

Brussels,

Dear Ms Sánchez Caldentey,

Thank you for your email of 22 March 2017 by which you transmitted to me on behalf of 72 Members of the European Parliament a letter where you and your colleagues express to the European Commission their concern and request a call for action regarding the hate campaign organised by the organisation *Hazte Oír* in Spain, which you consider as an unacceptable attack on the transgender and intersexual community in Spain.

Any form and manifestation of discrimination, intolerance or hatred on the basis of personal characteristics, including gender identity and sex characteristics, goes against the fundamental values of the European Union.

In the Commission, we follow closely all developments in Member States regarding the equality of lesbian, gay, bisexual, transgender and intersex (LGBTI) people and we are determined to use all tools at our disposal, within the powers conferred to the Commission by the Treaties, to ensure that all persons fully enjoy their fundamental rights across the Union without any discrimination.

As regards in particular LGBTI people, while their situation has improved in recent years in many EU countries – both in public opinion and in laws and policies, we have also seen different developments. All across Europe LGBTI people are still victims of verbal abuse, assaults, threats, harassment and violence. Even in countries which are relatively open about people expressing freely their sexual orientation, gender identity or sex characteristics, it is still possible to manipulate people into being homophobic and transphobic, through old and new expressions of bigotry and prejudice.

The public incitement to violence or hatred against an individual or a group on grounds of personal characteristics, including sexual orientation, gender identity, or sex characteristics, is not protected by free speech.

National law enforcement and criminal justice authorities have the primary responsibility of ensuring an adequate criminal law response to illegal hate speech, ensuring adequate investigation and prosecution of individual cases in accordance with applicable national legislation. This includes the assessment whether a specific incident represents a genuine and

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serious public incitement to violence or hatred, which is an assessment that only national authorities, in particular the competent courts, are in a position to make.

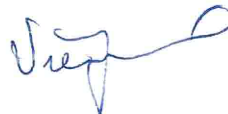
I understand that as regards the particular case referred to in your letter, the Madrid provincial public prosecutor's office has already opened an investigation. I am confident that national authorities will ensure that this is dealt with appropriately, if they find that the messages conveyed by the campaign are to be regarded as a form of incitement to violence or hatred against a group in light of applicable national legislation.

At the same time, we need to bear in mind that free speech protects not only the speech that we agree with but also that which "offends, shocks or disturbs the State or any sector of the population", as the European Court of Human Rights teaches us¹. If we want to address and challenge all manifestations of prejudice and bigotry we need to remain vocal and step up our actions to influence the public debate and improve critical thinking, developing alternative narratives and better communicating why equality, non-discrimination and diversity are a key interest to all citizens.

It is in this vein that, for example, I took part in the EuroPride in Amsterdam last year, an event that raises awareness and supports the emancipation of the LGBTI community. Taking part in the EuroPride was part of the '*We All Share the Same Dreams*' campaign², which we launched on the occasion, and whose aims are improving the social acceptance of LGBTI people while combating negative stereotypes and raising awareness about the rights of LGBTI people. The campaign is one of the many initiatives included in the 'List of Actions to advance LGBTI Equality'³, alongside research activities, exchange of good practices between Member States and other awareness raising initiatives. The first Annual Report⁴ on the implementation of the List of Actions was published in February and provides an overview of all specific initiatives undertaken to improve the situation of LGBTI people, including transgender and intersex people, decrease their discrimination and assist Member States to more effectively prevent and counter intolerance.

Please rest assured that we are firmly dedicated and fully committed to achieving full equality and social acceptance of LGBTI people. We will continue to champion the fundamental rights of those who are subject to discrimination and intolerance on a daily basis and to encourage more cooperation between EU countries, civil society, businesses and other stakeholders to that end.

Yours sincerely,



Věra Jourová

¹ http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf

² http://ec.europa.eu/justice/discrimination/orientation/awareness-raising/index_en.htm

³ http://ec.europa.eu/justice/discrimination/files/lgbt_actionlist_en.pdf

⁴ http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=54346