

REASONABLE ACCOMMODATION FOR DISABLED PEOPLE IN EMPLOYMENT CONTEXTS: A LEGAL ANALYSIS OF EU AND ICELAND, LIECHTENSTEIN AND NORWAY

Prof. Anna Lawson and Dr. Delia Ferri
on the basis of country reports provided by
the European network of legal experts in gender equality and non-
discrimination

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Reasonable Accommodation for Disabled People in Employment Contexts



**International and
supranational
benchmarks**

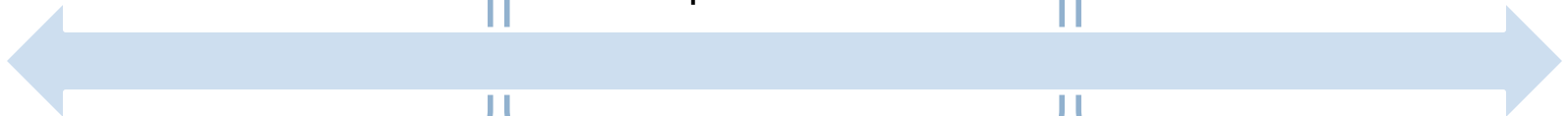


National laws on RA

- Trends
- Patterns
- Ambiguities
- Concerns
- Best practices



**RA and
Accessibility**



Reasonable Accommodation

CRPD

- Art. 2
- Art. 5
- Art. 27

Employment Equality Directive

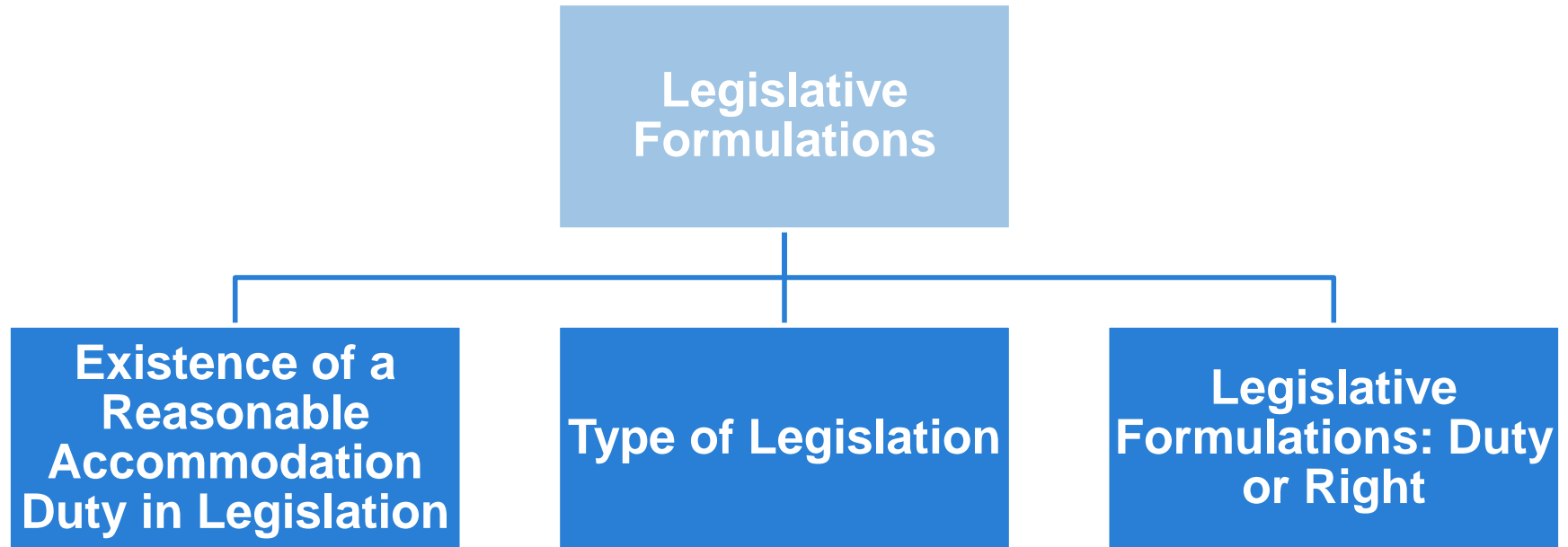
- Recitals 20-21
- Article 5

Employment Equality Directive and CRPD

Mismatch and Ambiguities

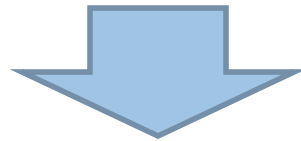
- ❖ Material Scope
- ❖ Classification: Unlike the Employment Equality Directive, the CRPD explicitly classifies the denial of reasonable accommodation as a form of discrimination
- ❖ Scope *ratione temporis* (Knowledge requirements)
- ❖ Procedural issues (Duty to consult)

Reasonable Accommodation in National Laws



Concerns

- ❖ **Absence** (in Lichtenstein and Iceland) of a **clearly articulated** reasonable accommodation duty
- ❖ Additional **restrictions** on Reasonable Accommodation Duties (e.g. the specification in the Italian legislation that public employers must implement reasonable accommodation duties 'without new or increased burdens on public finance and human resources')



Fall short of the standards set out in the Directive
and the CRPD

Material Scope

- ❖ In all 28 Member States as well as in Norway the reasonable accommodation obligation extends to both the **public and private sectors**, in relation to employment and occupation, vocational training and membership of, and involvement in employer and employee organisations
- ❖ **Exceptions** to non-discrimination principles, and thus (arguably) to reasonable accommodation duties, apply in the **military service** in several countries

Concern

Only the UK, Greece and Cyprus have entered reservations against Article 27 CRPD in respect of the armed forces.

Armed forces exemptions in the other countries are inconsistent with the obligations of those countries as States Parties to the CRPD.

Personal Scope

The concept of “worker” extends to (disabled) applicants for posts, people on work placements, trainees, and participants in vocational training events or programmes

Ambiguities and differences remain with regards to:

Self-employed people

Volunteers and unpaid workers

Carers/people associated with people with disabilities

Personal scope

The concept of disability:

1. **No legislative definition** of disability, and its meaning is **judicially elaborated** for purposes of non-discrimination law including reasonable accommodation.
2. The **definition** of disability is either provided in **anti-discrimination laws** or borrowed from **other legislation** and **applies generally** to anti-discrimination protection including reasonable accommodation.
3. The definition of disability for purposes of reasonable accommodation is **narrower** than that used for purposes of non-discrimination law more generally

Concerns

- ❖ Medical model oriented definitions of disability in some national laws
- ❖ Narrower definition of disability for the purpose of RA (i.e. operate in favour only of people who have been officially certified by a state authority to have more than a specified percentage or degree of 'disability')

Knowledge Requirements (Scope *Ratione Temporis*)



When the employer knows or ought to know



Specific request made by the disabled applicant or employee



Notification from a Competent Public Body

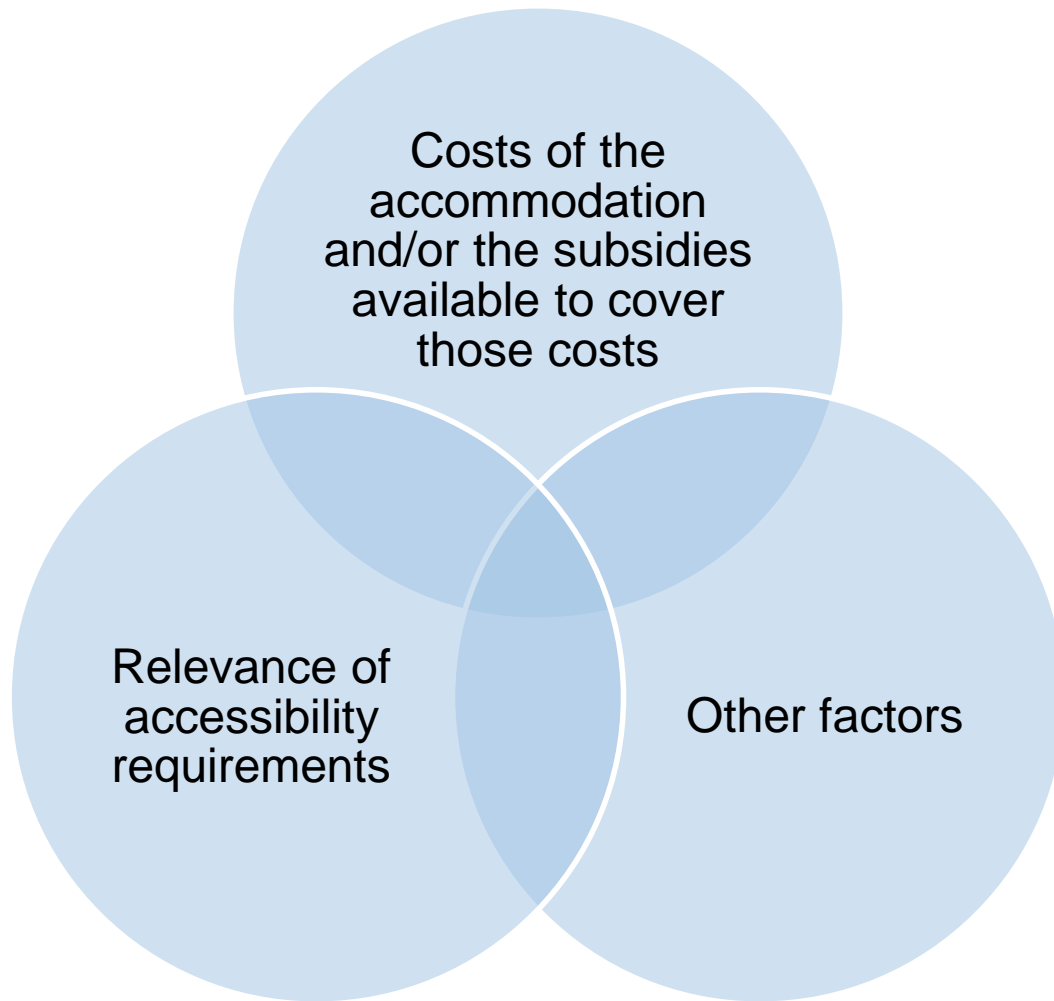
Substance of the Duty

- ❖ Individualised adjustment that objectively and appropriately satisfies the needs of the person and helps them to exercise their right to work
- ❖ Two main types of accommodations are identifiable in the countries under research:
 - ❖ Technical solutions
 - ❖ Organisational arrangements

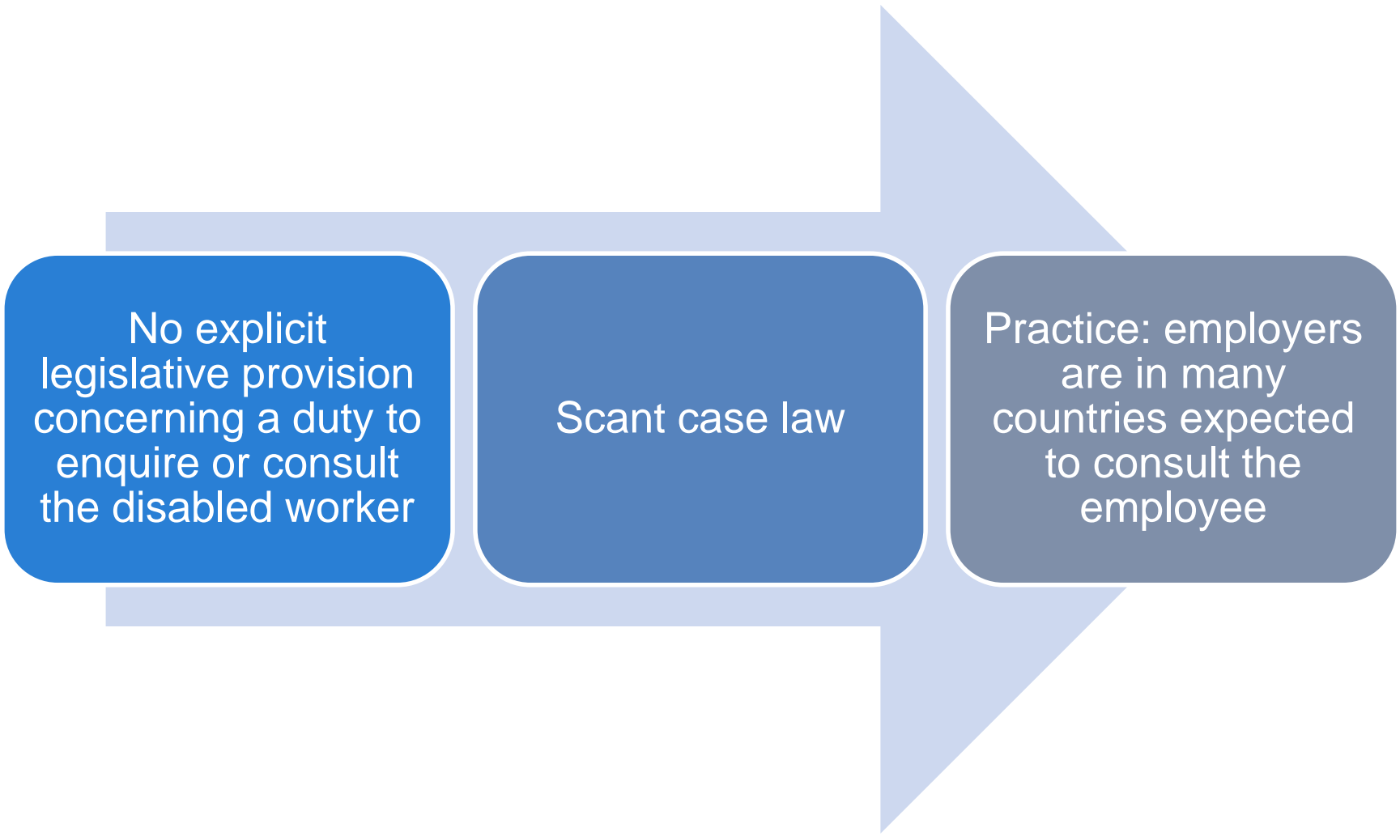
Disproportionate Burden

- ❖ Even in those jurisdictions (Romania and the UK) in which the national law does not use or define the concept of ‘disproportionate burden’, the question whether any particular adjustment is ‘reasonable’ involves, in essence, the determination of whether the accommodation involves a disproportionate burden for the employer.

Disproportionate Burden



Duty to Consult the Disabled Worker



No explicit legislative provision concerning a duty to enquire or consult the disabled worker

Scant case law

Practice: employers are in many countries expected to consult the employee

Classification

- ❖ In the majority of the countries considered, failure to provide reasonable accommodation is classified as discrimination
- ❖ In some States where failure to provide reasonable accommodation is considered discrimination, there are not always rules requiring a shifting of the burden of proof

Remedies

Financial compensation

Compensation, and/or order the employer to adopt or implement a certain accommodation

Administrative sanctions

Accessibility/Reasonable accommodation

With regards to the employment context, it is not entirely clear how accessibility laws are enforced and/or applied. Even in those countries in which lack of accessibility is deemed to be a form of discrimination, it often remains ambiguous which exact duties public and private employers bear, and what they are actually obliged to do in practice.



Other Duties

The interrelation between reasonable accommodation duties of employers and duties of landlords of employers to consent to accommodations appears overall quite blurred and unclear

In several countries public and private employers are required to provide a healthy and safe working environment, and this often implies accessibility duties

THANK YOU FOR YOUR ATTENTION

Dr. Delia Ferri

Delia.ferri@nuim.ie