

LEGAL STATUS OF THE POLISH ACADEMY OF ARTS AND SCIENCES

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ABSTRACT

The aim of this article is to analyse the legal status of the Polish Academy of Arts and Sciences, an entity operating within the system of higher education and science. The study explores the Academy's origins, its legal form and role it plays within the system of higher education and science, and its rights and obligations under the law. The findings presented in the paper allow for drawing conclusions on the legal status of the Academy, in particular recognising that it is a legal person functioning in the legal form of a (registered) association, and at the same time an organisation directly included by the legislator in the category of entities of the system of higher education and science. The study indicates the reasons justifying the Academy's inclusion in the catalogue of entities of this system, primarily its exceptional achievements in the field of scientific activities and popularising their results, as well as the universality of undertaken activities, tradition and reputation within the scientific community.

Keywords: Polish Academy of Arts and Sciences, higher education, science, associations

1. INTRODUCTION

The article's topic is the legal status of the Polish Academy of Arts and Sciences [Polska Akademia Umiejętności] (hereinafter: PAU). The Polish legal order lacks a universally applicable legal act regulating the organisation (structure) and functioning of this institution in a separate and comprehensive manner. Provisions governing PAU's rights and obligations are dispersed throughout the legal system,

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with a significant part relating to the area of higher education and science, which is in line with the tasks the PAU performs.

In my opinion, examining the legal form under which the PAU operates and its organisational evolution is essential. Another interesting aspect is PAU's role as an entity in this system, i.e. what are PAU's rights and obligations in its capacity as part of Polish science. Additionally, the obligations and rights of the PAU in other areas should be analysed as well. I believe that analysing these matters will enable us to understand PAU's legal form, its role resulting from the legal system, and why the legislator has distinguished the PAU as an institution related to the Polish system of higher education and science.

The primary method employed in this study is dogmatic, entailing an analysis of regulations that determine the functioning of the PAU and other entities within the system of higher education and science. When necessary, the historical-legal method is also employed, focusing on the genesis of PAU and its organisational and legal evolution.

2. GENESIS OF THE PAU

PAU traces its origins back to the late 18th century. In 1776, Hugo Kołłątaj proposed the idea of reforming the Jagiellonian University "and establishing an institution dedicated to scientific research. His project envisaged introducing five academies instead of four traditional academic faculties: philosophy, law, medicine, and theology".¹ In 1809, "Prince Józef Poniatowski, having taken control for the Duchy of the then Austrian-ruled Kraków, the former capital of Poland, granted the Jagiellonian University a statute. It followed Hugo Kołłątaj's idea, establishing Kraków Academic Institute, modelled on the French Institute with an aim to support the comprehensive development of science. However, this concept did not come to fruition at that time".² In 1815, the Kraków Learned Society was founded, "on the initiative of Walenty Litwiński, Rector of the University of Kraków, under the statute adopted on 24 July 1815 at the session of the Rector's Council. Alongside the Friends of Science Society in Warsaw, the Poznań Friends of Science Society and the Learned Society in Toruń, it was one of the oldest institutions of general science in Poland, and the only association of this type in the period 1832–1856".³ The organisation's goal was to "disseminate knowledge in the field of science and arts, and to care for the monuments of Polish history and literature".⁴ According to the organisation's Statute, the purpose of its operation was to "multiply all sciences, spread light and propagate industrial art and craftsmanship in the nation".⁵

¹ Dybiec, J., *Polska Akademia Umiejętności 1872–1952*, Kraków, 1993, p. 7.

² Kutrzeba, S., *Polska Akademia Umiejętności: 1872–1937*, Kraków, 1938, p. 1.

³ Maciuk, M., Mrówka, M., 'Wokół 200. rocznicy powołania Towarzystwa Naukowego Krakowskiego (1815–1872)', *Krakowski Rocznik Archiwalny*, 2016, Vol. 22, p. 240.

⁴ Danowska, E., 'Akademia Umiejętności – Polska Akademia Umiejętności. Czas przełomu po odzyskaniu niepodległości', *Rocznik Biblioteki Kraków*, 2018, yearly II, p. 151.

⁵ Maciuk, M., Mrówka, M., op. cit., p. 240.

On 2 May 1871, Emperor Franz Joseph I issued a rescript, transforming the Society into the Academy of Learning [Akademia Umiejętności]. However, it was Józef Majer, a physician, physiologist, anthropologist, Rector of the Jagiellonian University, and the President of the Kraków Learned Society, who initiated the establishment of the organisation.⁶ The Academy was founded thanks to the efforts of Prince Jerzy Lubomirski and Earl Alfred Potocki; with the latter being the President of the Council of Ministers (President-Minister) of Austria. As it is indicated, "Józef Majer had an opportunity to draw their attention to the importance of the Institution as well as the position and means appropriate for this task; and finally, the only way to remedy this by granting the Kraków Learned Society the rank of a Public Institution similar to that of Academies".⁷ Between 2 May 1871 and 3 May 1872, the Kraków Learned Society transitioned into the Academy of Learning, ending its activities on 29 April.⁸ In turn, on 16 February 1872, the Emperor approved the statute (actually prepared by Society members); in line with the statute, "members of the Learned Society elected the first 12 Academy members from among themselves. By the end of that year, faculties were organised, and at the beginning of the next year, the first public meeting was held to celebrate the 400th anniversary of Copernicus' birth, the inaugural meeting with great ceremony in the presence of the authorities, on 7 May 1873".⁹

Until Poland regained its independence, the Academy functioned with minimal change (merely increasing its members count). It was not only a scientific organisation, but also a patriotic one, "considering itself a Polish institution that gathered Polish scholars irrespective of their place of residence and citizenship. Everyone could participate in its work, as well as attend its annual general assemblies, which were held on 3 May to symbolically celebrate anniversaries of the adoption of the 1791 Governance Act".¹⁰ As highlighted, "the Academy of Learning was the most extensive scientific society conducting the broadest scientific activities in Polish territories until 1918".¹¹ Consequently, after the rebirth of the Republic of Poland it was only natural for this organisation to start functioning as the Polish Academy of Arts and Sciences. The formal change happened on 22 July 1919, following a new statute granted to the institution by the Chief of State.¹² Under this Statute, the PAU was a public service institution under the Polish State's care (later "under the care of the State authorities, in particular under the protection of the President of the Republic of Poland, who shall approve the election of foreign members, both active ones and correspondents, president, vice-presidents and secretary-general"¹³). In its first years in reborn Poland, the PAU faced financial difficulties and, therefore, "the Government of Poland helped the Academy substantially by providing subsidies

⁶ See Sławoj, Z., 'Polska Akademia Umiejętności w służbie narodu', *Niepodległość i Pamięć*, 1998, No. 13, p. 88.

⁷ *Ibidem*.

⁸ *Ibidem*, p. 89.

⁹ Kutrzeba, S., *op. cit.*, p. 2.

¹⁰ Danowska, E., *op. cit.*, p. 152.

¹¹ *Ibidem*.

¹² Cf. Kutrzeba, S., *op. cit.*, p. 3.

¹³ *Ibidem*, p. 4.

from the Ministry of Religious Denominations and Public Enlightenment. However, after the acquisition of the Żywiec estates and the onset of the Great Depression on the New York Stock Exchange, subsidies were capped at PLN 70,000 per year¹⁴. The financial situation of the PAU improved only after it acquired a land property “comprised of four parts: Archduke Karol Stefan Habsburg’s, Paweł Tyszkowski’s, Władysław Józef Fedorowicz’s and Stanisław Sozański’s¹⁵.”

Upon the outbreak of the Second World War, PAU and its members became the target of persecution: “The German occupation aimed to dismantle the Academy; its authorities were dismissed, and its museum premises were repurposed as warehouses for various scientific collections¹⁶.” Despite conspiracy activities, the war had a devastating impact on PAU: “It lost its assets, which were the basis of its activity, the library and museum collections suffered slightly (...), 70 members died or were killed by the occupier during the war¹⁷.” Post-war it emerged that the new Polish authorities saw no need for PAU and, therefore, actions were taken to curtail and possibly dissolve the organisation. This move was particularly evident amidst increasing trends towards centralisation and ideological oppression. On 21 June 1951, “the General Assembly adopted a resolution on transferring its premises and assets to the Polish Academy of Sciences (PAN)¹⁸.” After 1952, the PAU “started to decline as PAN took over its research units¹⁹.” Revival attempts post-1956 were unsuccessful.

Following the political transformation that started in 1989, PAU resumed activities, firstly by re-establishing its structure and organisational units, then by restoring its scientific and publishing activities²⁰. The PAU was (physically) re-established by “a group of members in accordance with the former statute, maintaining its organisational continuity and referring to the traditional forms of its activity²¹.”

In my opinion, several conclusions can be drawn from these facts. Firstly, the legal continuity of PAU at least since 1872, when the Academy of Learning was founded based on the Kraków Learned Society, is undeniable. Despite systemic and organisational transformations over the decades, the PAU was never officially dissolved (even when post-war communist authorities undertook a number of actions actually aimed at ending its operation). Secondly, it should be recognised that the PAU has functioned as a scientific institution, focusing primarily on scientific research and associated popularisation activities. The fundamental profile of the organisation has remained unchanged, positioning the PAU as a learned society that brings together distinguished representatives of the Polish scientific community and acting for the benefit of society since the beginning of its activities.

¹⁴ Biliński, P., Skrzyński, T., ‘Zarząd majątkami Polskiej Akademii Umiejętności w dwudziestolecu międzywojennym’, *Studia z Historii Społeczno-Gospodarczej*, 2010, Vol. VIII, p. 282.

¹⁵ *Ibidem*.

¹⁶ Dybiec, J., *op. cit.*, p. 13.

¹⁷ *Ibidem*, p. 14.

¹⁸ *Ibidem*, p. 22.

¹⁹ *Ibidem*, p. 23.

²⁰ See <https://pau.krakow.pl/index.php/pl/akademia/historia>

²¹ <https://encyklopedia.pwn.pl/haslo/Polska-Akademia-Umiejtnosci;3959726.html>

Thirdly, the non-public nature of the institutions is notable. Although it functioned in various legal and political circumstances, it has never been an administrative agency, but rather an entity independent of the state (within the legal limits), with its own assets and defining its own tasks. Lastly, it should be pointed out that over the decades an important aspect of the PAU's functioning has been its corporate character. Natural persons (eminent Polish scientists) associated with the PAU through membership have consistently formed its core.

These findings related to the historical role of the PAU lead to a discussion about the legal form in which the organisation functions at present.

3. LEGAL FORM OF THE PAU

At the beginning of this part of deliberations, it is necessary to note that in the Polish legal system, there is no universally binding normative act within the Polish legal system that regulates the legal status of the PAU as an individual organisation. Therefore, the regulations governing the PAU's operations should be identified amongst solutions designed for such institutions. To determine which provisions apply to PAU, it is necessary to examine the nature of the institution taking into account the legal and organisational solutions applied to it. The PAU Statute regulations will serve as the basis for this analysis.

As far as the issue of legal continuity of the PAU is concerned, provision of § 1 of the PAU Statute should be recalled, which states that the Academy of Learning in Kraków, established in 1872 based on the Kraków Learned Society founded in 1815 shall be called "the Polish Academy of Arts and Sciences" from the Polish State's rebirth. In my opinion, this provision supports the above-presented reasoning regarding the historical (and also organisational and legal) roots of the PAU. What is noteworthy is the reference to the Kraków Learned Society as a 'parent organisation' from which the Academy of Learning and then PAU originated. This confirms that the PAU originates directly from the Academy of Learning and that the organisation's name change is the only significant aspect from a succession perspective. Another important circumstance is that this provision does not indicate any period of interruption in the PAU's functioning (even during the time when the communist authorities *de facto* suppressed organisation's activities), thereby confirming the PAU's formal continuity.

As regards the tasks of PAU, it is necessary to point out § 2 and § 5 of the Statute. First sentence of § 2 stipulates that the PAU is an institution established to nurture science and culture, while § 5 states that the PAU's task is to support and facilitate creative work in Poland, encourage, coordinate, if possible, manage, if necessary, and reward such work.²² It can be stated that the previously mentioned continuity

²² The provision also determines that the PAU, in particular, shall record, secure and protect the fruits of the Polish creative work, and make them available to science and common culture, and maintain their communication with abroad; in agreement with Polish scientific and cultural associations and institutions and in cooperation with them, it is obliged to initiate, organise, and conduct scientific and cultural undertakings that should be implemented with the combined

is evident in the scope of the PAU's tasks, with its focus on supporting scientific activities and science popularisation. Therefore, the PAU maintains its operational profile, persisting as a specialised institution, committed to the development of Polish science.

The statutory provisions also establish the PAU as an organisation separate from the administrative apparatus, as confirmed by several factors. Firstly, as § 3 of the Statute stipulates, the PAU has the status of a legal person. In my opinion, this regulation is somewhat imprecise. The solution adopted in the Polish legal system is based on the normative method of regulating legal persons; "Thus, apart from the State Treasury, legal personality is vested only in such organisational units that are granted this status by special provisions. Legal persons are specified organisational units that are equipped with legal capacity and competence to participate in legal transactions thanks to the attribute of legal personality".²³ Hence, under Polish law there are organisational units that have legal personality and those without this attribute. Legal personality stems from the legislator's decision, and the unit in question cannot grant it to itself or limit it by virtue of its internal act. In this context, it should be stated that the formula used in the above-mentioned provision of the Statute might be recognised as not fully consistent with the current legal solutions resulting from commonly applicable law. Instead of using the phrase 'shall have the nature of a legal person', the provision should explicitly state that the PAU 'shall have legal personality'. Stating that an entity 'shall have the nature' of a legal person may suggest that it does not have legal personality but has some features typical of entities with this type of status. While the use of terminology derived from earlier legal systems in a current organisational act is understandable (due to preserving the PAU tradition), in my opinion, the part of the act regarding the organisation's legal status should take into account the need to ensure consistency with the currently binding legal regulations. However, regardless of the terminological issue, it should be pointed out that, in my view, § 3 of the Statute suggests that the PAU is an independent entity. This is linked not only to the legal personality of the PAU indicated in the provision, but to its indirect identification as a self-governing organisation, therefore setting its own operational rules. Secondly, the analysis of the PAU Statute leads to an inference that the organisation creates its bodies and determines their staffing on its own and independently of public authorities.²⁴ Nevertheless, in this context, it is necessary to notice the elements of statutory regulations that stipulate specific forms of public authorities' influence on the functioning of the PAU in the systemic dimension. In particular, attention should be drawn to the provision under § 20 of the Statute, which states that the President of the Polish Academy of Arts and Sciences shall be elected for a three-year term from among active members by an absolute majority

effort of Polish scholars and artists; in matters connected with science and culture, whenever it recognises that it is in their interest, the PAU is obliged to file motions, commentaries and requests to the State Authorities, or to publicly voice its opinions to society.

²³ Nazaruk, P., in: Ciszewski, J. (ed.), *Kodeks cywilny. Komentarz aktualizowany*, LEX/el., 2022, Article 33.

²⁴ Cf. § 7 and §§ 19–21 of the Statute.

in a secret ballot at the General Assembly. The same election process applies to the Vice-Presidents of the PAU (pursuant to § 7) and the Secretary General of the PAU. The election of the President, Vice-presidents and Secretary General requires the approval of the President of the Republic of Poland. The regulation, on the one hand, obliges the PAU to seek approval from the President of the Republic of Poland for the election of the holders of its organisation body roles, and on the other hand, seems to be heading towards creating the competence of the President of the Republic of Poland in this respect. However, it should be pointed out that as per current regulations, the President of the Republic of Poland does not have the power to act in this area; neither the Constitution of the Republic of Poland nor any statutes mandate the President of the Republic of Poland to have binding influence on staffing of bodies in non-governmental organisations that are legal persons. In my opinion, the regulation analysed should be interpreted in accordance with the current political system, and thus, understood as the PAU's obligation to notify the President of the Republic of Poland about the election of its authorities. However, it does not imply the President of the Republic of Poland's competence to shape the personnel of those bodies. This type of competence would have to be laid down in a commonly binding legal act. Alternatively, the regulation in question could be interpreted as a type of 'encouragement' for the President of the Republic of Poland to do the PAU the 'courtesy' of responding, i.e. informing the PAU that the state body has acknowledged the election of the organisation authorities. Thirdly, attention should be drawn to the statutory norms regarding the PAU's assets. The Statute clearly indicates the PAU's financial separateness and independence. § 25 stipulates that PAU's assets consist of movables and immovable property for its general purposes, and assets for special purposes, used as per the donor's instructions. In turn, § 26 of the Statute details the types of PAU's income. It is noteworthy that, in accordance with the Statute, the primary source of PAU's finance is income from the organisation's property, although at the same time the provision assumes that 'state funds' could constitute income as well.

Shifting focus to the relationship between the PAU and persons engaged in its operations, it is first of all necessary to emphasise that the Statute unambiguously implies the existence of membership bonds. This conclusion is derived from numerous statutory provisions, inter alia: § 7 determining the competence of the PAU's General Assembly in electing its members (as well as awarding honorary membership), § 14 categorising PAU members (national members, including national active and national correspondent, and foreign members),²⁵ § 15 defining obligations of national and foreign members, §§ 16 and 18 detailing procedure for PAU's departments and the General Assembly to elect their members,

²⁵ It should be pointed out that the Statute limits the number of members of the PAU and determines the requirements they have to meet to perform the function of the PAU member (outstanding scholars and artists, and exceptionally other persons whose creative work was the glory of the Polish nation can be active national members or correspondents; they must be Polish citizens. Citizens of other countries who are outstanding scholars and artists living abroad can be foreign members of the PAU).

§ 17 identifying one more membership category, i.e. honorary membership.²⁶ Furthermore, § 20 stipulates that the President of the PAU shall be elected from among the organisation's members for a three-year term by an absolute majority in a secret ballot at the General Assembly. The unambiguous and consistent foundation of the PAU on the structure of membership indicates that it should be considered a corporate legal person (a corporation). Membership embodies "a corporate bond between a person who is a member and a corporation, which consists in the fact that the member of the corporation is part of the corporation organisational structure and thus has determined rights and obligations. A corporation is based on the cooperation of a group of entities working towards a specific goal. Cooperation, on the other hand, is expressed through the exercise of rights and fulfilment of obligations by members towards a corporation as a certain community, most often equipped with a separate legal personality".²⁷ Therefore, there are no doubts that, by emphasising the issue of the PAU membership, the statutory legislator signifies its corporate nature as a legal person.

Another important consideration is how the PAU Statute pertains to the organisation's legal form. Given above-presented findings concerning PAU's legal personality and corporate nature, one would expect the Statute to regulate the PAU's legal position as an association. The features of this type of entity best correspond to the above-mentioned conditions determining the PAU operations. An association is "a voluntary membership-based structure formed to implement jointly agreed plans and utilising selected means".²⁸ However, upon reading the Statute, it is evident that it does not refer to any association form present in the Polish legal system. It can only be inferred from § 2 that the PAU is 'a public service institution' under "State Authorities' care, in particular under the protection of the President of the Republic of Poland". This solution does not clarify PAU's legal form, since the concept of 'an institution' does not determine a legal-administrative formula typical of associations. There is also no 'national public service institution' in the Polish legal system. Thus, it seems that the formula used in the Statute may be classified as one referring to the tradition and, at the same time, emphasising the significant role of the PAU as an organisation that is permanently present in the Polish scientific community. The inclusion of a phrase referring to public service in the Statute could be also interpreted as a reference to a common-interest association existing in the Polish legal system. Such organisations functioned based on the provisions of the Regulation of the President of the Republic of Poland of 27 October 1932: Law on Associations.²⁹

²⁶ A person whose merits for Poland are commonly recognised can be honorary member.

²⁷ Kopczyńska-Pieczniak, K., 'Rozdział II. Członkostwo w korporacji', in: *Korporacja. Elementy konstrukcji prawnej*, Warszawa, 2019.

²⁸ Florczak-Wator, M., in: Tuleja, P. (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, LEX/el., 2021, Article 58. In a broader sense, an association means "a type of social collective, a group formed voluntarily with a conscious intention to achieve particular objectives, which is characterised by the fact that its members share the same or very similar values, forms of conduct, activities and attitudes connected with obtaining the set mutual objectives; and within an association, there are more or less formally determined principles of directing, managing and organising collective activities" (Kopczyńska-Pieczniak, K., op. cit.).

²⁹ Journal of Laws, item 808, as amended.

Article 46 of the Regulation stipulates that associations the development of which is particularly useful for the State or social interest of the Republic of Poland may be recognised as common-interest associations.³⁰ The feature of ‘particularly useful’ associations does not exist in the current legal system. All associations are subject to regulations laid down in Act of 7 April 1989: Law on Associations³¹ and have the same legal position; thus, there are no normative grounds for granting special rights to a particular group of them or favouring those organisations.³²

Considering these findings, it is necessary to conclude that PAU is a non-state entity that has legal personality and acts in accordance with the principle of voluntary membership of natural persons, characterised by self-governance, functioning for a particularly noble purpose that is the development of Polish science and popularisation of its achievements. Therefore, its essence corresponds to the definition of an association laid down in Article 2(1) of the Act: Law on Associations (“An association is a voluntary, self-governing, permanent and non-profit organisation”). The PAU is an organisation (association) exercising constitutional freedom of association, and its existence and membership depend solely on the will of natural persons. The PAU is self-governing, because, as a legal person operating independently of public authorities, it freely structures its organisation, determines membership criteria, assigns tasks, adopts methods of functioning, as well as takes decisions on the intensity of undertaken activities and on appointing selected persons to PAU authorities.³³ The PAU is a permanent organisation, because its tasks are long-term, planned for many years and without a definitive time horizon. Lastly, the PAU is a non-profit organisation, as its main objective is not to conduct activities generating income but to pursue activities connected with its statutory aims.

Thus, despite the lack of a clear determination of the organisation’s legal form in statutory provisions, the PAU should be recognised as an association, acting

³⁰ In accordance with Article 47 of the Regulation, the recognition of an entity as a common-interest association used to be based on Regulation of the Council of Ministers, issued on the motion of the Minister of the Interior filed in consultation with the ministers concerned. From the point of view of the practice of this type of associations’ functioning, inter alia, Article 48 is considerably important (“An association may accept donations and acquire movable and immovable assets without any restrictions and the need to obtain permissions stipulated in special provisions that regulate matters concerning donations and acquisition of property by natural and legal persons”) and Article 51 (“Recognition may be accompanied by granting an association the privilege of exclusivity to operate in a certain scope within the territory of the entire State or smaller, which will entail the exclusion of any other associations from encroaching on this scope in the relevant area, regardless of their former rights and the wording of statutes”). For more on the role of common-interest associations see: Gronkiewicz, A., ‘Organy organizacji społecznych jako organy administracji publicznej prowadzące postępowanie administracyjne ogólne’, in: *Organizacja społeczna w ogólnym postępowaniu administracyjnym*, Warszawa, 2012.

³¹ Journal of Laws of 2020, item 2261.

³² It can be added that Article 53 Act: Law on associations stipulated that associations that were common-interest ones before the Act entered into force shall be granted the honorary title: “Common-Interest Association” and entered into the register of associations. The provision was adjusting in nature. However, it was repealed on 13 March 1990 by virtue of Act of 23 February 1990 amending Act: Law on associations and Act on Higher Education (Journal of Laws, item 86).

³³ See Rzetecka-Gil, A., in: *Prawo o stowarzyszeniach. Komentarz*, LEX/el., 2017, Article 2.

based on commonly binding provisions that regulate the functioning of this type of organisations. However, it should be noted that PAU is registered in the National Court Register [Krajowy Rejestr Sądowy] of associations, other social and vocational organisations, foundations and independent healthcare institutions.³⁴

4. PAU AS AN ENTITY WITHIN THE SYSTEM OF HIGHER EDUCATION AND SCIENCE

The Act of 20 July 2018: Law on Higher Education and Science (hereinafter: LHES), as a comprehensive regulation, stipulates the operating norms of the system of higher education and science. Article 7 LHES identifies the system components, i.e. the institutions forming the system of higher education and science (par. 1) and those acting on behalf of the system³⁵ (paragraph 2). LHES lists the following system components: universities, federations of the entities of the system of higher education and science, the Polish Academy of Sciences, institutes of the Polish Academy of Sciences, research institutes, international scientific institutes established based on separate legal acts and operating in the territory of the Republic of Poland, the Łukasiewicz Centre, institutes operating within the Łukasiewicz Centre Network, the Polish Academy of Arts and Sciences, as well as other entities involved in scientific activities on an independent and continuous basis.

Thus, as the above facts indicate, the PAU is explicitly included in the provisions of the Act as an inherent part of the higher education and science system.³⁶ It should be noted that the PAU is the only non-public institution (not founded by public authorities) that has been indicated as an individually designated entity in the catalogue of the institutions of the system of higher education and science (the catalogue also lists other independent entities but they are indicated only by type³⁷ or implicitly³⁸). This legislative approach should be interpreted as a deliberate act by the legislator to distinguish PAU from other entities functioning in the same legal form and in similar areas. It should be pointed out that the PAU might also

³⁴ The PAU has been registered under No. 0000213557. The entry directly indicates the legal form of the PAU.

³⁵ These are: the National Academic Exchange Agency, the National Research and Development Centre, the National Science Centre, the Medical Research Agency.

³⁶ It is worth noticing that in the legal state before LHES entered into force, there was no attempt to define the system of higher education. Attention is drawn to this fact in literature: "The Law on higher education of 2005, in Article 4(3), introduces an undefined concept of higher education and science indicating that universities are its integral part. Implicitly, the system of higher education was composed of universities, i.e. higher-level schools conducting studies, established in accordance with the statute (Article 2(1)(1) LHES). Act of 30 April 2010 on the principles of funding science (Journal of Laws of 2018, item 87) did not indicate a catalogue of entities creating the system of (science) scientific research or a collective of institutions conducting scientific activities" (Woźnicki, J., in: Degtyarova, I., Dokowicz, M., Hulicka, M., Jędrzejewski, T., Mrozowska, A., Wojciechowski, P., Woźnicki, J., *Prawo o szkolnictwie wyższym i nauce. Komentarz*, Warszawa, 2019, Article 7).

³⁷ It concerns entities referred to in Article 7(1)(8) LHES.

³⁸ It concerns independent (non-public) universities.

be included among entities primarily engaged in independent and continuous scientific activities, i.e. those entities that constitute elements of the system of higher education and science because they meet the requirements laid down in LHES. These requirements, equal and objective in nature, do not favour any organisation.

Consequently, PAU will remain a part of the system of higher education and science regardless of whether it will be an institution conducting “mainly scientific activity in an independent and continuous manner” in the future. Even if the PAU, for various reasons, discontinues this type of activity, only the legislator will be competent to decide on its further status as an element of the higher education and science system. The only way to exclude the PAU from the system would be a legislative intervention to amend the catalogue under Article 7(1) LHES. Given PAU’s inclusion in the provisions of the Act, there is no need to verify the existence of the circumstances indicated in Article 7(1)(8) LHES. In other words, whenever legal provisions grant specific rights to “an entity of the system of higher education and science”, in relation to the PAU, there will be no need to check whether the organisation meets the requirements for conducting a scientific activity. The provisions of LHES determine the status of the PAU in this respect, and nobody will do this in whatever verification procedure (i.e. at the stage of enforcing the law).³⁹

This raises the question about the justification for the legislative decision. The existence of a distinguishing feature, a special feature, would provide substantive grounds for including one of the system institutions in the provisions of the law and thus permanently anchoring it within this system. In my opinion, there may be several reasons for including the above-mentioned solution in the Act. First of all, we should emphasise the extraordinary, comprehensive (interdisciplinary) and territorially unlimited scope of the organisation’s activity. As per its Statute, PAU “is an institution established to nurture science and culture”.⁴⁰ This generally formulated task is specified in the organisational act by means of indicating structural conditions that give guidance on the work of this organisation. In accordance with § 6 of its Statute, the PAU consists of six faculties, or Classes: Philology, History and Philosophy, Sciences and Technology, Natural Sciences, Medicine, and Artistic Creativity. These Classes may establish commissions and standing or temporary committees to do research or perform special tasks. These commissions operate beyond the subject matter and scope of the Classes’ activities, as deduced from literal interpretation of the Classes’ names, attesting to PAU’s search for new research areas and flexible approach to the organisational and structural issues.⁴¹

³⁹ The classification of entities as elements of the higher education and science system was, among other things, the focus of deliberations included in the justification for the judgement of the Supreme Administrative Court of 23 June 2020, case No. I OSK 284/20, stating, *inter alia*, that: “No provision of the statute provides grounds for approving the view that only entry of a unit to the POL-on system establishes its subjectivity and thus enables application for the granting of a scientific category. On the contrary, the wording of Article 346(1) LHES in conjunction with Article 7 LHES explicitly states that, *inter alia*, other entities conducting predominantly independent and continuous scientific activity are subject to system entry”.

⁴⁰ § 2 PAU Statute.

⁴¹ For example, the History and Philosophy Class has the following commissions: Commission on Central Europe, Commission on Eastern Europe, Commission on Law, Commission on

What is more, other statutory regulations (§ 12) indicate that inter-class committees and commissions may be established to perform interdisciplinary tasks.⁴² In total, the scope of the PAU's activities covers a very wide spectrum of issues and the activeness of the organisation in the scientific area, to greater or lesser extent, relates to all fields of science. This definitely distinguishes the PAU from other organisations (learned societies) that usually focus their research attention and activity on a specific discipline or even its small section. This comprehensiveness of PAU makes it possible to talk about the organisation as a *sui generis* scientific institution with an extensive field of research interests and using the method of interdisciplinary approach. It is also necessary to emphasise the issue of the territorial range of the PAU's activity. Pursuant to § 4 of its Statute, the organisation is based in Kraków but can establish scientific stations and commissions in other towns in the Republic of Poland or abroad.⁴³ This indicates the potentially unlimited scope of the PAU's activities and also demonstrates the institution's ability to organise extensive activities and maintain a complex internal structure, including centres located outside the country. Secondly, attention should be drawn to the fact that the current PAU is an entity continuing activities aimed at protecting and developing the achievements accumulated over a hundred and fifty years. Thus, the PAU is a centre that stands out from other Polish scientific associations in terms of maintaining continuity of functioning in the field of conducting various research works.⁴⁴ In this functional approach, despite its non-state character, it is closer to the sphere of public service in its broader meaning as activity connected with universality and accessibility for the general public,⁴⁵ for the common good, and for general purposes. In this context,

the History and Culture of Jews, Commission on Prehistory of the Carpathians, Commission on Economic Sciences, Commission on Ethnography, Commission on the History of Wars and Military Science, Commission on Archaeology of Mediterranean Countries, Commission on Media Studies, and Commission on Biographies.

⁴² At present, these include: Commission on Threats to Civilisation, Commission on the History of Science, Commission on the Evaluation of Textbooks, Commission on European Matters, Commission on the Philosophy of Sciences, Commission for the Studies on the Polish Diaspora, Commission on Anthropology, Commission on Ergonomics, Commission on Culture and Media Management, and Polish CIHEC Subcommittee.

⁴³ At present, the scientific stations functioning in Poland are in Katowice and Gdańsk, and the stations abroad are in the United States and Canada. Under § 4 the PAU Statute, the approval of the President of the Republic of Poland is required to open a scientific station abroad. However, it should be pointed out that the commonly binding law does not lay down norms granting this type of competence to the President of the Republic of Poland. The internal organisational act, i.e. the statute of association, cannot stipulate this. That is why I interpret the above-mentioned statutory provision as a limitation that the organisation imposes on itself on its own. Thus, it is a measure obliging the relevant bodies of the PAU to notify the President of the Republic of Poland of its intention to establish a scientific station abroad in advance.

⁴⁴ We should point to the fact that there are also other scientific associations with a long tradition dating back to the 19th century, e.g. Poznań Society of the Friends of Sciences (est. 1857), Płock Learned Society (1820), Learned Society in Toruń (1875), Polish Philology Society (1893), Polish History Society (1886), and Stanisław Moniuszko Warsaw Music Society (1870), see: <https://encyklopedia.pwn.pl/haslo/Towarzystwa-naukowe-dzialajace-w-Polsce;447101.html> (accessed on 11 August 2022).

⁴⁵ Cf. the judgement of the Supreme Administrative Court of 26 November 2009, case No. I OSK 222/09.

it is particularly important to emphasise those aspects of the PAU's activities that are connected with the dissemination of scientific knowledge, aim to promote social awareness in various fields and to distinguish persons of outstanding merit in those fields (I mean, in particular, publications of the PAU⁴⁶ and activeness connected with awarding prizes for outstanding scientific achievements⁴⁷). Thirdly, attention should be drawn to the fact that PAU's significance as an important component of Polish science has been confirmed by institutional bonds between this organisation and other Polish scientific centres. In this respect, it is in particular necessary to mention the PAU Scientific Library that has been operating since 1 January 2000: "The Kraków Learned Society started building it in the middle of the 19th century. It functioned as the Library of the Academy of Learning (from 1872) and the Library of the PAU (from 1920) until 1952, and from 1953 as an independent facility of the PAN. As a result of the agreement concluded between the PAN and the PAU on 20 October 1999, it was transferred back to the PAU and is under its management".⁴⁸ The Archives of Science of the PAN and the PAU in Kraków function based on a similar principle of inter-institutional cooperation: "Apart from the resources of the PAN (from 1953), it keeps archives of the Kraków Learned Society (1815–1872) and other Kraków-based associations, in particular the Academy of Learning (from 1872) and the PAU (1918–1952 and from 1989), as well as numerous works of scientists (...). As a result of the agreement between the PAN and the PAU, since 1 May 2002, it has functioned as an independent unit (formerly a branch of the PAN Archive in Warsaw) called the Archive of Science of the PAN and the PAU in Kraków".⁴⁹ It should also be mentioned that the PAU is involved in the activities of the Polish Library in Paris founded in 1838 by the members of the so-called Great Emigration: "The PAU took upon itself an obligation to co-finance the Library (with the use of funds allocated by the Ministry of Education and Science). It also supports substantive work: in 2004–2011 by sending highly qualified professional

⁴⁶ The PAU publishes scientific journals (inter alia, *Acta Archaeologica Carpathica*, *Acta Militaria Mediaevalia*, *Czasopismo Prawa Karnego i Nauk Penalnych*, *Folia Historiae Artium*, *Kwartalnik Prawa Prywatnego*, *Studia Historiae Scientiarum*), dissertations of the PAU Classes, series publications (inter alia, studies and materials for the history of the Polish Academy of Arts and Sciences, *Biblioteka Przekładów z Literatury Starożytnej*, *Moravia Magna*, minutes of the sittings of the Council of Ministers of the Republic of Poland), works of the PAU commissions (inter alia, *Prace Komisji Astrofizyki*, *Prace Komisji PAU do Badań Diaspory Polskiej*, *Monografie Komisji Etnograficznej*, *Prace Komisji Etyki Medycznej*, *Prace Komisji "Fides et Ratio"*, *Prace Komisji Filologii Klasycznej*, *Prace Komisji Historii i Kultury Żydów*, *Prace Komisji Historii Wojen i Wojskowości*), and non-series publications.

⁴⁷ The PAU awards prizes, inter alia, Erazm and Anna Jerzmanowski Prize, Nicolaus Copernicus Prize (in nine categories: astronomy, economics, classics, natural philosophy, cosmology and astrophysics, medicine, earth sciences, and law), Professor Marian Mięszowicz Prize, Professor Tadeusz Browicz Prize, Professor Adam Bielański Prize.

⁴⁸ <https://pau.krakow.pl/index.php/pl/struktura/biblioteka-naukowa-pau-i-pan> (accessed on 11 August 2022).

⁴⁹ <https://pau.krakow.pl/index.php/pl/struktura/archiwum-nauki-pan-i-pau> (accessed on 11 August 2022).

employees, and currently by applying for and conducting research projects aimed at inventorying, cataloguing, developing and digitising the BPP collections”.⁵⁰

In my view, these circumstances justify the view that the PAU is an extraordinary entity with specific tasks and unique traditions, while also connected with public institutions operating in the field of scientific activities and the popularisation of their findings (in particular, together with the Polish Academy of Sciences). Thus, PAU distinguishes itself not only through its legal status, but also its functions, scope of scientific research, range of research interests, type of service to citizens, reputation within the Polish scientific community, publishing activities, and its involvement in operating (or co-operating) scientific institutions. In my opinion, it is insignificant that the PAU uses the name ‘Academy’. In the context of higher education and science system, it is a term classifying universities within a specific category (academic education institution⁵¹).

5. RIGHTS AND OBLIGATIONS OF THE PAU RESULTING FROM THE PROVISIONS OF THE LAW

5.1. First of all, it is necessary to indicate the rights of the PAU in relation to exemptions stipulated in Act of 19 March 2004: Customs Law. The provisions of the Act grant exemptions from customs duties, which “constitute an exception to the rule of commonly binding customs duties, which means that every commodity transported from the territory of a third country to the EU customs area is subject to import tax. An importer may be made exempt from customs duties provided that it results from the provisions of the law”.⁵² The Act stipulates that the mechanism may be applied to:

- (1) units and organisations entitled to exemptions from customs duties on educational, scientific and cultural materials;
- (2) private institutions entitled to exemptions from customs duties on scientific instruments and equipment;
- (3) private institutions entitled to exemptions from customs duties on animals specially prepared for laboratory use and biological or chemical substances;
- (4) institutions and laboratories entitled to exemptions from customs duties;
- (5) healthcare units and medical institutes entitled to exemptions from customs duties;
- (6) institutions involved in quality control of raw materials used in the production of medicinal products that are entitled to exemptions from customs duties.

⁵⁰ <https://pau.krakow.pl/index.php/pl/struktura/biblioteka-polska-w-paryzu> (accessed on 11 August 2022).

⁵¹ In accordance with Article 14 par. 1 LHES, a university is an academic education institution if it conducts scientific activity and is a holder of a scientific category A+, A or B+ in at least one scientific or artistic discipline. For the genesis of the term “academy” in the Polish system of higher education and science, see Woźnicki, J., in: Degtyarova, I., Dokowicz, M., Hulicka, M., Jędrzejewski, T., Mrozowska, A., Wojciechowski, P., Woźnicki, J., *Prawo o szkolnictwie wyższym i nauce. Komentarz*, Warszawa, 2019, Article 16.

⁵² Laszuk, M., in: Komorowski, E., Michalski, R., Laszuk, M., *Prawo celne. Komentarz*, Warszawa, 2022, Article 36.

The PAU is an institution entitled to customs duty exemptions in three areas. Firstly, it is the field of scientific instruments and equipment. Pursuant to the provisions of the Regulation of the Minister of Science and Higher Education of 20 December 2010 concerning the list of private institutions entitled to exemptions from customs duties on imported scientific instruments and equipment, PAU is included in the catalogue of entities entitled to exemptions from customs duties on imported scientific instruments and equipment referred to in Article 44(2)(b) of Council Regulation (EC) No. 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty (OJ L324, 10.12.2009. p. 23), included in the Annex to the implementing act.⁵³

Secondly, PAU is included in the list of units and organisations entitled to exemptions from customs duties on imported educational, scientific and cultural materials, as annexed to the Regulation of the Minister of Science and Higher Education of 27 December 2010 concerning the list of units and organisations entitled to exemptions from customs duties on imported educational, scientific and cultural materials (Journal of Laws of 2022, item 1612).

Thirdly, the PAU is also listed in the catalogue of private institutions entitled to exemptions from customs duties on imported animals specially prepared for laboratory use and biological or chemical substances (Regulation of the Minister of Science and Higher Education of 23 December 2010 concerning the list of private institutions exempt from customs duties on imported animals specially prepared for laboratory use and biological or chemical substances, Journal of Laws, item 1738, as amended).

5.2. PAU is an entity that benefits from the funds for higher education and science provided for in LHES. Under Article 366(1)(6) LHES, PAU receives funds for conducting scientific activities and implementing research investments, and may also receive funds under scholarships and programmes of the minister responsible for higher education and science. Pursuant to Article 368(7) LHES, the minister, upon request, shall determine the amount of the subsidy from the funds specified in Article 365 subsection 2 (a) and (b). The method of determining the subsidy amount for the PAU is specified in an implementing act issued based on Article 402 LHES.⁵⁴ It should be added here that the PAU is the only association receiving public funds stipulated in

⁵³ It is worth noting that the annexe contains “a catalogue of private institutions whose main activity is education or scientific research that entitle to exemptions from customs duties on imported scientific instruments and equipment”. Therefore, justifiably, the PAU is included among “private institutions”. Although Act: Customs Law does not provide a definition of this term (uses it in Articles 44 and 45), it can be justifiably inferred that these are such institutions that were not founded as a result of public authorities’ activities (other institutions referred to in the annexe include independent universities and higher divinity schools conducted by churches and religious denomination associations, independent schools, research institutes, the Łukasiewicz Research Network institutes, entrepreneurs that have a status of a research and development centre, the Ossoliński National Institute, and the Kórnik Institute).

⁵⁴ The authorisation laid down in this Article has been exercised by means of the issue of Regulation of the Minister of Science and Higher Education of 9 September 2019 concerning method of allocating funds for maintenance and development of educational potential and research potential that is at the disposal of the minister responsible for higher education

LHES in the form of a subsidy. While other organisations operating under this legal framework may benefit from some funds allocated to higher education and science, they do not receive these in the form of subsidies.⁵⁵

5.3. The PAU is also considered in some regulations on awarding prizes in the field of higher education and science. Notably, the President of PAU is defined as an entity eligible to apply for awards to:

- (1) the minister responsible for the marine economy, in relation to this minister's awards for academic teachers;⁵⁶
- (2) the minister responsible for higher education and science, in relation to awards for outstanding achievements in the field of scientific, educational, research implementation-related and organisational activities, as well as awards for the aggregate achievements;⁵⁷
- (3) the President of the Council of Ministers, in relation to awards for outstanding doctoral dissertations, highly evaluated achievements recognised as a basis for granting a higher doctoral degree or achievements in the field of scientific or research implementation-related activities.⁵⁸

5.4. We should also draw attention to regulations recognising PAU as an entity involved in various types of mechanisms aimed at ensuring a high level of initiatives in the field of education and science. In this respect, the following should be highlighted in particular:

- (1) PAU's participation in proceedings for entry into the list of experts on general education textbooks and the list of experts on linguistic opinions;⁵⁹
- (2) PAU's participation in proceedings for entry into the list of Matura exam moderators;⁶⁰

and science, and for tasks related to maintenance of training aircraft and training centres for air staff. (Journal of Laws of 2022, item 305).

⁵⁵ In accordance with Article 366 par. 1 (8) LHES, an organisational unit acting for popularisation of science is entitled to funds for the implementation of programmes and undertakings of the minister, as well as funds for tasks co-financed from the European Union budget or funds from aid provided by Member States of the European Free Trade Agreement (EFTA) that are not subject to refund, or other funds from foreign sources that are not subject to refund. The legislator did not limit the application of the provision to organisations functioning within specified legal forms; therefore, it can be assumed that they can also include associations.

⁵⁶ Cf. § 9 subsection 1 (2) (c) of the Regulation of the Minister of Marine Economy and Inland Navigation of 16 April 2019 concerning awards of the minister responsible for marine economy and inland navigation for academic teachers (Journal of Laws, item 846).

⁵⁷ Cf. § 4 subsection 1 (7) of the Regulation of the Minister of Science and Higher Education of 23 January 2019 concerning awards of the minister responsible for higher education (Journal of Laws of 2021, item 2286).

⁵⁸ Cf. § 6 subsection 1 (4) of the Regulation of the President of the Council of Ministers of 21 May 2019 concerning the criteria and mode of awarding prizes of the President of the Council of Ministers and a motion to grant them (Journal of Laws, item 976, as amended).

⁵⁹ See § 11 subsections 2 and 3 of the Regulation of the Minister of National Education of 3 October 2019 concerning approval of textbooks (Journal of Laws, item 2013).

⁶⁰ See Article 9ca (3)(2) of the Act of 7 September 1991 on the system of education (Journal of Laws of 2021, item 1915, as amended).

- (3) inclusion of the PAU Library in the list of libraries possessing collections recognised as national library resources;⁶¹
- (4) recognition of PAU as an institution with which the Plenipotentiary of the Government for Development and Internationalisation of Education and Science may cooperate.⁶²

6. CONCLUSIONS

The findings presented in this paper allow for drawing conclusions concerning PAU's legal status and tasks. As far as the PAU status is concerned, it is worth pointing out that it is a legal person operating in the legal form of a (registered) association, and at the same time an organisation directly classified by the legislator as one belonging to the category of entities in the system of higher education and science. This classification is supported primarily by PAU's extraordinary achievements in the field of scientific activities and popularisation of their findings, along with its broad activeness, tradition and reputation in the scientific community, as noted by the legislator and reflected in numerous legal regulations. However, it is important to note that, unlike statutory regulations, PAU does not enjoy special systemic status among other associations; the Law on Associations does not lay down norms distinguishing the PAU, nor are there commonly binding regulations recognising PAU as a special kind of association.

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⁶¹ See Annex to Regulation of the Minister of Culture and National Heritage of 4 July 2012 concerning national library resources (Journal of Laws of 2021, item 1308).

⁶² See § 3 subsection 2 of the Regulation of the Council of Ministers of 27 April 2022 concerning the establishment of the Plenipotentiary of the Government for Development and Internationalisation of Education and Science (Journal of Laws, item 945).

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