Summary

Prescription in administrative law

This monograph comprises a theoretical study in law and administrative law and focuses on the fundamental institution of prescription. The analysis deals with the essence of prescription and particular legal solutions related to it in administrative law with regard to legal systems in selected foreign states and under European law, including the judgements of European tribunals. The primary research goal was to create a theoretical concept of this institution by determining is constituent elements, and showing how it operates in administrative law and formulating conditions essential for legislating prescription in general terms in positive law.

Prescription exists as an institution in administrative law, albeit only in vestigial form. On many occasions the legislator employs a prescription as a construction, but does not refer to it by name. The legislator lacks a clear and comprehensive concept of how to regulate this institution, which functions in every branch of Polish law, as well as in the legal systems of other countries and in European Union law. The vestigial nature of this regulation in positive law prompts the question of its legitimacy with regard to some obligations and rights, as well as the absence of its establishment in relation to other forms, including those of a similar legal character.

In this monograph prescription is defined as a legal insitution which, with the passage of time determined by administrative law and the passivity of the individual authorized to undertake a particular action, which might be a public administration body or a private individual, combines the effect of the expiry of a right to impose an obligation on an individual or its implementation, or an individual's right to obtain or exercise a right it has been granted. When understood in this way, prescription exists as a three-element structure within the legal relationship between the individual and the state. In view of the insufficient degree of concretization, prescription is not covered by the same legal interest accorded to the individual by the state. In terms of the legal interest an individual is entitled to, it is difficult to state whether specific constituent elements of the institution of prescription existed or led to the effect of prescription.

The institution of prescription is necessary for the comprehensive regulation of administrative law. Introducing a general normalization of prescription would at least contribute to a partial ordering of interstitial matter in administrative law. This constitutes

the key postulate *de lege ferenda* resulting from discussion. If, due to political reasons, its implemention is not possible within the framework of the law's general stipulations, it would be worth considering whether there is any sense in entering such a regulation into the Code of Administrative Procedure, while at the same time being aware of the associated imperfections resulting from applying this law to only some forms of public administration activities.

Prescription performs several key functions in administrative law, including stabilizing legal transactions and ensuring their predictability and rationality. By means of the organizing function of prescription, social and economic life are organized, as well as the political dimension. Prescription stimulates public adminstration bodies to conclude in a timely manner proceedings which lead to obligations being imposed on an individual, and consequently to their performance, as well as stimulating individuals to make use of the rights granted to them. Prescription also performs the function of protecting entities not obligated to perform particular duties indefinitely. It relieves public administration bodies and administrative courts of the need to examine cases that are complicated in terms of evidence, and which are in many cases unsolvable in this sense.

Diversifying the regulation of administrative law is the reason for distinguishing specific types of prescription, from both the objective and subjective point of view. Prescription can be applied to legal rights and duties under administrative law which result directly from law regulations and decisions. The need for equality between the rights and duties granted to individuals is the reason for general regulation in this sense. The institution of prescription should not be perceived unilaterally, exclusively in categories of regulations serving to safeguard the rights of an individual in terms of public administration. The particular form of this institution, considered from the objective point of view, is prescription of a decision issued by a body in one of the special courses of administrative action, which translates into a private individual's material and legal situation. Due to the ease of identifying this institution's procedural effect, it has been called procedural prescription.

Diversification of prescription is expressed in the existing dissimilarity in the way the term prescription is constructed in different law regulations and the specific condition through which its use is suspended or interruption. When constructing a general framework for prescription and administrative rights the legislator should also take pains to introduce general regulations in this area. However, even in the current state of law, which is characterized by a marked dispersion of prescription regulations in positive law, justifications cannot be found for significant differences in standardizing the course of prescription, including its commencement and length. Premises regarding interruption and suspension of prescription relating only to certain regulations are similarly incidental.

The desired standardization and ordering of legal regulations regarding prescription in administrative law should encompass regulations regarding the time limit of prescription. This relates first and foremost to time limits from 3 to 6 years. With regard to this, the legislator should conduct a review of regulations in order to answer whether it is necessary to maintain existing differences. Bearing in mind the dynamic nature of contemporary law, including the experience of other countries, it would be necessary to exercise caution not to extend such limits excessively.

Standardizing prescription in administrative law should encompass the legal effects resulting in an interruption in or suspension of a time limit of prescription. On the basis of the Code of Administrative Procedure related to administrative penalties, one of the conditions for such a break might be where one party declares bankruptcy. Grounds for suspension include bringing legal proceedings to the administrative or court of general jurisdiction, or taking enforcement and precautionary measures aimed at performing duties under administrative law. Such premises for interruption or suspension of the time limit of prescription in conjunction with the legal bases in a limited number of specific acts should constitute the starting point for a discussion on the creation of a general catalogue of these legal bases characteristic for administrative law as a whole. This would not stand in the way of determining specific bases for interruption and suspension of the course of prescription determined by the subject of particular administrative law regulation.

As an institution of material administrative law, prescription indicates procedural effects. Expiry of the time limit of prescription leads to a body losing its right to commence or continue administrative or execution proceedings. It also hinders the administrative court's right to reach a decision that replaces a decision taken by a public adminstration body regarding the merits of the case. The general rule should be to set the mechanism to suspend the time limit of prescription in the event of a plaint being lodged with the administrative court against an act or public administration or action.

When considering the future of prescription as a legal institution in administrative law, it should be regarded as highly likely that the legislator will refer to it more readily in amending subsequent fields of material administrative law. This process is already discernible today, which is expressed by regulations on prescription regarding administrative financial penalties, or the new regulation of Water Law. One would hope that the popularization of this institution might lay the foundations for the introduction of general regulation regarding of estimation of the time limits of prescription. Administrative law judgements will undoubtedly play a key role in this respect.

The analysis undertaken here confirms the universal character of prescription as a fundamental institution of contemporary law, derived from the ancient tradition. Searching for the specific properties of this institution in the field of administrative law provides evidence of attention paid to its characteristic features, which distinguish the normative form of prescription from its equivalents in other branches of law. Despite its core features being shared, prescription in administrative law reveals specific characteristics that are typical for this branch of law. The specificity of administrative law should be taken into greater consideration, not only in terms of its creation, but also its application. It is essential to consider these theoretical and practical reflections on the institutions of this law, and in doing so show its diverse and rich nature.