

# *Reasonable Accommodation as a Gateway to the Right to Work: Comparative Perspectives*

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The Right to Work  
for Persons  
with Disabilities –

**International Perspectives**



**Maynooth  
University**

National University  
of Ireland Maynooth

# Reasonable Accommodation as a Gateway to the Right to Work



**CRPD and EU  
Employment Equality  
Directive**



**National laws**



**Concluding Remarks**





CONVENTION  
ON THE RIGHTS  
OF PERSONS  
WITH DISABILITIES



## Art. 2 CRPD

““Reasonable accommodation” means **necessary** and **appropriate** modification and adjustments **not imposing a disproportionate or undue burden, where needed in a particular case**, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”

# Art. 27 CRPD



- ▶ State Parties must ensure that reasonable accommodation is provided to persons with disabilities **in the workplace**” (Art. 27(1)(i) CRPD)

# Reasonable Accommodation

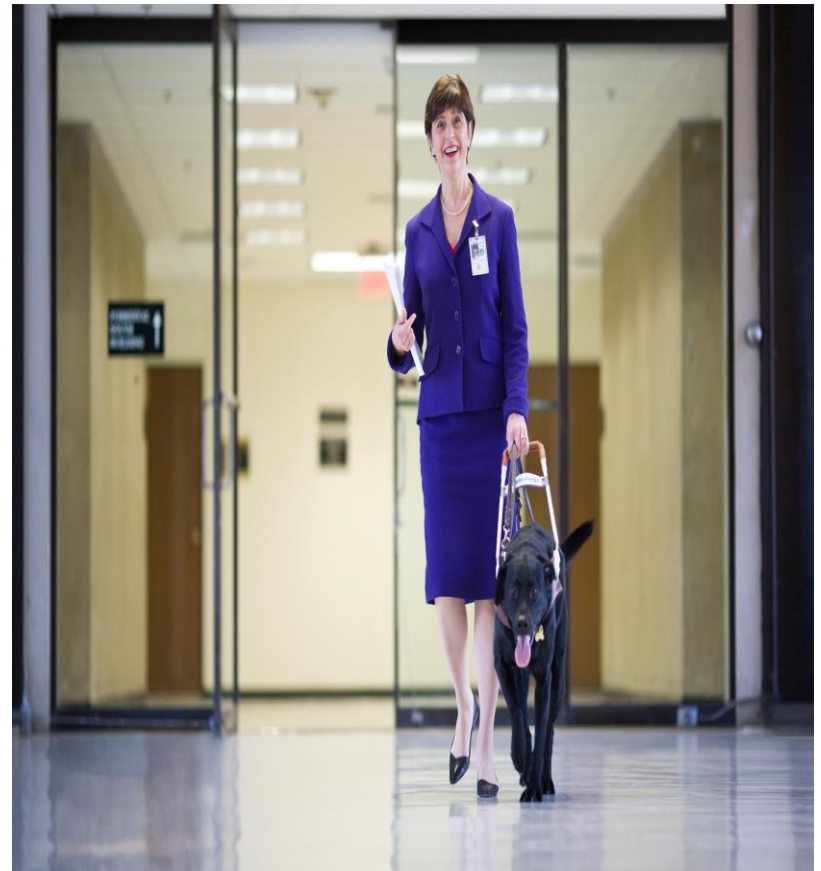
- ▶ Reasonable accommodation is unequivocally incorporated into the non-discrimination principle



# Reasonable Accommodation

Extend to all people with disabilities

Individual-oriented nature of the duty



## General Comment N. 4 (26 August 2016)

- ▶ ““**Reasonableness**” is understood as the result of a contextual test that involves an analysis of the relevance and the **effectiveness of the accommodation**, and the **expected goal of countering discrimination**. The **availability of resources** and **financial implications** is recognized when assessing **disproportionate burden**”.



# DISPROPORTIONATE BURDEN

- ▶ In *Jungelin v Sweden* (Communication No. 5/2011), the CRPD Committee stated that States Parties **enjoy a margin of appreciation** when assessing the reasonableness and proportionality of accommodation measures



**THE  
EMPLOYMENT  
EQUALITY  
DIRECTIVE (DIR.  
2000/78)**

## Art. 5

“In order to guarantee compliance with the **principle of equal treatment** in relation to persons with disabilities, **reasonable accommodation** shall be provided. This means that employers shall take appropriate measures, **where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to provide training for such a person, unless such measures would impose a disproportionate burden on the employer.** When this burden is, to a sufficient extent, remedied by existing measures as an element of disability policy in the Member State, it should not be considered disproportionate”

# Personal scope

“...the concept of ‘disability’ within the meaning of Directive 2000/78 must be understood as referring to a limitation which results in particular from **long-term** physical, mental or psychological **impairments** which, in **interaction with various barriers**, may hinder the full and effective participation of the person concerned **in professional life on an equal basis with other workers** (*HK Danmark, C-335/11 and C-337/11*)”

# Recital 20



# Disproportionate Burden



- ▶ costs
- ▶ scale and financial resources of the undertaking
- ▶ possibility of obtaining public funding

# Reasonable Accommodation in National Laws

# Reasonable accommodation





# Reasonable Accommodation in National Laws



# Exceptions for Military Services

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

No legislative  
**definition** of  
disability

**judicially  
elaborated**  
definition applies  
generally

The **definition** of  
disability is  
provided  
**legislation**

**applies generally**

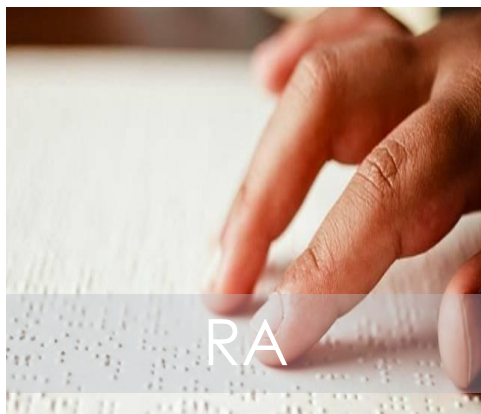
Definition for RA is  
**narrower** than that  
used for purposes  
of non-  
discrimination law

# Concerns

Medical  
model  
oriented  
definitions  
of disability

Narrower  
definition of  
disability for  
the purpose  
of RA

# Reasonable Accommodation



# Disproportionate Burden

- ✓ Costs of the accommodation
- ✓ Subsidies available to cover those costs
- ✓ Other Factors
  - ✓ activities of the undertaking,
  - ✓ the benefit that the disabled person receives,
  - ✓ the benefit that others receive

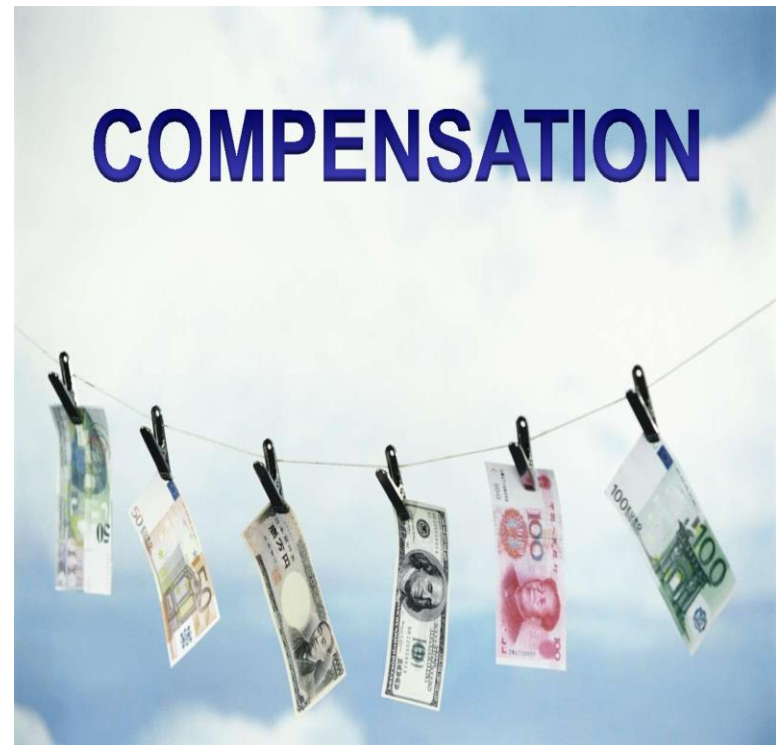
# Duty to Consult the Disabled Worker

No explicit legislative provisions

Scant case law

**BEST PRACTICES**

# Classification and Remedies





# Remedies

**Financial compensation**

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

**Administrative sanctions**

Some conclusions

# *Reasonable Accommodation as a Gateway to the Right to Work*



**Inconsistency with EU and/or UN Standards**

**Ambiguities**

**Best Practices**

**Importance of Awareness Raising**

Thank you for your  
attention

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