



BULGARIAN JUDGES ASSOCIATION
Member of the International Association of Judges (IAJ)

www.judgesbg.org
office@judgesbg.org

FAO

**THE PLENARY OF THE SUPREME
JUDICIAL COUNCIL**

DECLARATION

of the Bulgarian Judges Association in respect of the decision adopted by the Plenary of the Supreme Judicial Council (SJC) to abstain in the vote on the proposal put forth by the Executive Board of the European Network of Councils for the Judiciary (ENCJ) to suspend the membership of the National Judiciary Council of Poland
(*Krajowa Rada Sądownictwa, KRS*)

Members of the Council,

In connection with your decision, adopted at the meeting of the plenary of the Supreme Judicial Council (SJC) held on 13 September 2018, to abstain in the vote proposed by the Board of the European Network of Councils of the Judiciary (ENCJ) to suspend the membership of the National Judicial Council of Poland (*Krajowa Rada Sądownictwa, KRS*), we express our concern by the evident reluctance of the SJC to openly declare its position on manifest violations of fundamental principles and values, such as court independence, irremovability of judges and the rule of law in Poland.

This is a repetition of the abstention (i.e. refusal to express a position) of the SJC and its previous members in the vote on the suspension of ENCJ membership of the Supreme Judicial Council of Turkey.

In line with Article 16(1) of the Bulgarian Judiciary Act the SJC has a duty to ensure and defend judicial independence in Bulgaria. The SJC also represents the judiciary branch in Bulgaria and beyond its borders, including as a member of the European Network of Councils for the Judiciary. One of the goals of the ENCJ is to foster and strengthen an independent and accountable judiciary across Europe. Creating a common area of justice, including independent courts, is a declared goal of the European Union to which both Bulgaria and Poland belong.

The refusal of the body representing the Bulgarian judiciary in the European Network of Councils for the Judiciary to express a position on the consistent undermining of court

independence and rule of law in Poland is highly disconcerting. If at the time of putting forth your nominations for election to the Bulgarian Supreme Judicial Council you made sincere representations as to your intention to staunchly defend judicial independence, then your indifference to the ‘outcomes’ of the so-called ‘reform’ of the Polish judiciary — notably early termination of the term of office of previous KRS members and the full control of that body and the entire judiciary now enjoyed by the executive and legislative branches of government — is inexplicable. This is so because KRS members are no longer directly elected by their peers in the Polish judiciary, but by the Polish Parliament; because the term of office of the President of the Polish Supreme Court was terminated early; because 27 out of 72 judges in the Polish Supreme Court were forced to accept early retirement; because the Polish Minister of Justice who, in parallel, holds the office of Prosecutor-General has now been given powers to dismiss and appoint court presidents and initiate disciplinary proceedings against Polish judges who have openly spoken against the purported ‘reform’ of the Polish judiciary.

It is fortunate that we live in times of peace when no dramatic displays of courage or heroism are required from you in order to protect the life or health of others. You are asked to accomplish a much easier task that would be well within the capability even of individuals not subject to the rigorous test stipulated in Article 17(1) of the Judiciary Act of *satisfying the highest standard for professionalism and integrity*. We ask that you express clearly, openly and candidly a position on the problems faced by judges in Poland — a country with a past and culture very similar to our own — and the fact that not a single member of the current KRS is a Polish magistrate elected by their peers. In your learned opinion, is this in line with European standards for court independence? If these changes leave you indifferent, how can we be certain that you will take a different stance when an attack is mounted against the independence of Bulgarian courts?

We also express concern over the fact that the SJC member that represents the Council held consultations with the government on the position of the Council in the forthcoming vote at the meeting of the ENCJ on 17 September 2018 in Bucharest. The decision on the vote of SJC representatives on the proposal put forth by the ENCJ to suspend KRS membership of the network is solely within the remit of your sovereign competence in line with the Bulgarian Constitution and the Judiciary Act, as well as the ENCJ Statutes. The nature of your decision is a professional matter because of its relevance to a principle of fundamental importance to all judges — their independence.

We would like to avail ourselves of this opportunity to recall that according to the ENCJ’s Opinion of 5 December 2017 on the adoption of the amendments to the law on the *Krajowa Rada Sądownictwa* of Poland: ‘*like any citizen, a judge should be permitted to express such concerns when democracy and fundamental freedoms are in peril, subject to the constraints linked to a judge’s function. A judge’s reserve may yield to the duty to speak out*’.

The Bulgarian Judges Association expresses its solidarity with Polish judges and support for those of them already subject to disciplinary action on account of freely speaking up for the universal principles of rule of law.

Sofia
14 September 2018

On behalf of the BJA Managing Board:
Atanas Atanasov