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## **Recommendations made by the Equality Council in Cases where there is a Finding of Discrimination**

### **Efficiency and Effectiveness**

### **Report**

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## **1. Introduction**

This report was commissioned by the Council of Europe to assist the Equality Council in the efficiency and effectiveness of making and monitoring its recommendations in cases where discrimination has been found to occur.

Its preparation involved a review of Equality Council annual reports and published decisions (as available in English). Two online meetings were facilitated with the Equality Council to discuss: Equality Council strategy in making recommendations; respondents and their implementation of recommendations; applicants and their perspective on recommendations; Equality Council procedures; and challenges experienced by the Equality Council.

## **2. Current Situation**

### **2.1 Change Sought by the Equality Council**

Law No. 121 on Ensuring Equality establishes the purpose of the Equality Council as being to "ensure the protection against discrimination and ensuring equality to all the individuals who consider themselves victims of discrimination" (Article 11). The Regulation regarding the activity of the Council for Preventing and Eliminating Discrimination and Ensuring Equality, set out in Law No. 298, identifies that "The mission of the Council is to protect against discrimination, to ensure equality and to restore the rights of all discriminated persons" (Point 2).

In pursuing this purpose and this mission, the Equality Council usefully identifies the need for its work, based on this mandate, to contribute to change in:

- Culture: attitudes and values that underpin a concern for human dignity, respect, inclusion, and participation, in society and within organisations.
- Systems: legislation and regulations to ensure the elimination of any discrimination and ensure inclusion for groups covered by the equal treatment legislation; and sectors to ensure organisations in a sector work to a common standard of promoting equality, adapting for diversity, and ensuring non-discrimination.
- Organisation: internal policies and practices of organisations that prevent and eliminate discrimination, take account of diversity, and realise inclusion for groups covered by the equal treatment legislation.
- Individual: awareness of rights, under the equal treatment legislation, confidence to exercise those rights, and remedy for individual situations of discrimination.

There was a particular emphasis articulated in the workshop on the achievement of systems change as a priority for the Equality Council.

The recommendations of the Equality Council in cases where there is a finding of discrimination should be formulated in a manner to further this change if the Equality Council is to fulfil its mandate and realise its mission.

Equality is not defined in the legislation and has not been defined by the Equality Council. In the work of the Equality Council, equality involves:

- Non-discrimination and equal treatment.
- Recognition of diversity and adapting for the particular needs of groups covered by the legislation, so that neutral provisions do not exclude them.

- Inclusion and establishing new outcomes for groups in situations of disadvantage.

This understanding of equality should inform the formulation of its recommendations in cases where findings of discrimination are made.

## **2.2 Equal Treatment Legislation**

Law No. 121 on Ensuring Equality, provides for a range of competences for the Equality Council, including to:

- give to public authorities, proposals of a general character regarding the prevention and combating discrimination, and the improvement of the behaviour towards persons subject to this law;
- examine the complaints of people who consider themselves to be victims of discrimination;
- submit a request to the relevant authorities with regard to the initiation of a disciplinary process in order to hold responsible the person who has committed discriminatory acts;
- detect contraventions with discrimination elements according to the Contravention Code provisions; and
- contribute to the amiable solution of conflicts arising after the commission of discriminatory acts by reconciling the parties and looking for a mutual acceptable solution (Article 12).

In relation to its examination of a complaint, Law No. 121 indicates that:

- after examining the complaint, the Council adopts a motivated decision with the majority of its members' votes. The Council's decision includes recommendations for assuring the rehabilitation of victim's rights and preventing future similar cases; and
- if the Council disagrees with the measures taken, it is entitled to seek a superior body for appropriate actions and/or inform the public (Article 15).

The Regulation regarding the activity of the Council for Preventing and Eliminating Discrimination and Ensuring Equality, set out in Law No. 298, identifies "The mission of the Council is to protect against discrimination, to ensure equality and to restore the rights of all discriminated persons" (Point 2).

In relation to collaboration with public authorities the Law provides the Equality Council with the power to submit "general proposals regarding preventing and combating discrimination and changing behaviour towards persons" covered by Law No. 121; to "ensure the recovery of the rights of the person who considers they have been discriminated against and the sanctioning of discrimination actions" (Point 32a); and to "determine contraventions with discriminatory elements in line with the provisions of the Contravention Code" (Point 32d).

Law No. 298 provides for own-initiative cases, whereby "any member of the Council who gets to know a piece of information, situation, announcement or event containing indications about the existence of some obvious discriminatory facts may submit an ex-officio act to the Council" (Point 39).

The decisions of the Equality Council are required, under the regulation to "cover:

- the date and place of adoption;

- the name of the body which has adopted it;
- the name and surname of the members participating in the meeting;
- the note about the public or closed nature of the meeting;
- the name, surname and other identifying data of the complainant, respondent or, if needed, interested person, their explanations and objections;
- submitted evidence;
- name, surname of the persons who are representing the complainant or the respondent, their explanations and objections;
- description of the identified facts;
- the conclusion of the Council regarding the existence or the lack of discriminatory actions and the arguments used to reason it; and
- recommendations formulated to ensure the rights' recovery of the discrimination victim and to prevent similar actions in future" (Point 61).

The Equality Council is required, during the hearing of a complaint to "propose the parties to reconcile or to settle through mediation, the conflicts emerged as a result of the discriminatory acts: (Point 55).

### **2.3 European Standards**

The two key European standards for equality bodies both refer to the decision-making function of equality bodies in cases of discrimination.

The Council of Europe standard recommend that equality bodies, in a finding of discrimination, should have the competence to issue decisions or recommendations that require action to put an end to discrimination, achieve full equality, and avert future discrimination<sup>1</sup>. Equality bodies should have the competence to impose sanctions that are effective, proportionate and dissuasive. Equality bodies should ensure the execution and implementation their decisions. They should provide a reasoning for and publish their decisions.

The European Commission standards note that assistance to victims, as a function required of equality bodies, could include issuing recommendations and legally binding decisions<sup>2</sup>. Where equality bodies have the power to make legally binding decisions, they should have the capacity to issue adequate, effective, and proportionate sanctions. They recommend that equality bodies should be provided with the human, technical, and financial resources, premises and infrastructure to perform their tasks and exercise their powers effectively. These resources should include for an effective monitoring of their decisions.

### **2.4 Casework Procedure**

The Equality Council works to a detailed procedure for hearing and monitoring its cases, with specific provisions in relation to making recommendations. The process defined is rigorous and accurately reflects the law and the regulation for Equality Council. As such, it must be deemed efficient and effective. There is a draft law on amendments to Law No. 121 and Law No. 298, developed to change and improve the regulation which would allow improved efficiency and effectiveness of the procedure, but it has yet to be enacted.

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<sup>1</sup> ECRI General Policy Recommendation No. 2: [Equality Bodies to Combat Racism and Intolerance at National Level](#), Adopted on 7 December 2017, Council of Europe CRI(2018)06.

<sup>2</sup> Commission Recommendation of 22.6.2018 on [standards for equality bodies](#), Brussels, 22.6.2018 C(2018) 3850 final.

The key issue in relation to improving the regulation and, subsequently, the Equality Council procedure, is the time frames required of the Equality Council in hearing cases. These are not flexible enough to allow the Equality Council to deal appropriately with complex cases or to deal with cases that get delayed by the parties. This situation is exacerbated by inadequate staffing levels for the Equality Council and a growing caseload each year.

The procedure sets out that the decision would observe the following structure: subject of complaint; admissibility; parties' claims; relevant national and international law; and Equality Council conclusions. This matches the requirements of the regulation and appears to go beyond with the section on relevant national and international law.

The procedure indicates that the Equality Council would issue both individual and general recommendations. The recommendations are to be designed to ensure reinstatement of the victim's rights, alteration of the respondent's behaviour and/or prevention of similar acts of discrimination in the future by the respondent or other individuals or legal entities. Recommendations are required to be feasible and proportional to the situation and to be formulated within the limits of the respondent's attributions. The procedure allows for a different approach to monitoring general and specific recommendations.

There is no definition of general or individual recommendation provided. There is consistency in the Equality Council literature in interpreting individual recommendations as relating to improving the situation of the victim. In the 2019 Annual Report, general recommendations are identified as being to improve the situation of a group of persons in terms of equality. In the 2017 Annual Report general recommendations are identified in terms of preventing similar acts in the future by amending legislation or changing behaviours and attitudes through training.

The key difference identified in the workshops in relation to general and individual recommendations is that general recommendations seek systemic change and individual recommendations are case specific. This approach would allow:

- ***general recommendations*** to be understood to have a focus on preventing future discrimination, in terms of seeking
  - systems change in legislation and regulation, and across whole sectors of organisations, specifically through action by other bodies not directly involved in the case.
- ***individual recommendations*** to be understood to have a focus on remedying individual rights and altering actual respondent behaviour, in terms of seeking
  - individual change and improving the situation of the applicant; and
  - organisation change in enhancing the operational procedures and behaviours of the respondent.

This approach would allow for the more intense monitoring provided for under the procedure for individual recommendations to include a focus on organisation change by the respondent. It would enable a broader understanding of repairing the situation of the individual. It would allow for a focus on public authorities for advancing the longer-term action required in most of the general recommendations, but could also include a focus on action by private sector associations in these general recommendations where a whole sector is implicated in a case, such as the cases on sexist advertising.

The procedure requires that the case is depersonalised before it is communicated in public. It requires the official in charge of the final communication of the decision to anonymise specific details of the applicant. It further requires the official to ensure the privacy of the applicant by altering other data which may indirectly lead to the identification of the applicant, including their workplace. This, in effect shields the respondent.

In the workshop it was clarified that, in line with Law No. 121, the depersonalisation of the case is done after a query from the Equality Council to each party as to whether they agree to be identified. This depersonalisation is usually requested.

## 2.5 Casework Data

It is difficult to track the exact casework data of any equality body over a period of years, given the transition of cases from one year to another, and the interruptions in concluding cases due to appeals. The Equality Council has addressed its casework in slightly different formats, year on year, in the annual reports available in English. It might be useful to settle on a single format to enable tracking over a period of years.

The number of cases examined by the Equality Council has risen dramatically each year from 2015 to 2019, by 107% over the whole period. This marks the impact it has had on popular consciousness through demonstrating how the equal treatment legislation is a valuable means for those exposed to discrimination to effect change in their situation and experience.

Year	Cases examined	No. Recs.	% General	% Individual	% Sanctioning	% Settled	% Finding	% Inadmissible
2019	263	122	66.3%	33.7%		4%	32%	49%
2018	213	109	72.8%	27.2%			39%	44%
2017	149					2%	40%	35%
2016		51	56%	36%	8%			
2015	127						27%	53%

The number of recommendations made over the period from 2016 to 2019 has risen significantly each year, by 139% over the period, that is to a greater extent than the rise in cases examined. General recommendations increasingly make up the bulk of the recommendations made.

The percentage of cases with a finding of discrimination reached a high of 40% in 2017 and stood at 32% in 2019, which would be of a norm with other equality bodies. There is a high level of inadmissible cases, around 50% in two years.

The trend towards general recommendations was explained in the workshops in terms of their potential to have collective impact on group or groups of people. It was also pointed out that all general recommendations have their roots in an individual incident with its own individual recommendation.

A limited number of cases are subject to amiable settlement. Mediation is proposed by the Equality Council at a hearing, as required under the regulation. There is no defined procedure for mediation and it is left up to the parties. There is no confirmation of the quality of the result of such a settlement, once both parties are satisfied, or its implementation.

Year	Cases with finding	No. Recs.	% Implemented	% Ongoing monitoring	% Not implemented
2019	84	122	30.6%	57.1%	11.2%
2018	84	110	40.9%	46.5%	12.5%
2017	60				
2016	34	51	63%	16%	19%
2015	35		34%		

There is evidence of a decreasing level of implementation of recommendations over 2015-2019. However, at the same time there is a slightly decreasing level of recommendations being reported as not implemented. This is explained by the growing number of recommendations subject to ongoing monitoring.

Ongoing monitoring, as noted in the workshops, usually refers to general recommendations, addressing prevention of future discrimination. These focus on amending or introducing legislation or regulations, involving a longer time frame. General recommendations it was highlighted are not subject to the same time limit for implementation as is required for individual recommendations.

The 2017 Annual Report identifies that of the ten recommendations not implemented, seven were general recommendations related to legislative change. The other three recommendations related to sanctioning procedures.

	2019	2018	2017	2016	2015
No. Appeals	33 (12.5%)	15 (7%)	17 (11.4%)		9 (7%)

A significant portion of cases are appealed each year. In general, the annual reports suggest that the Equality Council has done well in relation to appeals of its decisions. In 2017, it was reported that the Courts had upheld 91.6% of cases appealed. In 2019, six appeals were concluded and the Courts upheld the decision of the Equality Council in all six cases appealed.

In the workshop it was noted that 2020 had not been a good year in relation to appeals. The Courts had quashed a significant number of decisions on the basis of their exceeding the time limit allowed for coming to a decision. The delays in this instance were due to an inter-regnum between the end of mandate of one set of members and the appointment of new members. However, this has opened up an avenue of attack on the Equality Council decisions which is problematic given the tight and inflexible nature of the time limits established in the regulation.

	2019	2018	2017	2016	2015
Self-reporting notes		1	9		2

Own initiative cases, based on self-reporting notes from members of the Equality Council, are rare. They do have an important contribution to make to a strategic approach by the Equality Council to its recommendations.

The regulation stipulates that members may submit own initiative cases based on any information, situation, announcement or event containing indications about the existence of some obvious discriminatory facts. The Equality Council is pro-active in its approach to

its mandate and own-initiative cases would have an important place within such an approach. However, there is no strategy as to how most effectively to deploy this power.

	2019	2018	2017	2016	2015
Use of contravention Code	7		1		15
<i>Of which...</i> due to failure to implement	6		1		15
<i>Of which...</i> due to workplace harassment	1				

The Equality Council can initiate a Contravention Procedure where there is a failure to implement its recommendations or in some cases related to employment, education, and provision of goods and services. This is done under the Contravention Code and this power has been further enhanced with additional remedies in the 2019 Administrative Code.

This power is rarely used by the Equality Council. There is an internal procedure that regulates when to use this power. However, it is noted that staff shortages leave limited time for monitoring implementation of recommendations and the time required for monitoring is often underestimated. The database of decisions is updated twice a year with proposals contravention procedures brought forward for consideration by the members on the basis of this. There are time limit issues in the use of this procedure, with one year allowed to initiate and prepare a case.

This power has a significant dissuasive component in relation to respondents that are found to discriminate given the link to sanctions available under this procedure. It does discourage discrimination into the future. There is interest in its further use.

In seven Contravention Procedures pursued in 2019, there were five court decisions to maintain the sanction, with two under examination. 1 relating to harassment included a financial sanction and a further punitive sanction applied by the Court.

The Contravention Procedure is pursued for individual recommendations and not for general recommendations. It is pursued where the respondent unduly refuses to implement the recommendation with no good reasons. The Equality Council first examines the reasons for this failure and pursues it where bad faith is identified.

## **2.6 Casework Decisions and Recommendations**

The published decisions drafted by the Equality Council address: Subject of complaint; Admissibility of complaint; Petitioner submission; Respondent submission; other submissions; Relevant national and international law; Conclusion; and Recommendation. This reflects the requirement of the regulation and its own procedure. The published decisions reviewed are concise and well-formulated. The section on relevant national and international law includes a focus on international human rights standards and, in some cases, recommendations made in relation to these.

One issue of note is the range of phrases used in relation to the recommendations made. In some instances, it is stated that the respondent 'shall' take a defined course of action. In others, it is stated that the Council 'recommends' that the respondent shall take a defined course of action. In some, it is recommended that the respondents take unspecified measures to avoid repeat incidents. In others, it is stated that the decision is sent to respondents to take unspecified preventive measures.

Members formulate the recommendations. The formulation of a recommendation is noted as challenging as:

- recommendations are, by their nature, not mandatory. The Equality Council comes under attack for supposedly exceeding its powers. Its powers to restore the rights to a victim are not clear as the Equality Council is not a Court, but a quasi-judicial body. The Courts can uphold the finding of the Equality Council but quash the recommendation for exceeding its power. The Equality Council cannot be seen to be giving instructions or cancelling a decision of a public authority. This situation lends itself to a preference for general recommendations.
- recommendations need to be precise and specific and to relate to the particular circumstances of the case. They cannot be vague, or they do not get implemented for lack of understanding and cannot be monitored for lack of clarity. Particular situations can be difficult to address such recommendations given their complexity.

Specific recommendations can be difficult to formulate in the context of the powers of the Equality Council in relation to restoration of rights. General recommendations tend to be most specific, with detailed amendments suggested for legislation or regulations, or for methodological guidelines for implementation, all usually to a party that is not the actual respondent.

Recommendations to the actual respondent organisation most often relate to staff training. The Equality Council provides training and encourages respondents to participate on this, but has not specifically recommended this for respondents in its decisions. There are instances of a strategic approach to organisational change in others, with recommendations to: draw up an internal regulation; survey the workplace climate; or draw up an action plan. The difficulty in monitoring the quality of implementation of such recommendations, in the absence of a standard, is noted.

Recommendations to the actual respondent organisation can be of a broad nature such as to 'undertake all necessary measures.' Some recommendations to actual respondent organisations are specific in identifying actions to be taken such as: provision of interpretation.

Recommendations reflect a caution in relation to the extent of the power of the Equality Council to restore rights. In many instances, in particular relating to hate speech, they involve seeking an apology to be made to the victim.

The Equality Council could recommend affirmative measures, but no instance of this could be recalled.

## **2.7 Respondents**

The Annual Reports do not provide data on the sectors where respondents are located, public sector private sector or particular sub-sectors within each of these. The data is available to the Equality Council and might be a useful addition to its reporting. It would enable a tracking of incidents and responses by sector and sub-sector which would assist the strategic approach of the Equality Council.

The private sector appears more open to implementing recommendations on findings of discrimination. There is an economic imperative, it can be costly to pursue appeal proceedings in the Courts.

The public sector can be more reluctant to implement recommendations. This could relate to the reality that many of the recommendations to public bodies relate to legislative change or change in regulations. The public sector appears more likely to appeal decisions to the courts.

Beyond recommendations related to change in legislation or regulations, there is a suggestion that there can be a limited capacity among respondents to implement recommendations and to do so to a necessary standard. The Equality Council has developed some guides, conducts training, and provides methodological support if requested.

## 2.8 Applicants

Most applicants are the individual directly affected by the discrimination. Cases of a group interest can be presented by specialised NGOs, usually complaints with a more collective impact. These group interest cases appear to be growing in number. There are a smaller number of cases that are presented through a representative, a lawyer for or an NGO representing the individual victim.

	2019	2018	2017	2016	2015
Own Interest	171				
Group Interest	49				
Through a representative	21				

The Annual Reports do not set out the complaints presented by specific grounds. The criteria on which discrimination alleged is recorded in a register, and is evident from a decision with a finding of discrimination. This data could be presented annually and might assist the Equality Council in more targeted approaches to under-reporting, and more strategic engagements in its promotion function.

The Annual Reports do establish the percentage of the overall number of cases with findings of discrimination that relate to each of the grounds covered. This can vary with particular events, such as the submission of a large number of complaints by one applicant or an influx of cases on the one issue due to a particular incident.

There is, however, a pattern evident. Sex/gender (from 10.71% in 2018 to 25% in 2019), disability (from 13.75% in 2019 to 31.53 % in 2017), and language (from 8.55% in 2017 to 30.95% in 2018) feature in the top bracket as the criterion for discrimination in cases with a finding of discrimination over the period 2015 and 2019. Pensioner status, age, religion/conviction and ethnic origin feature in the next bracket below.

Respondents, particularly in urban areas, tend to be represented by a lawyer. Applicants tend not to be represented by a lawyer. There is an issue of equality of arms between the two in a hearing situation. However, it is noted that:

- the Equality Council is a quasi-judicial body and can only advise the applicant on how to make a complaint. A guide has been prepared for this.

- the Equality Council takes an investigative approach, seeking further evidence from the parties as required, which can reduce the impact of this imbalance.
- there are free legal aid systems available for general counselling (free for all) and for representation (means tested).

The Equality Council asks applicants in the hearings to be specific about what they want to achieve, specifically the type of redress. The response of applicants can vary and is not always realistic. Moral satisfaction is important and is possible to achieve. Reinstatement and more developed repair of situation for the applicant is not deemed possible. In some few cases, the Equality Council will suggest to the applicant to file a suit for damages. It is complicated, however, to get damages from court, in particular due to the statute of limitations. Tracking of applicant satisfaction is not done, but an internal procedure for this could be developed.

The high rates of inadmissibility of cases involves time consuming effort to justify and communicate the decision. Care is needed to sustain people's hope and trust in the Equality Council. People don't understand the concept of discrimination nor the mission and mandate of the Equality Council. The administrative code binds the Equality Council in this area where the governing regulation of the Equality Council is silent on the matter.

The rate of success for applicants in cases is low. This can result from inappropriate presentation of cases. This is less likely with NGOs taking a case, but even NGOs can have an erroneous understanding of what is possible and appropriate. It appears that cases taken by NGOs have a higher rate of success but this is not tracked.

### **3. Future Directions**

#### **3.1 Casework Procedure**

The procedure for the hearing of cases, including for the making and monitoring of recommendations, is aligned with the regulation and is effectively elaborated.

The procedure makes provision for individual recommendations and general recommendations to be made in cases where there is a finding of discrimination. Different monitoring arrangements are established for each these two types of recommendation. The nature of the recommendation further influences the length of time within which implementation can be expected, which leaves many general recommendations subject to ongoing monitoring.

**It would be useful to further define these recommendations.** In an earlier report on the monitoring procedures of the Equality Council, it was recommended that the Equality Council might consider addressing this by introducing a third type of recommendation: institutional recommendation. This would be addressed to the actual respondent in the case, recommending action to prevent future discrimination.

Another approach, that emerged in the meetings would be to establish a definition for individual recommendations that encompassed this institutional element. In this approach:

- ***general recommendations*** would be defined as
  - being of a systemic nature,
  - usually involving amendment to or introduction of legislation or regulation or action by associations governing sectors of organisations,
  - designed to prevent future discrimination by,

- addressing causal factors for the discrimination found in the case that are the responsibility of bodies not directly involved in the case.
- ***individual recommendations*** would be defined as
  - seeking to remedy the situation and experience of the applicant,
  - designed to alter the behaviour of the respondent,
  - through the introduction of organisational systems to prevent future discrimination,
  - being addressed to the actual respondent in the case.

This definition would have the added advantage in monitoring, whereby 'ongoing monitoring' would be confined to those bodies not directly involved in the case.

The Equality Council procedure, as per the regulation, indicates that the parties are invited to solve the case amicably at an appropriate moment during the hearing. This invitation appears to be rarely taken up. However, no standard is established for this amicable settlement, other than that it would be mutually acceptable. This is problematic in situations where the respondent has access to legal expertise and the applicant does not.

**It might be useful to develop the mediation role of the Equality Council.** This would ensure that:

- Formal mediation is provided that ensures an equalisation of power in the mediation process;
- The terms of the settlement reach the standards set by Law No. 121 on Equality; and
- Implementation of the settlement is monitored.

Efficiency could be enhanced by introducing an admissibility filter at the start of the procedure for hearing cases with a target set for the staff time to be spent on this part of the process. This could only be achieved where the regulation governing the Equality Council would address the issues relating to inadmissibility explicitly. The Equality Council has made proposals for amending this legislation which, if enacted, would enable efficiency in dealing with inadmissible cases. It would be important for this legislation to be enacted given the heavy burden imposed on the resources of the Equality Council due to the high level of inadmissible cases.

### 3.2 Casework Recommendations

Law No. 121 and Law No. 298 are specific in stating that recommendations of the Equality Council ensure 'the rights' recovery of the discrimination victim and to prevent similar actions in future'.

General recommendations increasingly make up the bulk of the recommendations made by the Equality Council. This appears to reflect a prioritising of the systemic change enabled by these recommendations. It might further reflect concerns at the interpretation by the courts of the powers of the Equality Council and the potential for recommendations requiring specific action by the respondent to be quashed on appeal, even where the finding of discrimination remains valid.

Within this complex context, it remains important for the recommendations of the Equality Council to be specific and to be directed at progressing the change it understands as being required for fulfilling its mandate. This change was identified in the workshops as

encompassing: cultural change; systemic change; organisation change; and individual change.

The preponderance of general recommendations leads to a dominant focus on recommendations that seek to contribute to systems change. However, there are elements evident within general recommendations and individual recommendations directed at achieving cultural change; organisation change; and individual change. A greater balance across these forms of change, and in particular between the pursuit of systems change and of organisation change, could usefully be achieved.

**It might be useful to develop a more strategic approach to incorporating these goals into the recommendations made.** Recommendations could be reviewed before signing off to ensure that they address to the maximum extent possible, each element of the change sought by the Equality Council. It might be useful to develop a framework typology of recommendations under each heading that could be referred to by the members in making recommendations.

An increased focus on recommendations advancing organisation change might benefit from developing a shared understanding within the Equality Council of how organisational change is made happen. There is a strong reliance on training as serving to change behaviours and attitudes. Training is important, but training alone is not sufficient for this task. Training needs to take place within a wider organisational system that is focused on non-discrimination, diversity and equality issues. An understanding of how organisational change is made to happen might usefully inform the recommendations made to actual respondents.

A **framework typology** of recommendations for each element of the change sought could be developed and applied in this process:

	<b>Cultural</b>	<b>Systemic</b>	<b>Organisational</b>	<b>Individual</b>
Recommendation Type	Public apology or public statement of commitment to the value of diversity	Introduce new legislation or amend legislation	Introduce a policy to set an equality standard	Provide an apology
Recommendation Type	Internal communication of decision within the organisation	Introduce new regulation or amend regulation	Implement management training	Desist from discriminatory behaviour
Recommendation Type	Internal communication of rights and responsibilities under equal treatment legislation within the organisation	Implement methodological guidelines	Implement staff training	Make reasonable accommodation for diversity including for people with disabilities
Recommendation Type	Replace discriminatory billboards or discriminatory advertising with text in a similar position acknowledging the issue in the case	Implement Equality Impact Assessment in future policy making	Review the situation or survey climate in organisation, and prepare an equality action plan	Restoration of rights
Recommendation Type	Prepare and communicate a values statement within an organisation to identify the equality values espoused	Implement affirmative measures	Identify a responsible person to lead on equality issues	
Recommendation Type		Sectoral associations to establish and communicate a standard for members	Implement a procedure to ensure future reasonable accommodation of individual people with disabilities	
Recommendation Type		Sectoral associations to provide training for members	Implement Equality Impact Assessment in planning and policy making	

**A specific formula of words might usefully be established for making a recommendation** to be applied in all instances, for example:

The Equality Council recommends that the 'respondent' would take the following steps...

### 3.3 Casework Strategy

International standards emphasise the importance of sanctions in cases of discrimination being dissuasive. This is viewed as important in creating a culture of compliance. A culture of compliance makes duty bearers wary of breaching the legislation for fear of action being taken against them, even in contexts of high levels of under-reporting of discrimination.

The Equality Council does not have the power to impose sanctions. However, it has the power to "determine contraventions with discriminatory elements in line with the provisions of the Contravention Code" and has used this power to good effect, though on a limited number of occasions. **It might be useful to develop a strategic approach to its implementation given the dissuasive nature of this procedure.**

It could assist in building a culture of compliance in key sectors or in relation to key issues being addressed by the Equality Council. These sectors and issues could be identified in a strategic approach and linked to a target set for the number of such procedures to be pursued each year. This could take a tabular form, including:

Sectors	Target	Issues	Target
Advertising		Hate speech	
Transport		Harassment & Sexual Harassment	
Education		Reasonable accommodation of people with disabilities	

There is evidence of a decreasing level of implementation of recommendations over the recent period. If those recommendations subject to ongoing monitoring of implementation are taken out of the tables, the proportion of recommendations not implemented has risen from 30% in 2016, to 23% in 2018, and 35% in 2019.

This further emphasises the importance of the contravention procedure and its strategic implementation. However, it also raises issues of capacity among respondents to implement recommendations and to do so to a necessary standard.

The Equality Council has developed some guides and provides methodological support if requested. It also provides a programme of training. **It might be useful to consider recommending in casework decisions that respondents in cases where discrimination has been found would identify a senior manager to take part in this training**, which senior manager would then take on responsibility for equality issues in their organisation.

In an earlier report on the monitoring procedures of the Equality Council, it was recommended that **implementation of recommendations could usefully be assisted by**:

- developing and disseminating a short, simple, and accessible standard for use in its monitoring activities which would address the goals of equality, diversity and non-discrimination being pursued by the Equality Council within its mandate.

- developing and disseminating a suite of enablers in the form of guidance for legislators, policy-makers, and organisational managers, that are short, simple, and accessible.

Consideration might usefully be given to progressing these recommendations as resources allow.

The Equality Council usefully requests applicants to identify what they wish to achieve if their case is successful as part of the casework procedure. **It might be useful to track and, from time to time explore, applicant satisfaction with the process and the outcomes achieved.** This could involve:

- exit interviews with applicants on foot of the case being concluded; or
- annual survey of applicants.

This tracking would establish to what extent applicants' original objectives had been met, how applicant objectives had changed over the course of the procedure and to what extent these modified objectives were met. This tracking process could be placed in the context of expectations and assessing how realistic applicants' expectations are given the powers of the Equality Council.

Own initiative cases have an important role to play in enabling the Equality Council to advance the change it seeks through its casework recommendations. Members may submit own initiative cases based on any information, situation, announcement or event containing indications about the existence of obvious discriminatory facts.

**It might be useful to develop a strategy as to how most effectively to deploy this power.** This could be developed and agreed by the members. This strategy might include that own initiative cases would be pursued to:

- respond to the situation and experience of groups that have not come forward significantly in the casework of the Equality Council;
- address key issues for discrimination as identified in the casework, plans and research of the Equality Council;
- deepen a culture of compliance in key sectors identified from the casework, plans, and research of the Equality Council; and
- test out interpretation of certain provisions of Law No. 121 on equality.

### 3.4 Annual Report

The Annual Reports provide valuable information in relation to recommendations and progress made on foot of recommendations. This is useful in tracking the approach taken by the Equality Council to making recommendations and securing their implementation.

**It might be useful to further develop the casework data and the manner in which it is provided in the Annual Report and to ensure a consistency over the years in this.** A common format might usefully be developed for this data, to enable tracking over a period of years. There might usefully be further data provided. This could include:

- data on the criteria on which discrimination is alleged across all complaints presented to the Equality Council; and
- data on the sectors where actual respondents are located: public and private sectors and specific sub-sectors within each of these.

### **3.5 Policy Advice**

The Equality Council has progressed important initiatives in providing policy advice on and seeking change in the legislation and regulation that governs its work. **This review underpins the importance of this work and in particular the need to address the issues of:**

- time limits in case hearings;
- powers of the Equality Council in making recommendations, and
- adequate human and financial resources.

The draft law currently under consideration does appear to establish reasonable and more realistic time limits for operations of the Equality Council. It would be important for this to be progressed and enacted.

There remains the need to secure provision in the legislation to:

- clarify the binding nature of the recommendations of the Equality Council;
- underpin the powers of the Equality Council to instruct the actual respondent to take specific action to repair the rights of the individual and to prevent future discrimination; and
- secure the powers of the Equality Council to apply effective, proportionate and dissuasive financial and other sanctions.

Finally, it is clear that efficiency and effectiveness in managing and making its recommendations requires that the Equality Council would have the human and financial resources to meet the growing demand for its interventions.