

# CRITERION OF SIGNIFICANT CONTRIBUTION TO THE DEVELOPMENT OF A SPECIFIC DISCIPLINE IN HABILITATION PROCEEDINGS\*

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## ABSTRACT

This article is an original research paper concerning the interpretation of one of the prerequisites for conferring the academic degree of habilitated doctor in Poland, i.e. the prerequisite of making a significant contribution to the development of a specific scientific discipline. Starting from the statement of ambiguity of the provision formulating this prerequisite, the author indicates possible ways of understanding that provision, and then determines which interpretation, in the light of recognised methods of legal interpretation, should be regarded as appropriate. The aim of the research is to prove the main thesis that the aforementioned prerequisite, contrary to widespread practice, should be understood as meaning that the contribution to the development of the discipline must be made by the habilitation candidate's entire body of work, and not by the main work alone. In this respect, the author's findings are original in nature, as this view, although already presented to a limited extent in the literature, has not been substantiated in detail to date. The results of the research conducted may be of significant importance for the functioning of the system of scientific promotions in Poland, as they have the potential to modify the current practice of reviewers and bodies participating in habilitation proceedings.

Keywords: habilitation, review, body of work, habilitation proceedings, contribution to the development of the discipline

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1.

The grounds for awarding the postdoctoral degree (*doktor habilitowany*) are among the most important elements of the academic<sup>1</sup> promotion system in Poland. They define the conditions which, when fulfilled, attest to the attainment of a recognised position within the academic community and allow the holder to perform many prestigious functions in higher education<sup>2</sup> and, in exceptional cases, even outside it.<sup>3</sup> Their proper regulation is therefore crucial for the proper functioning of Polish science. Any shortcomings in this area may negatively affect its condition, especially by unjustifiably hindering the careers of some researchers.

Although, by its very nature, the issue of the grounds for awarding academic degrees may be of interest to the entire academic community in Poland, it is primarily a subject of research within the discipline of legal sciences. This is due to the fact that these grounds are legal norms and are applied in proceedings which are, in essence, administrative proceedings. For this reason, they are analysed in detail primarily in legal literature, although the results of this research are used in promotion proceedings regardless of the field and scientific discipline.<sup>4</sup>

The issue of the grounds for awarding academic degrees has already been the subject of interest among representatives of legal doctrine, including after the entry into force of the LHES, which introduced significant modifications in this area. This also applies to the prerequisite regulated in Article 219(1)(2) LHES, i.e. having in one's body of work scientific or artistic achievements that constitute a significant contribution to the development of a specific discipline. However, a review of the literature indicates that not all relevant issues concerning this prerequisite have been analysed in sufficient detail to date. This concerns in particular to the issue of the number of scientific achievements required to obtain the degree of and the extent

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<sup>1</sup> The postdoctoral degree is not only an academic degree, but also an artistic one. For the sake of simplicity, however, further comments will refer exclusively to academic promotions, which should, nevertheless, also be understood to include promotions in the arts. This will also allow for the necessary consideration of issues specific to the latter.

<sup>2</sup> However, it should be noted that the Act of 20 July 2018 – Law on Higher Education and Science (consolidated text: Journal of Laws of 2023, item 742, as amended; hereinafter referred to as the 'LHES') – compared to previous regulations – significantly limited the benefits of holding the postdoctoral degree. First of all, it is no longer necessary for employment as a university professor (formerly associate professor). Nonetheless, it is still generally required for employment as a professor at an institute in scientific units of the Polish Academy of Sciences, for the role of supervisor or reviewer in doctoral proceedings, and for the role of reviewer or other member of a habilitation committee, as well as for membership of the Council for Scientific Excellence, hereinafter referred to as the 'CSE'. Furthermore, in practice, habilitation often proves to be necessary for employment as a professor and for entrusting the most important organisational functions at a university.

<sup>3</sup> The postdoctoral degree in legal sciences allows one to hold even the most prominent legal positions without having to complete a traineeship and pass a professional examination, or have relevant practical experience. This allows one to conclude that, in legal sciences, the degree in question is not only academic in nature, but *de facto* also professional.

<sup>4</sup> See, for example, the review by E. Roszkowska of 24 January 2023, prepared in the proceedings for the award of the postdoctoral degree in the discipline of automation, electronics and electrical engineering to M. Czubenko, whose final conclusion was the result of applying the interpretation of the provisions proposed in the legal literature cited in that review.

to which the requirement of a significant contribution to the development of the discipline applies to them.<sup>5</sup> This issue has very important practical implications, as the final outcome of the habilitation procedure may in many cases depend on the correct interpretation of the indicated part of Article 219(1)(2) LHES.

In view of the above, the subject of this article is a dogmatic analysis of Article 219(1)(2) LHES to the extent necessary to define the framework for applying the criterion of significant contribution to the development of a specific discipline in habilitation proceedings. The main objective of this study is to prove the thesis that, contrary to widespread practice and some views presented in doctrine, the aforementioned criterion should currently be applied not merely to a single ('main') work or series, but jointly to all achievements presented. For this reason, other issues related to the awarding of the postdoctoral degree, including those directly related to the content of Article 219(1)(2) LHES, will remain outside the scope of detailed consideration.<sup>6</sup>

## 2.

The current prerequisites for awarding the postdoctoral degree are regulated primarily in Article 219(1) LHES. According to this provision, they include: holding the academic degree of doctor, having scientific or artistic achievements in one's body of work that constitute a significant contribution to the development of a specific discipline, as well as demonstrating significant scientific or artistic activity carried out in more than one university, scientific institution or cultural institution. There has been controversy in legal doctrine as to whether this list should be extended, at least in some cases, to include a separate prerequisite of a positive assessment of the habilitation colloquium.<sup>7</sup> Apart from this one exception, there are no grounds for seeking other conditions for awarding the postdoctoral degree. Nor does it seem reasonable to interpret Article 219(1) LHES creatively in a way that would allow for the discovery therein, as it were, of additional prerequisites not explicitly expressed by the legislator.<sup>8</sup>

Among the conditions listed in Article 219(1) LHES, particular attention should be paid to the requirement to make a significant contribution to the development of a specific scientific discipline. Already *prima facie*, it seems that this requirement is the most important in practice, as it best reflects the essence of habilitation.

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<sup>5</sup> This problem has been given particular attention essentially only in M. Gurdek, 'Liczba osiągnięć naukowych albo artystycznych, stanowiących znaczny wkład w rozwój określonej dyscypliny, konieczna do wykazania we wniosku habilitacyjnym', *Roczniki Administracji i Prawa*, 2022, Vol. XXII, No. 2, pp. 153 et seq. Nonetheless, the solution proposed therein seems unsatisfactory, as will be demonstrated later in this study.

<sup>6</sup> The subject of reflection will therefore not be, in particular, issues already sufficiently addressed in doctrine, such as the understanding of expressions such as 'a series of thematically related articles' or 'a significant contribution to the development of a particular discipline'.

<sup>7</sup> This view is presented in M. Radajewski, 'Nadawanie stopnia doktora habilitowanego w świetle Prawa o szkolnictwie wyższym i nauce', *Studia Prawno-Ekonomiczne*, 2020, Vol. 114, p. 91. It was, however, criticised in P. Pokorny, P. Waszkiewicz, in: Jakubowski A. (ed.), *Prawo o szkolnictwie wyższym i nauce. Komentarz*, Warszawa, 2023, Legalis, commentary on Article 221, point VI.3.

<sup>8</sup> We sometimes encounter this practice in real life, e.g. when reviewers do not evaluate the habilitation candidate's body of work from the point of view of statutory criteria, but rather on the basis of the generally understood criteria of scientific 'maturity' or 'independence'.

However, it has been formulated in a way that may raise serious interpretative doubts. The provision in question reads as follows:

‘The postdoctoral degree shall be awarded to a person who (...) has in their body of work scientific or artistic achievements constituting a significant contribution to the development of a specific discipline, including at least (...)’.

Then, in points (a)–(c), the legislator lists specific types of scientific achievements: a scientific monograph, a series of thematically related articles, or a realised original design, construction, technological or artistic achievement, at least one of which must be included in the habilitation portfolio. Nonetheless, this wording of Article 219(1)(2) LHES does not allow one to determine unambiguously how many scientific achievements must be presented in the habilitation procedure and, above all, whether a ‘significant contribution to the development of the discipline’ must be made independently by the main work alone, listed in Article 219(1)(2)(a)–(c) LHES, or also by at least one other achievement, or perhaps by all achievements combined.

The above interpretative dilemma may hypothetically be resolved in four basic ways, which can be summarised in the following statements:

- (1) To meet the criterion referred to in Article 219(1)(2) LHES, it is sufficient to present one scientific achievement, provided that it meets the conditions described in points (a)–(c) and makes a significant contribution to the development of the discipline.
- (2) In order to meet the criterion referred to in Article 219(1)(2) LHES, it is necessary to present at least two scientific achievements, including one referred to in points (a)–(c), and it is this achievement that must independently make a significant contribution to the development of the discipline.
- (3) In order to meet the criterion referred to in Article 219(1)(2) LHES, it is necessary to present at least two scientific achievements, including one referred to in points (a)–(c), with each of them separately making a significant contribution to the development of the discipline.
- (4) In order to meet the criterion referred to in Article 219(1)(2) LHES, it is necessary to present at least two scientific achievements, including at least one referred to in points (a)–(c), whereby they must contribute significantly to the development of the discipline jointly, and not necessarily independently.

3.

The first hypothesis, which essentially rests on the claim that the basic criterion for awarding the postdoctoral degree is making a significant contribution to the development of a given discipline through one main scientific achievement, although in practice it seems to be particularly popular among reviewers,<sup>9</sup> has the

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<sup>9</sup> The doctrine clearly supports this view; see for example: M. Pyter, in: Balicka A., Pyter M., Zięba B. (eds), *Prawo o szkolnictwie wyższym i nauce. Komentarz*, Warszawa, 2020, Legalis, commentary on Article 219(1); D.P. Kała, ‘Szczegółowe przesłanki nadania stopnia doktora habilitowanego’, *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 2022, Vol. 84, No. 3, pp. 41–43, and P. Grzebyk, ‘Warunki uzyskania stopnia doktora habilitowanego w dyscyplinie nauk prawnych’,

weakest basis in the text of the statute itself. Article 219(1)(2) LHES clearly refers to scientific 'achievements' in the plural. Proponents of this position usually refer to purposive interpretation, assuming that a literal interpretation would be too rigorous in this case.<sup>10</sup> Yet, this argument is easily refuted. This is because a literal interpretation of the phrase 'scientific achievements' does not necessarily require each of these achievements to be of a qualified nature, i.e. to take the form of one of the achievements referred to in Article 219(1)(2)(a)–(c) LHES, or to contribute independently and substantially to the development of a specific discipline. Given this assumption, it does not seem that linguistic interpretation of the phrase in question would produce unreasonable or even unsatisfactory results, and therefore that it would be justified to give priority to purposive interpretation in this case.

Supporters of this position also refer to legal solutions regulating the previous prerequisites for awarding the postdoctoral degree, i.e. the provisions of Article 16 of the Act of 14 March 2003 on Academic Degrees and Titles and on Degrees and Titles in the Field of Art,<sup>11</sup> as amended on 18 March 2011.<sup>12</sup> Paragraph 1 of this provision stipulated that the basis for awarding the degree could be having scientific achievements obtained after receiving the degree of doctor, constituting a significant contribution by the author to the development of a specific discipline, while paragraph 2 clearly indicated that the achievement referred to in paragraph 1 could only be: a work published in its entirety or in substantial part, or a series of thematically related publications, a realised original design, construction, technological or artistic achievement, or part of a collective work. Due to the ambiguous wording of the indicated provision, with paragraph 1 referring to 'achievements' in the plural and paragraph 2 referring to 'achievement' in the singular, there was doubt as to whether a significant contribution to the development of the discipline had to be made by the main work itself as such or whether the habilitation candidate had to demonstrate at least two qualified achievements referred to in Article 16(2) AAD, i.e. two postdoctoral monographs, for example.<sup>13</sup> In practice, mainly due to purposive interpretation, the first of the above options was adopted.

The above findings indicate that, with regard to the understanding of the prerequisite of having achievements that constitute a significant contribution to the development of a specific discipline, there is insufficient analogy between the current and previous regulations. In particular, Article 219(1)(2) LHES does not contain

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*Państwo i Prawo*, 2022, No. 5, p. 74. However, only in the latter case was a broader argument presented in its favour. In the case of the second of the above-mentioned publications, there is a certain inconsistency – its author consistently refers to a single achievement constituting a significant contribution to the development of the discipline, but this does not prevent him from approvingly referring to the view that: 'the "significance of the contribution" should be assessed in terms of the quantity and quality of the body of work' (p. 41). If this qualified achievement must independently constitute a significant contribution to the development of the discipline, the quantity and quality of the remaining body of work should not be relevant when assessing the criterion in question.

<sup>10</sup> See P. Grzebyk, 'Warunki uzyskania...', op. cit., p. 74.

<sup>11</sup> Consolidated text: Journal of Laws of 2017, item 1789; hereinafter referred to as the 'AAD'.

<sup>12</sup> Journal of Laws No. 84, item 455. See P. Grzebyk, 'Warunki uzyskania...', op. cit., p. 74.

<sup>13</sup> See K. Ślebza, 'Jednotematyczny cykl publikacji jako przesłanka nadawania stopnia doktora habilitowanego nauk prawnych', *Państwo i Prawo*, 2013, No. 7, pp. 32–33.

the inconsistency characteristic of Article 16 AAD in the number used for the noun 'achievement', which was the basis for giving priority to purposive interpretation with regard to the latter provision. In this context, it is worth adding that during the work on the LHES, the interpretative problems related to Article 16 AAD must have been known, which is indirectly confirmed by the different and, this time, consistent wording of Article 219(1)(2) LHES. It does not seem reasonable, therefore, to interpret both of these provisions on the basis of the same assumptions. It should also be assumed that if the legislator had intended to maintain the previous normative *status quo* in this regard, it would at most have removed the previous ambiguity from the relevant provision. However, Article 219(1)(2) LHES was in practice drafted anew, leaving only the basic terms used in Article 16 AAD, such as 'achievements' and 'significant contribution to the development of a specific discipline'.

Indirectly, the removal in the current law of the requirement that achievements which are to contribute significantly to the development of the discipline must be obtained after the award of the degree of doctor also argues against drawing analogies between the above-mentioned provisions. This modification, made by the legislator with full awareness,<sup>14</sup> seems to interfere significantly with the purpose of the prerequisite in question, and therefore must also affect the functional interpretation of the provision formulating that prerequisite. Whereas under the previous legal regime the emphasis could be placed on one particular achievement obtained after the doctorate, now – anticipating further considerations – the legislator seems rather to require a broad view of the habilitation candidate's overall achievements. Thus, the purposive interpretation of Article 219(1)(2) LHES, instead of confirming the need to interpret this provision analogously to Article 16 AAD, seems rather to provide additional arguments against such an analogy.<sup>15</sup>

#### 4.

The second of the hypotheses presented above is essentially an attempt to reconcile the first hypothesis with the unambiguous wording of the statute, which in Article 219(1)(2) LHES uses the term 'achievements' in the plural. It therefore amounts to recognising that, under the criterion described in this provision, the habilitation candidate submits at least two scientific achievements for evaluation, including one qualified ('main') achievement, and it is this achievement that must independently meet the condition of making a significant contribution to the development of the discipline. Although this position is *prima facie* free from the most significant flaw of the first hypothesis, namely an unjustified departure from literal interpretation, it should also be considered unconvincing. In essence, it is *de facto* equivalent to the first hypothesis. It is difficult to imagine that a candidate for the postdoctoral degree would

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<sup>14</sup> See the explanatory memorandum to the draft Act – Law on Higher Education, Sejm print No. 2446, p. 50, Sejm of the 8th term.

<sup>15</sup> It is worth adding here that it remains uncertain whether the practice of applying Article 16(1) and (2) AAD after 2011, referred to by supporters of the hypothesis in question, was correct and accurately reflected the intentions of the legislator, as will be discussed in more detail later in this paper.

have no scientific achievement other than the main work itself.<sup>16</sup> It also does not seem that such a quantitatively modest body of work, even in extraordinary circumstances, would allow one to conclude that the criterion of demonstrating significant scientific activity by the habilitation candidate has been met. The hypothesis in question would therefore imply that the requirement to have scientific ‘achievements’, rather than an ‘achievement’, would be a superfluous requirement. It seems, moreover, that if the thesis in question were true, the legislator would have constructed Article 219(1)(2) LHES differently, i.e. by moving the phrase ‘constituting a significant contribution to the development of a specific discipline’ to the end of the provision, to a separate line, after the list in points (a)–(c), so that this requirement would clearly refer only to qualified achievements. Only such a solution would allow one to assume that the quoted phrase refers to the listed points and only to them.<sup>17</sup> This is confirmed by the fact that the legislator used the plural form not only in relation to the noun ‘achievements’ but also in relation to the adjective ‘constituting’, which determines that the legislator applies the criterion of a significant contribution to the development of the discipline to more than one achievement.

5.

As already indicated, the third interpretation of Article 219(1)(2) LHES can be reduced to the hypothesis that, in order for the habilitation procedure to be successfully completed, the candidate for the degree must present at least two scientific achievements, including one qualified achievement, each of which must separately meet the criterion of a significant contribution to the development of a specific discipline. Importantly, this position has been clearly expressed in the literature on the subject.<sup>18</sup>

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<sup>16</sup> In principle, this is even impossible, because Article 186(1)(3) LHES stipulates that the prerequisite for obtaining a doctoral degree, the holding of which is a condition for obtaining habilitation, is the publication of at least one scientific article or monograph, or the authorship of an artistic work of significant importance. Hypothetically, a situation in which a habilitation candidate has only one achievement in their body of work could occur only if the aforementioned monograph or artistic work also qualified as a doctoral dissertation and was then presented in the habilitation procedure as an achievement referred to in Article 219(1)(2)(a)–(c) LHES. Such a situation seems unlikely in practice and is rightly considered unacceptable by some representatives of doctrine – see Ł. Kierznowski, *Stopnie naukowe i stopnie w zakresie sztuki. Komentarz*, Warszawa, 2021, p. 132.

<sup>17</sup> Cf. G. Wierczyński, *Redagowanie i ogłaszanie aktów normatywnych. Komentarz*, Warszawa, 2016, pp. 378–379.

<sup>18</sup> See, for example, M. Gurdek, ‘Liczba osiągnięć...’, op. cit., pp. 153 et seq. According to this author, some other representatives of doctrine are also likely to support this interpretation, pp. 157–159. This observation seems to be justified at least in relation to K. Ślebzak, ‘Komentarz do art. 219 ustawy – Prawo o szkolnictwie wyższym i nauce’, in: Baran K.W. (ed.), *Akademickie prawo zatrudnienia. Komentarz*, Warszawa, 2020, LEX. Although the author does not indicate this explicitly, when discussing the requirement to have achievements other than those referred to in Article 219(1)(2)(a)–(c) LHES, he refers to them separately as a criterion of significant contribution to the development of the discipline: ‘In cases where the scientific level of a doctoral dissertation can be considered a significant contribution to the development of a given scientific discipline, it may also be assessed in the procedure for awarding the postdoctoral degree. Nevertheless, it should be emphasised that a doctoral dissertation alone cannot be the basis for awarding the postdoctoral degree, as Article 219(1)(2) LHES refers to scientific (artistic) “achievements”. Therefore, in addition to the doctoral dissertation, there must also be other

According to the proponents of this view, there are a number of arguments in its favour. The first of these is said to be the literal interpretation of Article 219(1)(2) LHES.<sup>19</sup> Undoubtedly, it must be agreed that this provision refers to 'achievements' that constitute a significant contribution to the development of a specific discipline, and therefore that there must be more than one such achievement. However, in no case does literal interpretation alone allow one to conclude that the aforementioned criterion of influence on the development of science must be met by them separately, rather than jointly. The legislator did not use any linguistic construction in the provision in question that would clearly resolve this doubt. Therefore, while resort to literal interpretation allows one to reject the hypothesis that having one scientific achievement in one's body of work is sufficient, the correctness of the analysed position requires reference to other types of interpretation that will allow one to determine how – separately or jointly – the achievements submitted for evaluation should contribute significantly to the development of a specific discipline.

Some authors argue that historical interpretation also supports the validity of this thesis. It would indicate a close connection between Article 219(1)(2) LHES and the previously applicable Article 16(1) and (2) AAD, in the wording discussed above after the 2011 amendment. This connection should be seen, as it were, in contrast to the previously applicable regulations, in particular the original wording of Article 16 AAD, which provided that the prerequisites for admission to the habilitation procedure were, in addition to holding the degree of doctor, obtaining substantial scientific or artistic achievements and presenting a habilitation thesis. In accordance with the then Article 17(1) and (2) AAD, such a thesis could be a work or a series of publications on a single topic that made a significant contribution to the development of a specific discipline.<sup>20</sup> It followed unequivocally from the content of this provision that the indicated contribution prerequisite had to be met independently through one main scientific achievement, while other elements of the candidate's body of work were not assessed in this respect at all. There can therefore be no doubt that the conditions for awarding the postdoctoral degree provided for in the amended text of the AAD and in the LHES are different. Even so, this does not mean that the legislator, by extending the application of the criterion of influence on the development of the discipline to scientific achievements other than the equivalent of the former habilitation thesis, decided that it should now be applied to at least two achievements assessed as it were separately from each other. Such a measure would in fact mean a radical tightening, a kind of doubling, of the requirements necessary to obtain the postdoctoral degree compared to the original content of Article 16 AAD. However, this does not seem to have been its intention. This is not indicated by the course of work on the 2011 amendment to the AAD or on the LHES. On the contrary, the explanatory memorandum to the draft of the first of these acts indicated that the amendment to Article 16 AAD was intended to 'focus on the assessment of the candidate's scientific

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achievements that demonstrate a significant contribution to the development of a specific discipline. Theoretically, these may also be publications included in the doctoral procedure (...), but they must additionally meet the criterion of a significant contribution' (LEX version, point 2).

<sup>19</sup> See M. Gurdek, 'Liczba osiągnięć...', *op. cit.*, pp. 156–157.

<sup>20</sup> *Ibidem*, pp. 159–165.

achievements' and to depart from 'the obligation to present a habilitation thesis in its current form'.<sup>21</sup> It is therefore justified to claim that the modification of the conditions for awarding the postdoctoral degree in 2011 was not intended to tighten them significantly, but to ensure that the proceedings examine the impact of the habilitation candidate's entire body of work on the development of the discipline, that is, 'achievements' in the plural, rather than just a single habilitation thesis.<sup>22</sup> In this context, the current wording of Article 219(1)(2) LHES should be seen rather as a continuation of this postulate, while at the same time eliminating the shortcomings of Article 16(1) and (2) of the AAD discussed above. This leads to the conclusion that historical interpretation does not provide sufficient arguments for accepting the thesis in question; on the contrary, it allows the current regulations to be regarded as the result of an evolution towards a more comprehensive assessment of the entire scientific activity of candidates for the degree, rather than only its individual, 'point' manifestations, as was previously the case.

Supporters of the analysed view also cite the normative context in which the regulations governing habilitation currently operate. They point out, among other things, that obtaining habilitation is currently in principle not an essential stage in the career of a researcher, which allows for greater emphasis on the role of persons holding a postdoctoral degree in staff development, i.e. participating with a decisive voice in proceedings for awarding academic degrees. This, in turn, would correspond to an increase in the requirements imposed on them, so that only persons with very high scientific qualifications could act as reviewers and supervisors.<sup>23</sup> However, this argument also raises serious doubts. The right to perform important functions in promotion proceedings was a privilege of persons holding a postdoctoral degree regulated also in the previously applicable laws. The legislator provided that qualifications in this area were to be certified by demonstrating a significant contribution to the development of the discipline. This solution was based on the valid assumption that a person who has themselves made a significant contribution to the development of science has, at least at a minimum level, the competence to supervise and evaluate the scientific work of others. From this point of view, it does not seem relevant whether a given scientist made this contribution once or twice, which would *de facto* amount to a requirement to have

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<sup>21</sup> Draft Act amending the Law on Higher Education, the Act on Academic Degrees and Titles, and Degrees and Titles in the Field of Art, and amending Certain Other Acts, Sejm print No. 3391, Sejm of the 6th term, p. 9.

<sup>22</sup> Although, as already mentioned, this has not been confirmed in practice, it seems that, on the basis of the amended Article 16(1) and (2) AAD, it was necessary to examine the impact of all the achievements submitted for evaluation on the development of the discipline. This resulted from the fact that Article 16(2), defining the achievement referred to in paragraph 1, was not formulated categorically, i.e. in a way that excluded achievements other than those described therein; the legislator used the phrase 'may constitute' rather than 'must constitute' or 'may only constitute'. The interpretation that would best harmonise paragraphs 1 and 2 of the provision being analysed would therefore involve assessing all achievements from the point of view of their impact on the development of the discipline; this would avoid the need to depart from the literal interpretation of paragraph 1, which referred to 'achievements (...) constituting a significant contribution', with the proviso that there must be at least one achievement referred to in paragraph 2, equivalent to a habilitation thesis.

<sup>23</sup> See M. Gurdek, 'Liczba osiągnięć...', *op. cit.*, pp. 165–167.

at least two achievements in one's body of work, each of which independently made such a contribution. This allows one to assume that, even under the current law, there are no grounds for claiming that the criterion of contribution to the development of the discipline must be met as it were multiple times. It should also be remembered that the legislator does not limit the rights of persons who obtained the postdoctoral degree under previously applicable regulations in this respect. This further confirms that it is not possible to infer a tightening of the criteria for obtaining the academic postdoctoral degree from the mere fact that its formal significance is currently reduced primarily to the possibility of performing key functions in promotion proceedings. On the contrary, it allows one to assume that, from this point of view, these criteria have undergone at most insignificant modifications, which should also affect the interpretation of the currently applicable regulations.

The last argument that is said to support the hypothesis under discussion is the legislator's use, also in other provisions of the LHES governing habilitation proceedings, i.e. in Article 220(2)(2) and Article 221(8) LHES, of the term 'scientific achievements' in the plural.<sup>24</sup> Although this observation is correct and, as such, may serve to reject the thesis that only one (main) scientific achievement should be assessed in the course of these proceedings, it certainly does not determine whether the achievements presented by the habilitation candidate must meet the criterion of significant impact individually or collectively.

6.

The above considerations indicate that also the view that the condition for obtaining the postdoctoral degree is to have at least two achievements, including one qualified achievement, in one's body of work, with each achievement separately contributing significantly to the development of a specific discipline, is not sufficiently justified. The arguments in favour of this view are partly misplaced and, in the remaining scope, at least inconclusive. In this context, particular attention should therefore be paid to the fourth of the above-mentioned hypotheses, the essence of which is that the condition for obtaining habilitation, referred to in Article 219(1)(2) LHES, should be understood as meaning that it is sufficient to present at least two scientific achievements, including at least one referred to in points (a)–(c), provided that they contribute significantly to the development of the discipline jointly, and not necessarily independently. It should be emphasised that this view is also presented in doctrine,<sup>25</sup> although it has not yet been justified in greater detail, especially in

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<sup>24</sup> Ibidem, pp. 167–168.

<sup>25</sup> See, for example, P. Pokorný, P. Waszkiewicz, in: Jakubowski A. (ed.), *Prawo o szkolnictwie...*, op. cit., Legalis, commentary on Article 219, point II.2. In the context of the criterion in question, these authors refer to the body of work that is subject to assessment and must meet certain quantitative and qualitative conditions. This interpretation seems to be confirmed also in Ł. Kierznowski, *Stopnie naukowe...*, op. cit., p. 226. The author points out that: 'However, it is not the quantity but the quality of achievements that is of key importance here, because regardless of their number, they must constitute a "significant contribution to the development of a specific discipline". It is not impossible to fulfil this prerequisite even with a small number of very significant achievements (...)' . The overall assessment of the body of work, rather than individual achievements, is also discussed in M. Radajewski, 'Nadawanie stopnia...', op. cit., pp. 85–88.

the context of interpretative doubts arising from the ambiguous wording of the above-mentioned provision.

In order to prove the validity of the thesis in question, it should first be clearly emphasised that, with regard to the criterion laid down in Article 219(1)(2) LHES, the assessment of achievements, at least two, is provided for, rather than the assessment of a single qualified scientific achievement. This is supported by the arguments already mentioned above, i.e. both the literal interpretation of the provision in question and its context, which consists of other regulations that also refer to 'achievements' in the plural. It is also worth noting that in Article 219(1) LHES, unlike under the AAD, the legislator did not provide that the basis for awarding the postdoctoral degree could consist solely of achievements obtained after the award of the doctoral degree. Thus, achievements obtained at every stage of the habilitation candidate's academic career are subject to assessment in terms of meeting the criterion of a significant contribution to the development of the discipline. For this change to make rational sense, it must be assumed that the 'achievements' referred to in Article 219(1) LHES are all scientific achievements, and not only the qualified achievements listed in Article 219(1)(2)(a)–(c) LHES. It would be difficult to expect habilitation candidates to obtain their main habilitation achievements before obtaining their doctorate, and even if this could happen in exceptional cases, there is no reason to believe that the amendment in question was made solely because of them.

Having demonstrated that the condition for awarding the postdoctoral degree referred to in Article 219(1)(2) LHES includes the assessment of not one but at least two scientific achievements, it is necessary to determine whether they can meet the criterion of significant contribution jointly or only independently. This is what distinguishes the hypothesis in question from the previous one. Since this dilemma cannot be resolved on the basis of linguistic analysis alone, due to the ambiguity of the wording of the provision in question, it is necessary, in accordance with generally accepted rules of legal interpretation, to resort to historical and purposive interpretation.

In the context of the first of the above-mentioned types of interpretation, it should be recalled that a key change in the criterion in question took place in 2011. It was then that the legislator abandoned the prerequisite of demonstrating a significant impact on the development of science through the habilitation thesis itself, in favour of demonstrating such an impact through 'scientific achievements'. This change, as already mentioned, was made deliberately and was intended by the authors of this solution to lead to a broader assessment of elements of the habilitation candidate's body of work other than the habilitation thesis alone, which was perceived, as it were, as separate from the rest. This effect was essentially not achieved due to the poor legislative quality of the amended Article 16(1) and (2) AAD. The ambiguity of the terms used therein and their mutual relations led in practice to the maintenance of the existing method of evaluating habilitation candidates and, *de facto*, to the continued treatment of the main scientific achievement as a habilitation thesis, which had to make a significant contribution to the development of a specific discipline on its own.

Against this background, it seems that the current statutory regulation should not be treated as an endorsement of established practice, which in fact significantly undermines the attempt to reform the criteria for awarding the postdoctoral degree

in 2011, but on the contrary – as an affirmation of the validity of this reform and its improvement by removing the ambiguities in the statutory provisions that have existed to date. There are, nevertheless, no grounds for claiming that the legislator's current objective is to further modify the prerequisites for habilitation significantly by creating a requirement to present *de facto* two equivalents of the former habilitation thesis, at least in terms of their contribution to the development of the discipline. Such a far-reaching tightening of the criteria would have to either result *explicite* from the content of the provisions or at least find clear confirmation in the work on the law, within the framework of which such an objective would have been clearly articulated. However, nothing of this kind took place.

Nonetheless, apart from historical interpretation, this hypothesis is supported primarily by functional interpretation of Article 219(1)(2) LHES. The purpose of this provision is to emphasise clearly that the postdoctoral degree may be awarded only to a person who has made a significant contribution to science, namely to the development of a specific discipline. This is evidence of such a person's high standing in the scientific community and of the noticeable impact of their thinking on the research of others. From this point of view, it seems irrelevant in what form, i.e. by what means or forms of participation in scientific discourse, such a contribution was achieved. It would be difficult to justify the view that the described effect could differ significantly depending on whether it was achieved through a specific publication, or a series of publications, or through an entire, extensive body of work. There are therefore no grounds for claiming that the legislator, by making the award of the postdoctoral degree conditional on a significant contribution to the development of the discipline, simultaneously recognised that persons who have made such a contribution through their entire body of work, rather than through two independently assessed scientific achievements, do not deserve this degree. From this point of view, it seems that the formulation of additional conditions for the habilitation candidate's body of work, other than that it makes a significant contribution to the development of the discipline, especially with regard to its structure, may be based only on an explicit statutory provision. Under the current regulations, the only condition of this kind is the requirement the body of work include one qualified achievement, i.e. one that meets the criteria described in Article 219(1)(2)(a)–(c) LHES. There are therefore no grounds for claiming that a habilitation candidate is required to submit for assessment at least two scientific achievements contributing to the development of the discipline independently of each other.

Purposive interpretation also contradicts the thesis that, in order to obtain the postdoctoral degree, it is necessary to make a significant contribution to the development of the discipline twice, 'doubly', which is a necessary implication of the view that it is necessary to have at least two achievements in one's body of work that independently meet this criterion. From the perspective of the habilitation procedure objectives, a candidate for the degree need not to demonstrate twice the ability to obtain an achievement making a significant contribution to science. Since it is precisely this contribution that is decisive, it should not matter how many times it has been made. This is not justified by the important role entrusted to persons holding postdoctoral degree in the academic promotion of other persons; in order to act as a supervisor or reviewer in proceedings for the award of doctoral

or postdoctoral degree, it is entirely sufficient simply to demonstrate a significant contribution to the development of the discipline. An even broader impact on the advancement of science may be expected at most from persons with the academic title of professor, which is reflected in the content of Article 227(1)(1)(a) LHES, which requires candidates for this title to have outstanding scientific achievements.

It should be emphasised here that the interpretation according to which all of the habilitation candidate's achievements are assessed collectively in terms of their contribution to the development of the discipline is also supported by at least one systemic argument, resulting from the content of Article 224(2) LHES. This provision stipulates that the waiting period preventing the submission of a new application for habilitation proceedings may be shortened in the event of a significant increase in the body of work. If, in the course of such proceedings, only specific, usually only two, distinguished elements of the habilitation candidate's body of work were assessed, such a rule would not make much sense. Its purpose is undoubtedly to enable a person who has already begun to meet the requirements for obtaining the postdoctoral degree to apply for it without delay. This confirms that the legislator equates the conditions for awarding the aforementioned degree with a positive assessment not of specific scientific achievements considered separately, but of the body of work, understood as a whole.

At the same time, it does not seem that the content of Article 219(1)(2) LHES, which in a sense distinguishes between 'body of work' and 'scientific achievements (...) constituting a significant contribution to the development of a specific discipline', argues against the interpretation in question. The wording of this provision suggests that the latter form part of the former and, therefore, that only part of the body of work is subject to assessment in terms of its impact on the development of the discipline. This could lead to the conclusion that, from this point of view, only specific achievements, treated independently of one another, are subject to assessment. However, such a conclusion would be too hasty. First of all, it should be noted that it is not possible to have scientific achievements other than 'in one's body of work'; the principles of formal logic exclude the existence of achievements 'outside one's body of work'. The normative nature of this phrase can therefore consist solely in emphasising certain issues, which should be useful for reconstructing the norms resulting from the provision in which it is included. Undoubtedly, in the context of interpretative dilemmas related to Article 219(1)(2) LHES, the phrase 'in the body of work' additionally emphasises the need for a comprehensive assessment of achievements. It therefore seems that the legislator has thus indicated that it is the entire submitted body of work, i.e. the sum of achievements, and not achievements understood independently, that is subject to assessment in the habilitation procedure. The reference to the concept of 'body of work' also emphasises the continuity of the habilitation candidate's work and the entirety of their intellectual effort, which results from the fact that the accumulation of achievements is a long and laborious process. This also seems to emphasise that the assessment in the habilitation procedure – from the point of view of contribution to the development of a specific discipline – should cover the candidate's entire work to date, and not just selected aspects of it. It seems that the term 'body of work' also refers to the multifaceted nature of scientific work, which further emphasises the need to focus on the diversity of its manifestations. In the context of the interpretative dilemma under analysis, this

undoubtedly provides additional arguments for the need to carry out a comprehensive assessment of all the scientific achievements presented jointly.

It seems that the above findings are also confirmed by the aforementioned Article 224(2) LHES, in which the legislator explicitly makes 'body of work' – and not 'achievements' – a concept of key importance for initiating habilitation proceedings. It is also worth noting here the content of the aforementioned Article 227(1)(1)(a) LHES, which regulates the prerequisites for awarding the academic title of professor. One of these prerequisites – and the most important one – is having outstanding scientific or artistic achievements. Importantly, in this case, the legislator did not use the phrase 'in the body of work'. Such different wording of Article 227(1)(1)(a) and Article 219(1)(2) LHES, in accordance with the principle of the rationality of the legislator, cannot be considered accidental. It must therefore be assumed that different norms are laid down in these two provisions. Therefore, while the academic title of professor may be awarded solely on the basis of an assessment of selected individual scientific achievements, each of which must independently meet a specific criterion, namely excellence, in the case of awarding the postdoctoral degree, the entire body of work is crucial, and therefore achievements are treated as a certain whole, characterised by diversity and representing the result of the entire career to date.

It should be emphasised here that the presented interpretation of Article 219(1)(2) LHES has been partially accepted in practice. This concerned in particular reviews prepared in proceedings in which the habilitation candidate's main work itself raised certain controversies. As an example, one may refer to an excerpt from a review by L. Wilk, in which he points out:

'Currently, Article 219(1)(2a) of the Law on Higher Education and Science stipulates that the postdoctoral degree is awarded to a person who "has in their body of work scientific achievements (...) which constitute a significant contribution to the development of a specific discipline, including at least one scientific monograph" published by a relevant publisher. This literally means that at least one item in the scientific body of work must be a monograph published by a relevant (renowned) publishing house, but it does not mean that this monograph should constitute a "significant contribution to the development of the discipline", as all scientific achievements are assessed in this respect'.<sup>26</sup>

This thesis was also confirmed by the position of the Academy of Young Scholars of the Polish Academy of Sciences (Akademia Młodych Uczonych PAN) of 15 July 2022 on the habilitation procedure.<sup>27</sup> In this document, addressed, among others, to the CSE, point IV clearly states that: 'The CSE guidelines should indicate in an unambiguous manner that the entire body of work of the habilitation candidate is subject to evaluation, and not just one monograph or one series of articles.' At the same time, it should already be emphasised here that the discussed interpretation

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<sup>26</sup> L. Wilk, *Recenzja osiągnięć naukowych Pani Dr Magdaleny Ickiewicz-Sawickiej ubiegającej się o stopień doktora habilitowanego nauk prawnych*, Cieszyn, 2021; [https://wpia.uwm.edu.pl/sites/default/files/u12/prof.\\_l.\\_wilk\\_rec.\\_m.\\_ickiewicz-sawickiej-skompresowany.pdf](https://wpia.uwm.edu.pl/sites/default/files/u12/prof._l._wilk_rec._m._ickiewicz-sawickiej-skompresowany.pdf) (accessed: 22 October 2024), pp. 3–4.

<sup>27</sup> Akademia Młodych Uczonych PAN, *Stanowisko Akademii Młodych Uczonych PAN ws. procedury habilitacyjnej*, Warszawa, 2022; [https://amu.pan.pl/wp-content/uploads/2022/07/2022\\_AMU\\_stanowisko-ws-habilitacji.pdf](https://amu.pan.pl/wp-content/uploads/2022/07/2022_AMU_stanowisko-ws-habilitacji.pdf) (accessed: 22 October 2024).

of Article 219(1)(2) LHES has not yet been clearly confirmed in the case law of the CSE or administrative courts, as will be discussed further below.

It is also worth noting that practical arguments can be made against this thesis, concerning the risk of lowering the level of habilitation. Indeed, awarding the postdoctoral degree to a person whose main work does not independently make a significant contribution to the development of a given discipline may raise doubts. However, these do not seem to be decisive. Firstly, this is because within the habilitation procedure, assessment is made of the very fact that the achievement indicated by the habilitation candidate as the main one meets the criteria referred to in Article 219(1)(2)(a)–(c) LHES. This means that it is permissible within that procedure to examine whether, for example, a given book, even if published by a relevant publisher, meets the criteria of a ‘scientific monograph’ and, therefore, whether it qualifies as an original and creative presentation of a scientific issue.<sup>28</sup> Secondly, the assumption that, under the current regulations, the criterion of significant influence on the development of a discipline must be met by the entire body of work, and not just by a single work, allows for a more rigorous understanding, and one more consistent with its literal meaning, than has been adopted to date. This should largely eliminate the risks associated with the above interpretation of Article 219(1)(2) LHES.

Finally, it should be remembered that the mere allegation that a given interpretation will lead to adverse practical effects is an *argumentum ad consequentiam* and, as it is non-substantive, cannot be used in academic discussion.<sup>29</sup> It should be addressed to the legislator, not to the interpreter of the law. The role of the latter is solely to interpret the content of norms in a formally correct manner, even if this process leads to a result that is unsatisfactory from a practical point of view. Moreover, the interpreter should not even be expected to take such issues into account if they do not result from generally accepted rules of interpretation,<sup>30</sup> as only a reliable and objective reconstruction of legal norms can represent a starting point for a public debate on the possible harmfulness of the adopted solutions.

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<sup>28</sup> See § 10(1)(1) of the Regulation of the Minister of Science and Higher Education of 22 February 2019 on the Evaluation of Scientific Activity (consolidated text: Journal of Laws of 2022, item 661). According to paragraph 2 of this provision, certain other book publications, such as translations of works significant for science or culture, as well as critical scholarly editions of source texts, may also be considered monographs.

<sup>29</sup> An argument of this type is admissible only in pragmatic discussions. In theoretical discourses, such as the determination of the content of a legal norm within the framework of legal dogmatics, it is currently rejected as a so-called informal fallacy – see D. Walton, ‘Historical Origins of *Argumentum ad Consequentiam*’, *Argumentation*, 1999, Vol. 13, No. 3, pp. 251–252, 259–260.

<sup>30</sup> *Argumentum ad consequentiam* should not be confused with purposive interpretation of provisions. Under such interpretation, it is possible to take into account the practical effects of a given interpretation, but only to the extent that it is relevant to the correctly reconstructed purpose of a given regulation. Applying this type of interpretation, a particular understanding of a given provision may therefore be rejected only if it is established that the effects of such an understanding would be contrary to the objective pursued by the legislator. This is not the case with the issue at hand. As has already been demonstrated, it appears that the purpose of the regulation in question was precisely to assess the entire body of work of the habilitation candidate. Any negative effects of such an approach do not therefore fall within the scope of purposive interpretation, but can at most be an argument in favour of amending the law and adopting a different objective by the legislator.

7.

The finding that the legislator requires candidates for the postdoctoral degree to have in their body of work at least two scientific achievements, including one qualified achievement, which, taken together – and not necessarily independently – make a significant contribution to the development of a given discipline, has very important implications for the practice of conducting habilitation proceedings. In this context, it should first be pointed out that, pursuant to Article 221(8) LHES, the task of reviewers in such proceedings is to assess whether the scientific achievements of the habilitation candidate meet the criteria set out in Article 219(1)(2) LHES and, therefore, whether, as a whole, they make a significant contribution to the development of science. The reviewer cannot therefore limit themselves to assessing the main achievement alone, in particular if the assessment is to be negative.<sup>31</sup> They are obliged to evaluate the entire body of work presented by the habilitation candidate against the criterion of contribution to the development of a specific discipline. Reviews that do not meet this condition violate the law. This is particularly important in the context of Article 221(10) and (12) LHES, which determine that two negative reviews result in the need to refuse to award the degree.<sup>32</sup> Any formal defects in them may therefore qualify as grounds for revoking the resolution refusing to award the degree and for repeating a significant part of the habilitation procedure.

The above comments should be applied accordingly to the resolution of the habilitation committee and to the decision concluding the proceedings. In each of these acts, an analysis should be made of the entire body of work presented by the habilitation candidate and an assessment should be made of whether it meets the statutory criteria. Failure to comply with this requirement, in particular by limiting the assessment to the main achievement, results in their defectiveness, having a significant impact on the outcome of the proceedings, which should result in their annulment in the course of review by a higher instance.

In this context, however, it cannot be overlooked that one will search in vain in the CSE's case law to date for traces of clear approval of the above interpretation of Article 219(1)(2) LHES. This is despite the fact that it has already examined cases in which the decision to refuse to award a degree resulted primarily from the fact that at least two negative reviews had been prepared during the proceedings, at least one of which was limited solely to a critical assessment of the main work and not of the entire body of work. In those cases, the CSE did not consider this to be a ground for revoking the resolution refusing to award the degree.<sup>33</sup> This means that it does not share the interpretation of Article 219(1)(2) LHES proposed in this article, although

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<sup>31</sup> In the case of a positive review, this conclusion is less categorical. It can be assumed that a statement that a given qualified achievement makes a significant contribution to the development of the discipline implies that the collection to which it belongs, and therefore the entire body of work, also possesses this value. This does not mean, however, that a reviewer who gives a positive assessment of the main work can freely omit the analysis of the candidate's other achievements, as the law requires them to assess 'scientific achievements' in the plural.

<sup>32</sup> For legitimate doubts about this mechanism, see, for example, M. Bogusz, M. Miłosz, 'Konstrukcja związania negatywnymi recenzjami w nowym postępowaniu doktorskim i habilitacyjnym', *Państwo i Prawo*, 2022, No. 5, pp. 88 et seq.

<sup>33</sup> See, for example, CSE decision No. Z5.410.3.2022 of 26 September 2022.

it is unclear which of the other hypotheses explaining the normative meaning of this provision it approves in this case.<sup>34</sup> It is also worth noting that the issue in question has not yet been the subject of judicial statements by administrative courts.

8.

The above considerations allow one to formulate the most important final conclusions. The first of these consists in a critical assessment of the wording of Article 219(1)(2) LHES, which gives rise to serious interpretative disputes. This phenomenon is all the more problematic given that the previous statutory regulation concerning the prerequisites for awarding the postdoctoral degree was also characterised by a similar lack of precision. Yet, the legislator has once again ignored this problem, which is all the more incomprehensible as the provision in question was not transferred from the previously applicable act, but *de facto* created anew. It is also worth bearing in mind that precision in the drafting of provisions is particularly important in this matter, as it seems that only this allows for an effective departure from established academic practices that are contrary to the actual intentions of the legislator.

Despite the flawed wording of Article 219(1)(2) LHES, it has been demonstrated above that the rules and methods of interpretation commonly used in jurisprudence allow for the conclusion that this provision should be interpreted in such a way as to require that the entire body of work presented by the habilitation candidate be assessed in terms of its contribution to the development of science, and not only their main achievement. The current statutory solutions are therefore part of the process of changing the meaning of habilitation, which began in 2011 and whose important element is the departure from the concept of a narrowly understood habilitation thesis in favour of a comprehensive assessment of the habilitation candidate's scientific profile.

It is impossible not to notice that, in practice, the legislator's intention has not been fully realised. It seems that academic traditions continue to play a key role in this area, requiring that the criterion of contribution to the development of science focus almost exclusively on the main achievement of the candidate for the degree, with other elements of their body of work being included, at most, in the assessment of their generally understood scientific activity. This practice becomes particularly problematic when reviewers or other persons involved in the habilitation procedure raise objections to the habilitation candidate's main work. This may lead to an overly hasty refusal to award them the degree, contrary to the intentions of the legislator. In these circumstances, it is the attitude of the CSE in particular that deserves criticism, as, while having a significant influence on the activities of reviewers and habilitation entities, it seems not to perceive the problem in question. It remains to be hoped that this article will prompt renewed reflection on this issue and lead to a modification of the incorrect practice of those involved in habilitation proceedings.

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<sup>34</sup> An analysis of the CSE's decision does not allow one to conclude that the interpretative problem discussed in this article was even clearly recognised by it. This may be due to the specific nature of the cases referred to this body, in which the indicated defect in the review does not occur very often. It is also unclear to what extent the habilitation candidates themselves draw attention to this problem in their appeals.

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