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From: Maciej Kruk <maciej.kruk@brpo.gov.pl>

To: "ebco@ebco-beoc.org" <ebco@ebco-beoc.org>

Date: 10/02/2023 12:45 EET

Subject: EBCO's Annual Report 2022 - the Commissioner for Human Rights' input

Dear EBCO colleagues,

Please find attached the Commissioner for Human Rights' reply to Ms. Tsouni's letter regarding the EBCO Annual Report.

Should you need any further information, please do not hesitate to contact us.

Best regards, Maciej Kruk
Specialist

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From: Biurorzecznika <biurorzecznika@brpo.gov.pl>

Sent: Thursday, January 19, 2023 7:51 AM

To: sekretariat-WWM <sekretariat-WWM@brpo.gov.pl>

Cc: sekretariatRPO <sekretariatRPO@brpo.gov.pl>

Subject: FW: EBCO's Annual Report 2022 and broader cooperation

Importance: High

From: EBCO BEOC <ebco@ebco-beoc.org>
Sent: Wednesday, January 18, 2023 4:07 PM
To: Biurorzecznika <biurorzecznika@brpo.gov.pl>
Subject: EBCO's Annual Report 2022 and broader cooperation
Importance: High

Dear Sir/Madam,

We wish you a happy and peaceful new year!

Attached please find a letter from our President about your country's entry in EBCO's Annual Report 2022.

Please check the attachment and send us your feedback by the 10th of February 2023.

We will publish EBCO's Annual Report 2022 in February 2023.

Thank you in advance.

Yours sincerely,

European Bureau for Conscientious Objection (EBCO)

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Warszawa, 09-02-2023 r.

**OFFICE OF THE COMMISSIONER
FOR HUMAN RIGHTS**

Deputy Commissioner for Human Rights

Valeri Vachev

WWM.0720.2.2023.MK

Ms. Alexia Tsouni

**President of the European Bureau for
Conscientious Objection**

Dear President,

In recent years the Commissioner for Human Rights has not received complaints regarding the refusal to fulfill the obligation of defense (military service) on grounds of conviction. This is due to the fact that conscription for compulsory military service was suspended in 2009. Neither have there been cases concerning professional members of the armed forces or volunteers. This situation may change in the coming years, as the current reservists participating in military exercises approach the upper age limit and, in order to replenish the reserves, it will be necessary to select soldiers from a group of people who have not had to deal with the military thus far. In addition, the Commissioner has not recently handled a case concerning the refusal to obey an order on grounds of conviction.

There have been only a handful of complaints concerning personal or material services for national defense purposes that under Polish law a person may be required to provide. These services do not possess a strictly military character. The personal ones involve performing various types of short-term work for the preparation of national defense or for combating natural disasters. They may also include the use of simple tools in their possession, and, in the case of couriers, i.e. persons delivering documents of appointment to active military service and calls for other contributions, their means of transport. The material ones consist in making available immovable or movable property for the purpose of preparing the state's

defense. The complaints received by the Commissioner have concerned the services of material nature – mostly the use of heavy equipment and all-terrain vehicles.

According to the case law of the Polish administrative courts, the services for defense purposes (*świadczenia na rzecz obrony*) cannot be equated with military service and are not covered by constitutional and international norms on conscientious objection¹. Therefore, no exemption can be granted from them on grounds of conscience. This position has been lately confirmed in two rulings of the Supreme Administrative Court of Poland². Although it can be argued that the relationship between some national defense services and the military sphere may be sufficiently strong to attract the guarantees arising from Article 9 of the European Convention on Human Rights³, this line of argumentation has not been reflected in the Polish case law yet. Taking into consideration the legal practice to date, this may continue to pose certain problems particularly for Jehovah's Witnesses.

Finally, the Commissioner has not received any complaints concerning the refusal to grant an asylum for a persecuted conscientious objector.

I hope you will find this document informative.

Yours sincerely,

Valeri Vachev

Zastępca Rzecznika Praw Obywatelskich

/-podpisano elektronicznie/

¹ See more: W. Brzozowski, "Sprzeciw sumienia wobec świadczeń na rzecz obrony" [Conscientious objection to national defence services], *Przegląd Sądowy*, 3/2022, pp. 35-52 (hereinafter referred to as "W. Brzozowski 2022").

² II OSK 1259/18 (issued 12.03.2020) and II OSK 1434/18 (issued 1.12.2020).

³ W. Brzozowski 2022, 46 ff.