31st Council
10-13 June 2020
Online
by the European Greens

Title: **AM-31-2 to Res 4.: Defending the Right to Protest**

Tabled by: Bündnis90/Die Grünen

From line 31 to 33:

5. Expression that ~~is gratuitously offensive, promotes hatred~~incites hatred, discrimination or violence ~~based on intolerance~~, including antisemitism, antimuslim racism and other forms of group-focused hostility, that glorifies terrorism, or that violates the fundamental rights and freedoms of others does not enjoy protection. Whether a statement crosses this threshold must be assessed in its context, applying the criteria of the Rabat Plan of Action, and must never rest on a presumption against particular groups or causes.

Explanation / Comment

Justification: The term "gratuitously offensive" is vague and open to subjective interpretation by both courts and parties. Article 20, paragraph 2 of the ICCPR prohibits incitement to hatred that leads to discrimination, hostility, or violence. Mere offensiveness is not a sufficient threshold. The proposal eliminates the term and instead names the phenomena explicitly mentioned in the BDK (Hanover) decision: antisemitism and anti-Muslim racism. The phrase "no presumption against particular groups" addresses the criticism that protests in Germany concerning the Middle East are subject to blanket suspicion. The glorification of terrorism is covered by the BDK Hanover decision (terrorist attack of October 7).