinus Nijhoff.

Waddington L (2000) Changing attitudes to the rights of people with disabilities in Europe. In: Cooper J (ed.) *Law, Rights and Disability*. London: Jessica Kingsley Publishers.

Waddington L and M Diller (undated) *Tensions and coherence in disability policy: the uneasy relationship between social welfare and civil rights models of disability in American, European and international employment law*. Available at: http://dredf.org/international/papers_w-d.html.

WHO (2011) *World Report on Disability*. Available at: http://www.who.int/disabilities/world_report/2011/report.pdf.

Zhavoronkov R N (2014) *Pravovoe regulirovanie truda i sotsialnogo obespecheniya invalidov v Rossiiskoi Federatsii* [The legal regulation of employment and social security of the disabled in the Russian Federation]. Doctoral thesis, Moscow State Law University, Russia.