

# PETI Fact-finding visit to Poland

## 19 - 21 September 2022

The present briefing investigates two main issues that were subject to specific petitions, namely the case of the Białowieża primeval forest (Petitions 0805/2017, 0812/2017 and 0623/2018) and the education of young persons and children with special educational needs in Poland (Petitions 0956/2018 and 1186/2018), in view of the fact-finding visit by the PETI Committee to Poland from 19 to 21 September 2022.

Environmental and social issues such as the two above-mentioned subjects of the petitions have been at the core of Poland governmental debates over the past years and the decisions pursued by the Polish government have showed commitment in fighting these fundamental issues.



### Poland

Poland, officially the Republic of Poland, is a country of central Europe which is bordered to the north by the Baltic Sea, to the northeast by Russia and Lithuania, to the east by Belarus, Ukraine and to the south by Slovakia and the Czech Republic, to the west by Germany. The nation also shares maritime boundaries with Denmark and Sweden.

Poland joined the European Union on 1 May 2004 and, with a [population](#) of over 38 million, it is the sixth-most populous Member State of the European Union. The country's capital and largest metropolis is Warsaw. Other major cities include Kraków, Łódź, Wrocław, Poznań, Gdańsk, and Szczecin. The official language of the nation is Polish. The country has 17 UNESCO World Heritage Sites, 15 of which are cultural. Poland is a founding member state of the United Nations, as well as a member of the World Trade Organization, NATO, and the European Union (including the Schengen Area).



As far as the political situation is concerned, Poland is a unitary parliamentary republic and a representative democracy, with a president as the head of state. The executive power is exercised by the Council of Ministers and the prime minister, who acts as the head of government. The President of the Republic is directly elected for a 5 years' term and can be re-elected only once. The current President is Andrzej Duda (from the PiS - Law and Justice party). He was elected in 2015 and re-elected for a second term in 2020. The President has the power to propose or veto laws and has occasionally made use of this power. The current prime minister is Mateusz Morawiecki.

The Polish Parliament is bicameral. The Sejm (the Lower Chamber) is composed of 460 MPs, who are elected for 4 years by a proportional voting system with a 5% threshold. It has the final decision-making power when adopting laws. In the summer of 2021 the Government parties lost their majority in the Sejm but have managed to have laws approved with the support of other MPs. The Senate (the Higher Chamber) is composed of 100 Senators, elected for 4 years by a first-past-the-post electoral system. It can reject or amend bills passed by the Sejm, but it can be overruled by an absolute majority vote in the Sejm. The Senate has a majority of Senators pertaining to the opposition and has often blocked laws approved by the Sejm. The last parliamentary elections of 13 October 2019 reconfirmed a parliamentary majority for the Law and Justice (PiS) party in the Sejm, but not in the Senate.

## Environmental issues in Poland: the case of the Białowieża Forest



The Białowieża Forest, situated on the border between Belarus and Poland, is one of the best preserved forest ecosystems in Europe and one of the last and largest remaining parts of the primeval forest, which is characterised by large quantities of dead wood and ancient trees, some of which are centuries old. The forest is also home to the Europe's largest bison population, as well as lynxes and wolves. One-third of the Polish part of the Białowieża Forest is protected as a national park and nature reserves, while the remaining two-thirds are subject to forest management. Because of its unique value, Białowieża Forest has been designated as a UNESCO World Heritage site and a Natura 2000 site and is protected by the EU Birds and Habitats Directives.

## Historical background - from the 2016 operations to the protests

In March 2016, the Polish Environment Minister Jan Szyszko took the decision to triple logging activities in the Białowieża Forest District and to increase active forest management operations, such as “sanitary pruning”, reforestation and restoration, in areas previously outside the scope of such activity. The Polish government justified the intensification of logging by the alleged need to tackle a Spruce Bark Beetle outbreak and infestation.

Both scientists and the civil society strongly oppose large-scale cutting of trees in the forest. In July 2016, the UNESCO World Heritage Committee [presented its concerns](#) about the increase of logging, and the government’s plans for Białowieża Forest, which “could result in disturbance of natural ecological processes”. The European Commission initiated an infringement procedure against Poland due to the government’s plans to increase logging in the Białowieża Forest. This decision, which was the first step of a procedure that could result in Poland being taken to the European Court of Justice for breaching the EU Habitats Directive, came in response to a complaint filed by a coalition of seven NGOs, including ClientEarth, WWF, Greenpeace and Birdlife. Indeed, in petition 0805/2017 by Radosław Ślusarczyk, the petitioners, a group of seven Polish NGOs, claim that the new legislation on forest management adopted by Poland in 2016, circumvents the environmental safeguards provided in the EU Birds Directive and Habitats Directive and has a massive destructive effect on invaluable forest ecosystems. The petitioners urged the European Parliament to ensure compliance with EU environmental legislation, given that intensive logging had already been carried out in the past months in three major Polish forests, threatening the existence of several species of endangered birds.

On 16 December 2016, the Polish Parliament amended the Act on the protection of nature and the Forest Act, exempting Poland’s State Forests from certain provisions of the Birds Directive and the Habitats Directive. This Act came into force on 28 December 2016 and widened the list of situations in which the safeguards provided for in the two EU Directives would not apply to Poland’s forests.

In 2018, the Court of Justice of the EU ruled that the logging operations violated EU law and ordered Poland to suspend them. In this light, a petition (0623/2018) filed on behalf of residents of the Białowieża region, suggested a balanced approach between environmental standards in the forest region of Białowieża and the needs of the local residents. Environment protection organisations have allegedly requested to stop the renovation of the Narewowska road, a key connection between two regional cities, while residents claim the renovation works have been conceived and agreed in compliance with all environmental standards, including those related to Natura 2000. Nevertheless, at the beginning of 2021, the logging in the forest resumed.

## Legal situation (2015-2016 - up to now)

Since the filing of petition 0805/2017 more violations of EU environmental legislation and more cases of environmental destruction as a result of forestry activities in Poland have been documented.

First of all, in the infringement case initiated by the European Commission against Poland (case 2018/2208), it was demonstrated that forest management in Poland violates EU environmental legislation, destroys nature and excludes public participation. The infringement consists in the fact that forest management in Poland is exempted from the obligation of strict protection of species of Community interest and that Forest Management Plans (FMPs) cannot be challenged in court. In July 2018, the Commission launched an infringement procedure (case 2018/2208) and addressed a reasoned opinion to Poland. After Poland failed to rectify its national legislation, in July 2021, the Commission referred the case to the Court of Justice of the EU.

New irregularities in forest management have been discovered since, namely logging without any legal basis. In an update on petition 0805/2017 it is documented that the State Forests carry out forestry activities, including massive logging in valuable natural forests such as the Świętokrzyska Forest, the Borki Forest or the Carpathian Forest, without valid Forest Management Plans. In the first quarter of 2021 (1 January 2021-17 March 2021), 46 out of the 430 Forest Administrations in Poland were conducting forestry activities despite not having valid Forest Management Plans. Under the laws in force in Poland, including the Law on Forests, it is illegal to carry out forestry activities without valid Forest Management Plans. However, forestry activities in such cases are authorised under internal regulations of the State Forests. This leads to a situation in which forestry activities, including industrial-scale logging, are carried out in Natura2000 areas based on internal finance and business plans that do not undergo environmental impact assessments or assessments of impacts on Natura2000 sites.

In addition to the absence of public and institutional oversight of forestry, Poland has also exempted forest management from the prohibitions to disturb, destroy or deliberately kill specimens of protected animal species, in violation of Article 16 of the Habitats Directive and Article 9 of the Birds Directive. Such generalised derogations from the requirements of strict protection constitute a glaring violation of the two EU directives and are also covered by the infringement case 2018/2208 that has been referred to the CJEU. Because of the absence of oversight of logging and the licence to ignore nature protection requirements while carrying out forestry activities, forest management currently poses the greatest threat to Poland's forest habitats protected under the Habitats Directive. This situation is also affecting animals, an example being the destruction of several dozen grey heron nests in the course of forest works conducted during the birds' breeding season.

Lastly, it needs to be noted that the non-compliance of forest management in Poland with European legislation is a long-standing problem. In 2015, following the European Commission's intervention, Poland was asked to repeal the rules which granted foresters a general derogation from the prohibition to disturb or kill protected species. An amendment of the Law on Forests proposed in 2016 was supposed to repeal the legal provisions incompatible with European legislation, but it only extended the State Forests' licence to act in violation of the Birds and Habitat Directives. Even though the Commission referred the case to the Court of Justice in July 2021, the Polish government has yet to take any action to amend the national rules and bring them into compliance with EU law with regard to both the protection of species and access to justice.

In 2017, Workshop for all Beings tried to stop logging in Białowieża in Poland's courts, but was unsuccessful.

## Wall Belarus - Poland

Following the crisis at the borders with Belarus, whereby President Lukashenko's regime sponsored the smuggling of migrants into the EU via Lithuania, Latvia and Poland, in August 2021 the Polish authorities announced that they would start building a 5.5-metre high anti-refugee wall. On 7 September the state of emergency was introduced, which bars access for NGOs, journalists and civil society to the restricted border zone. The Polish government sees the wall as fundamental in stopping the influx of migrants, who are being sent to Poland by Belarus in retaliation for EU sanctions. In this regard, more than 700 scientists [issued](#) a joint appeal against Poland's decision to build a wall on its border with Belarus, which they said would have a "devastating" impact on the area's valuable and delicate ecosystem, since a part of the 186-kilometre-long barrier would be located in Białowieża Forest.

## Conflicts over forest management

It is clear that the current model of forest management in Poland has been generating more and more conflict between the State Forests on the one hand and the public and local communities on the other.



People stand up to the State Forests over destructive logging in forests with great natural value, such as the Białowieża Forest, which should be permanently protected as National Parks and nature reserves. To conclude, forests in Poland are beyond social and institutional control and only an in-depth reform of forest management can reverse the current trend towards loss of forest biodiversity.

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## Special educational needs in Poland: education of young persons and children with social disorders

The petitioners of petitions 956/2018 and 1186/2018 raise the problem of children with disabilities in Poland who are following a specific individual course of study and who, due to new provisions of the Education Law introduced in September 2017, have difficulties in accessing education. According to the petitioners, the implementation of this new legislation deprives children with special educational needs of adequate support and the opportunity of real education through integration. These children are segregated because of their state of health and, in the petitioners' opinion, they have difficulties in accessing further education in public schools, especially at secondary level.

This situation deprives pupils of the opportunity to learn and interact with their peers. Forcing individual tuition at home, or bringing children to specialist, often remote facilities in smaller centres, deprives them of the only free daily therapy and social interactions that they have. The possibility offered by the Polish Ministry of National Education of including these students in educational activities on the school premises, individually or in a group of up to five students, is not implemented in practice. The lack of precise guidelines as to the number of hours that can be funded makes the situation of disabled pupils much worse and uncertain.

The Regulation of the Ministry of Education and Science of 9 August 2017 on the rules of organisation and provision of psychological and pedagogical assistance in public kindergartens, schools and institutions, and the Regulation of the Ministry of Education and Science of 7 September 2017 on judgments and opinions issued by adjudicating teams operating in public psychological and pedagogical counselling centres, were intended to provide students with a Special Education Certificate (SEC) easier access to schools.

However, the change of the provisions of the educational regulations eliminated the possibility of continuing individual education at school by students with disabilities and special educational needs. The changes introduced by former Minister Anna Zalewska thus forced parents to choose one of two paths: either full-time school education without individual support from a teacher, or home education.

The new regulations also do not guarantee the previously compulsory 12 to 16 hours of individual classes at the post-primary level. In practice, this often means that children are not receiving the support they need. The crucial part of the new law introduced by Minister Anna Zalewska is the *de facto* isolation of children with special educational needs. In fact, due to the 2017 regulations, there are children with disabilities in Poland who are following a specific individual course of study and are having difficulties in accessing education.

## Historical background: the major changes introduced by the 2017 regulations

The situation concerning the education sector in Poland appears to be difficult: not only as indicated by Poland's [10<sup>th</sup> place](#) in the PISA ranking, but also because the conditions of Polish education were made more difficult by the pandemic. What is more, the gap between Poland and other EU countries is widening.

This situation was brought to the attention of the European Parliament in 2018 in the above-mentioned petition filed by Ms Monika Mamulska, and the subsequent speech of Ms Mamulska at a meeting of the Committee on Petitions in January 2022, in which she asked MEPs and staff members of the European Commission to take all possible measures to bring an end to the violations of fundamental human rights in Poland.

The two regulations introduced in August 2017 say opposite things. The first one states that "individual preschool preparation classes or individual teaching classes shall be conducted in the place of residence of the child or student, in particular in the family home" In the second the rules for conducting individual teaching in schools are specified, which read as follows: "Classes of individual preschool preparation and classes of individual teaching for a child or student whose health condition significantly impedes attendance at a kindergarten, other form of preschool education or school, may be organised in a kindergarten, other form of preschool education or school, respectively, if:

- the (special needs) assessment indicates the possibility of realisation of individual preschool preparation or individual teaching in a room in a kindergarten, other form of preschool education or school;
- the preschool, other form of preschool education or school, has a room in which classes can be held for that child or student.

In the new regulation, the entire second possibility has disappeared. Until 2017, most of the children who, in their assessment were given the possibility to be taught at school, pursued this pathway. This option has now been removed.

According to estimates, in 2017-2018, more than 20,000 children were diagnosed with Asperger's Syndrome and ADHD and the new regulation increases the chances that of pupils not receiving the support they need. Indeed, with inclusive education, pupils can participate in the life of the school, the classroom and receive the fullest possible socialisation. In school education, this is just as important as the acquisition of knowledge. Nonetheless, this decision was justified by the Ministry of Education and Science by the need to prevent principles from abusing the individual teaching gateway.

## Legal framework

Polish legislation, EU legislation and other acts and international instruments that Poland has ratified clearly state that compulsory education must be accessible for all and no one may be discriminated against on the grounds of disability. In this light, the 2017 regulations can be considered a breach of both principles.

The ordinance of the Ministry of Education and Science of 2017, which deprived many students with special educational needs (SEN) of the opportunity to study at school, could be viewed as a violation of legal principles. According to Art. 14 of [Charter of Fundamental Rights of the European Union](#), everyone has the right to education and to have access to vocational and continuing training. This right also includes the possibility to benefit from free compulsory education.

Moreover, Art. 21, on non-discrimination, stipulates that any discrimination, in particular on grounds of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a group, membership of a national minority, property, birth, disability, age or sexual orientation, shall be prohibited.

These rights are further confirmed by Art. 24 of the [UN Convention on the Rights of Persons with Disabilities](#) (CRPD) and Art. 69 (on the obligation of public authorities to integrate people with disabilities) and Art. 70 (the right to education) of the Constitution of the Republic of Poland.

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