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ABOUT THE CERTIFYING DECISION
– COMMENTS UNDER ART. 122F CODE
OF ADMINISTRATIVE PROCEDURE

O POSTANOWIENIU ZAŚWIADCZAJĄCYM
– UWAGI NA TLE ART. 122F K.P.A.

Summary: The study concerns one of the important, though not very intensively discussed in literature issues related to the tacit confirmation. Meanwhile, the unprecedented, dualistic character of the decision issued with the tacit confirmation, prompts to pose a number of questions regarding both its essence and the consequences of introducing this type of construction into the legal system. The observations made can be a good opportunity to open a discussion on the evolution of the administrative procedure and its adaptation to the social and political circumstances.

Keywords: tacit confirmation, attestation, decision

Streszczenie: Poruszana w opracowaniu problematyka dotyczy jednej z istotnych, aczkolwiek niezbyt intensywnie omawianych w literaturze kwestii związanych z milczącym załatwieniem sprawy. Tymczasem niespotykany dotychczas, dualistyczny charakter postanowienia wydawanego przy milczącym załatwieniu sprawy, skłania do postawienia szeregu pytań dotyczących zarówno jego istoty, jak i konsekwencji wprowadzenia do systemu prawnego tego rodzaju konstrukcji. Poczynione spostrzeżenia mogą być dobrą okazją do rozpoczęcia dyskusji na temat ewolucji procedury administracyjnej i jej dostosowania do otaczającej rzeczywistości.

Słowa kluczowe: milczące załatwienie sprawy, zaświadczenie, postanowienie

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I

The amendment to the Act of 14 June 1960 Code of Administrative Procedure¹ made in 2017 introduced a number of new institutions that significantly changed the face of the general administrative procedure. Among them, the important news is the addition of two special modes of jurisdictional administrative procedure, namely simplified proceedings and tacit confirmation of the case.

The two modes mentioned above are intended by the legislator to constitute a special form of administrative procedure, the difference from which of “ordinary” proceedings is based on the separation of categories of cases to be dealt with in these modes. In both cases, the legislator explicitly indicated that their application does not depend on the will of the authority, but on the explicit provision of the Act authorizing their application². An exhaustive discussion of the entire tacit confirmation procedure is not within the scope of the considerations presented³. For the sake of order, however, some comments should be made about it.

The legislator in art. 122a § 2 of the Code of Administrative Procedure explicitly indicated that the case can be confirmed tacitly in a way that fully complies with the party’s request if, within one month of delivery of the request to the authority, the party fails to issue a decision or order terminating the case, or raises an objection by way of decision. In accordance with the content of art. 122c § 1 of the Code of Administrative Procedure tacit confirmation of the case takes place on the day following the day on which the deadline for issuing the decision or order ending the proceedings or raising an objection expires. From the point of view of the discussed issue, it is important that the tacit confirmation of the case occurs *per facta concludentia*, without the authority having to issue any act concluding the proceedings. The only “trace” about the final of such a case favorable to the party is the official annotation about the tacit confirmation of the case placed in administrative files, which indicates the content of the decision and its legal basis (art. 122e of the Code of Administrative Procedure). Already at this point one can notice a certain inconsistency of the legislator imposing the obligation to indicate the content of the decision, which in fact does not exist. The annotation should, in fact, indicate the content of the party’s request and the provisions that constituted the basis for the tacit approval of the application. Specifying the party’s request is at the same time an indication of the content of the “decision” of the authority that tacitly approved the content of the application - its subject and scope. The annotation about the tacit confirmation of the case is not of any administrative nature, since neither its existence nor its content creates or shapes any legal relationship (whether

¹ Uniform text: Journal of Laws of 2018, item 2096 as amended – hereinafter called the Code of Administrative Procedure.

² Cf. P. Dobosz [in:] Z. Kmiecik, M. Gajda-Durlik (ed.), *Milczące załatwienie sprawy przez organ administracji publicznej*, Warszawa 2019, p. 147.

³ More on the genesis of tacit confirmation of the case, not only in Poland, but from the perspective of European law: M. Szewczyk, *Milczące załatwienie sprawy*, „Zeszyty Naukowe NSA” 2019, No. 5, p. 25 et seq.

material or procedural). The view that it is a legal fiction, bringing a kind of “elusive factual and legal status to the level of verifiable facts, at the same time removing a sense of uncertainty about the law⁴, deserves approval. However, there are doubts as to the lack of justification for such confirmation. It must be remembered that art. 11 of the Code of Administrative Procedure contains an important, from the point of view of protection of the party’s subjective rights, principle of explaining the premises of the authority’s operation. The regulations governing tacit confirmation do not contain any exceptions in this matter, which means that far-reaching objections are raised by placing only brief laconic mention of tacit confirmation. It seems, although there is no explicit legal basis, that the annotation about the tacit confirmation of the case should also include a statement that the outcome of the case favorable to the applicant was caused by the fact that the authority did not see any circumstances precluding the confirmation of the application in this way. Such a statement in the annotation would cause the authority at least partly to comply with the aforementioned principle, at the same time indicating that the tacit confirmation of a particular case is not a coincidence or negligence, but a deliberate acceptance of the content of the party’s request.

At least, the question is whether, as is the case with the legal basis of the decision (art. 107 of the Code of Administrative Procedure), the annotation should contain an indication of competence, substantive and procedural norms, or whether it is enough to refer only to the provisions of substantive law. It seems that there are no grounds for this, which on the one hand makes this procedure significantly deformed, and on the other hand puts the implementation of the code principle of translating the motives of the authority’s action into question. In this case, the withdrawal from legal regulations may be justified by the nature of the activities (notifying the fact, and not shaping the sphere of rights and obligations of a particular entity), although the annotation containing the reference to the legal basis will more fully reflect the authority’s intentions.

II

As I mentioned earlier, the tacit confirmation of the case takes place *per facta concludentia*. The effect is therefore by law, the party gains the opportunity to exercise the rights indicated in the application, and the annotation discussed above proves that the case was settled tacitly, indicating at the same time when it occurred. The party may, however, have an interest in obtaining confirmation of both the fact of tacit confirmation and indication of the date on which it occurred. This is to be served by the introduction to the Code of Administrative Procedure of a new institution – a kind of legal hybrid, namely a certificate taking the form of a decision⁵.

⁴ Cf. Z. Kmiecik [in:] Z. Kmiecik, W. Chróścielewski (ed.), *Kodeks postępowania administracyjnego. Komentarz*, Warszawa 2019, p. 681.

⁵ Pursuant to the content of art. 122f § 1 of the Code of Administrative Procedure, at the request of

Reading the justification of the draft changes to the Code of Administrative Procedure does not provide an exhaustive answer to the question about the reasons for which it was decided to create a new form of the certificate⁶.

The designers noted that giving the certificate the form of a provision gives the party the opportunity to verify it. Secondly, taking into account the possibility of functioning in the legal circulation of certificates of various content, adopting the form of the order in their opinion formalizes its content, avoiding any discrepancies in this respect. Thirdly, issuing the order and delivering it to all parties to the proceedings protects their interests. The arguments put forward, in the face of potential problems that may entail giving such a form to the certificate, however, do not fully convince.

III

Attributing the form of the resolution to the certificate of tacit confirmation of the matter creates a number of complications of both theoretical and practical nature. First of all, it should be noted that the provision within the meaning of the provisions of the Code of Administrative Procedure is a procedural act of a judicial nature, undertaken in connection with the emergence of specific issues in the course of administrative proceedings, when a specific provision provides for such a form. (cf. art. 123 § 2 of the Code of Administrative Procedure)⁷. From the fact that the decision is of a judicial nature, it can be concluded that in a binding and imperious manner it shapes the situation of a given entity, even when it comes to a very limited scope of strictly procedural rights. It is well-pointed out that this is an activity called doubly specific character, because it concerns a specific recipient and decides on a clearly marked issue (obligation or entitlement)⁸. The classification of provisions, in the fullest manner carried out by G. Łaszczycza⁹, does not give an answer to which category could be included in the provision issued on the basis of art. 122f of the Code of Administrative Procedure.

It is impossible to attribute to it the “decision on the substance of the case”, because this act in no way shapes the legal situation of the addressee (such provisions may include the order refusing to initiate proceedings – art. 61a of the Code of Administra-

a party, a public administration body, by way of a resolution, issues a certificate of tacit confirmation of a case or refuses to issue such a certificate.

⁶ Cf. Parliamentary document No. 1183.

⁷ See G. Łaszczycza, *Postanowienie administracyjne w ogólnym postępowaniu administracyjnym*, Warszawa 2011, p. 59. See also A. Adamczyk, *Publicznoprawne formy działania administracji. Teoria i praktyka*, Warszawa 2013, p. 177. The author defines the decision as an external, formalized procedural act of a public administration body or other administrative body of a judicial nature, essentially settling an individual procedural issue arising in the course of proceedings. See also K. Ziemiński [in:] R. Hauser, Z. Niewiadomski, A. Wróbel (ed.), *System prawa administracyjnego*, tom 5: *Prawne formy działania administracji*, Warszawa 2013, p. 175-176.

⁸ G. Łaszczycza *Postanowienie...*, p. 60.

⁹ *Ibidem*, p. 73 et seq.

tive Procedure, and which the cooperating authority takes a position – art. 106 § 5 of the Code of Administrative Procedure)¹⁰. It is also difficult to speak here of a decision determining the issue arising in the course of the proceedings (i.e. a strictly procedural order), most often giving a specific direction to the pending proceedings (e.g. order to suspend an administrative post – art. 97 § 1 of the Code of Administrative Procedure, decision to restore the time limit for lodging an appeal – art. 59 of the Code of Administrative Procedure), as the act issued based on art. 122f § 1 of the Code of Administrative Procedure has the character ending the proceedings.

Looking more closely at the provision indicated in art. 122f of the Code of Administrative Procedure and having regard to the systemic location of this regulation, it can be stated that in reality it is strictly informative, which is clearly demonstrated by the fact that it is in fact a certificate. This, in turn, prompts to ask questions about the content of such a provision. The legislator in art. 122f § 3 point 4 of the Code of Administrative Procedure indicated that the certificate of tacit confirmation of the case contained the content of the resolution of the case resolved tacitly. As a consequence, we are dealing with an administrative act of a declarative nature, which does not create any rights (because they already exist by law) but only states the existence of certain facts, the occurrence of which enabled the party to exercise the rights provided for in the application by law. At the same time, unlike the “classic” declaratory acts¹¹, it has a different function – it externalizes the factual and legal status in a specific individual case, shaped by the silence of the authority, while the other declarative acts state whether the circumstances provided for in the regulations occur¹².

The characteristics of the provision indicated in art. 122 f Code of Administrative Procedure, due to its dual nature, should be supplemented with a few remarks regarding certificates. Reaching into the regulation of Section VII of the Code of Administrative Procedure regulating the issue of certificates, it can be stated that within the meaning of the Code of Administrative Procedure the certificate is “official confirmation in writing of an objectively existing (current or past) state of affairs (actual or legal), made by a public

¹⁰ This last case is questioned B. Majchrzak – cf. B. Majchrzak, *Postanowienia rozstrzygające o istocie sprawy w administracyjnym postępowaniu ogólnym*, [in:] J. Niczyporok (ed.), *Kodyfikacja postępowania administracyjnego. Na 50-lecie k.p.a.*, Lublin 2010, p. 519.

¹¹ E.g. communalization decision issued based on art. 5 of the Act of 10 May 1990, provisions introducing the Act on Local Government and Local Government Employees (Journal of Laws No 23, item 191 as amended).

¹² J. Borkowski questioned the legitimacy of this division, accusing it of dubious criteria – cf. J. Borkowski, *Decyzja administracyjna*, Łódź – Zielona Góra 1998, pp. 80-81, cf. judgment of Provincial Administrative Court in Kielce of 11 January 2018, II SA/Ke 844/17, in which the court clearly indicated that the difference between a declaratory decision and a certificate is that in the case of a decision, such binding determination or drawing of the facts to legal norms takes place when required by a specific legal provision. In general, this occurs when the circumstances surrounding the occurrence of legal effects are unclear, their existence may raise doubts or there is a dispute around their occurrence. However, the certificate is issued when the fact of such legal effects is obvious and the authority does not have to decide on anything. All decisions of administrative courts referred to in the text come from the database of judgments available at <http://orzeczenia.nsa.gov.pl>.

administration authority (in terms of system or function) at the request of the person concerned whose interest is based on law¹³. The certificate is therefore of a nature confirming the existence of certain circumstances (facts, states), which is its fundamental feature that distinguishes it from decisive acts¹⁴. A different role is played by a declarative character of a decision (in fact aimed at specifying the legal situation of an individual) from the certificate, which is pointed out in the literature¹⁵. The declaratory decision bindingly indicates that in specific legal circumstances (indicated directly by the regulations) specific legal consequences arise¹⁶. The certificate, on the other hand, states only the existence of certain circumstances (factual or legal) relevant to the entity that is applying for it.

The above remarks lead to the conclusion that by providing for the possibility of issuing a certificate in the form of a decision, the legislator is trying to reconcile two completely different legal institutions. On the one hand, the content of the act referred to in art. 122f of the Code of Administrative Procedure clearly indicates that we are dealing with a "classic" certificate confirming the factual circumstances (date and manner of tacit confirmation) with legal significance¹⁷. Such a certificate, issued *ex post*, refers to an already existing state which has had specific legal effects.

On the other hand, while giving this certificate the form of a decision, the legislator assumed the possibility of verifying the tacit confirmation of the case by way of instance by checking this decision. The order, as an individual administrative act, characterized by the aforementioned "double concreteness" in the shape in which it was regulated in art. 122f of the Code of Administrative Procedure somehow "detaches" from the proceedings that were the reason for its release. Attention is drawn to the fact that the legislator did not foresee any deadline by which a party should apply for such a provision. This, in turn, leads to the conclusion that, as is the case with a "normal" certificate, a party may do so at any time¹⁸.

¹³ Z.R. Kmieciak, *Charakter prawny zaświadczenia a możliwość ustalania i weryfikacji jego treści*, „Państwo i Prawo” 2004, No. 10, p. 58; cf. also R. Kędziora, *Kodeks postępowania administracyjnego. Komentarz*, Warszawa 2014, p. 1143.

¹⁴ See L. Klat-Wertelecka, *Zaświadczenia w prawie administracyjnym*, Warszawa 2001, p. 34 et seq.; Z.R. Kmieciak, *Instytucja zaświadczenia w prawie administracyjnym*, Lublin 2002, p. 19 et seq., see judgment of Provincial Administrative Court in Gdańsk of 1 August 2019, III SA/Gd 359/19.

¹⁵ Cf. T. Kielkowski, *Sprawa administracyjna*, Kraków 2004, p. 73.

¹⁶ Z.R. Kmieciak, *Charakter prawny zaświadczenia...*, p. 61, Cf. also K. Ziemiński [in:] *System...*, p. 180.

¹⁷ Cf. K. Chorąży, Z. Kmieciak, *Wydawanie zaświadczeń – kwestie nierozstrzygnięte w literaturze*, „Samorząd Terytorialny” 2000, No. 6, p. 70.

¹⁸ Which raises significant problems even when considering the possibility of raising such a provision by resuming the proceedings or annulling them. In both cases, consideration should be given to the admissibility of the possible elimination of an administrative act from trading after a specified period, with the specificity of the situation being that the source (event with a specific effect) may have arisen much earlier than the order itself. From this perspective, one should consider what effects it has on the existence of a possible course of action in this respect. However, the dimensions of this study exclude the possibility of wider reflection in this area.

IV

The observations made lead to the conclusion that in the present case we are dealing with a kind of provision, the difference of which lies not only in the fact that it has this “certifying” nature, but also that it is not issued in pending administrative proceedings, but in a way separate, initiated by another party’s motion. Reading the regulations governing the tacit confirmation of the case gives grounds to conclude that in fact this mode provides for the existence of two interrelated proceedings. The basic and primary will be the proceedings in which the matter will be settled tacitly. It (in a case favorable to the party) will end with this legally significant silence of the authority. The procedure for issuing the certificate will, however, be separate but functionally related. It is a procedure initiated by a party’s request, as a result of which the matter is to be settled by a decision. From the point of view of the subject of the proceedings, the administrative matter is only one, while looking from a formal and procedural perspective we are dealing with two administrative proceedings – basic (tacit) and secondary, of a certifying nature, ending with issuing the said decision. Due to the fact that the provision of art. 122f provides for the issuance of a decision at the request of a party, then all necessary provisions of the Code of Administrative Procedure will apply, including those regarding the initiation of proceedings, deadlines for its confirmation, participation of parties, deliveries, etc.

Looking closer at the content of art. 122f § 1 of the Code of Administrative Procedure first of all, attention should be paid to the subjective aspect of applying for a certificate. The cited provision states that the issue of a certificate of tacit confirmation of the case takes place at the request of a party. In such a situation, it seems obvious to ask whether this application should be treated as an application initiating administrative proceedings within the meaning of art. 61 § 1 of the Code of Administrative Procedure, or as another application submitted in the course of proceedings. Given that the purpose of this application is to issue a decision stating the existence of certain circumstances, it appears that the application initiates an independent administrative procedure, the purpose of which is to issue a certificate of a specific form. This in turn raises a number of implications related to the course of such proceedings.

First of all, submission of the application initiates administrative proceedings, as we are not dealing with the “attestation” procedure provided for in art. 217 of the Code of Administrative Procedure. Since we are talking about the application and its result (issuing the order), it must be assumed that it is about instituting ordinary (jurisdictional) proceedings, pursuant to art. 64 § 1 of the Code of Administrative Procedure, which in turn requires the authority to notify all other parties to the proceedings. Before this occurs, however, the authority should examine whether the application comes from an authorized entity. The provision of art. 122 f of the Code of Administrative Procedure provides for a party’s application, and no other provision

precludes tacit proceedings involving more than one entity. Thus, each time the application should be examined primarily in terms of whether its author has a legal interest within the meaning of art. 28 of the Code of Administrative Procedure. None of the above-mentioned regulations gives grounds for excluding a situation in which such a decision will be requested not by the one who, as a result of his application, settled the case tacitly, but who wants to establish this fact in connection with his legal interest. Because proceedings pending based on the provisions of Chapter 8a of the Code of Administrative Procedure are characterized by a kind of formal minimalism in determining the number of parties to proceedings, hence the conclusion that it is only at the stage of possible submission of a request for the issue of the said certificate that the authority undertakes actions to examine who was entitled to the party's status in such proceedings. This is dictated primarily by the fact that the provision of art. 122f § 4 of the Code of Administrative Procedure imposes an obligation to deliver a copy of the order to all parties in a tacitly settled case. Therefore, the preliminary actions of the authority, after the initiation of the proceedings in question, should focus on determining the circle of its parties, which, due to the specificity of the original proceedings, may give rise to certain complications. The authority is obliged, based on the content of the application, which has been tacitly dealt with, to determine to whom and to what extent the tacit confirmation of the case may affect its rights, notify these entities about the pending proceedings, and finally send them a certifying decision.

The procedure regarding the issue of a certifying decision itself differs from the regulation regarding the issuing of certificates, contained in Section VII of the Code of Administrative Procedure. First of all, its essence is different. The certificate is issued in two cases, which is clear from the content of art. 217 § 2 of the Code of Administrative Procedure. The main difference from the mode regulated in art. 122f of the Code of Administrative Procedure consists in the fact that when issuing „ordinary” certificates, the proceedings themselves are very limited in nature – and both in terms of the person (there is only one party – the applicant) and the material – it is about confirming the existence of a specific fact or state. As it has already been indicated, in the case of the discussed regulation, the group of entities that receive the certificate is not limited to the initiator of tacit proceedings, but also includes all those entities whose legal situation will change due to the tacit confirmation of the case.

Seemingly it would seem that also in relation to proceedings governed by the provisions of art. 122f of the Code of Administrative Procedure the material scope will be limited to confirming the facts indicated in the annotation referred to in art. 122e of the Code of Administrative Procedure. However, as mentioned at the beginning, everything depends on the content of the said annotation, which, in fact, is the only formal link between the case settled tacitly and the proceedings conducted to issue a certificate in this regard. Therefore, while the “classic” certificate is a substantive and technical activity of a confirming nature, one could say – a specific

statement of the authority's knowledge, the decision issued on the basis of art. 122f of the Code of Administrative Procedure not any more¹⁹. Comparing the discussed decision to other administrative acts, one can notice a certain similarity of the said decision to the declaratory decision. It has the form of an administrative decision (similar to the aforementioned decision) and formally finishes the proceedings in a specific case. However, unlike the declaratory decision, this provision does not constitute a specific "fulfillment" of the legal requirement that creates specific rights for its recipient (as it is the case with respect to the declarative decision). The result of issuing the said decision is only confirmation of the existing state, which brings them closer to the certificate. This content of the decision contradicts the very idea of the order as an imperative act, provoking certain legal (material or procedural) consequences²⁰.

The content of the certifying decision should meet the requirements specified in art. 124 § 1 of the Code of Administrative Procedure, except that the decision is replaced by a statement on tacit confirmation of the case. Thus, it is in this element of the resolution that its dualistic (hybrid character) is most clearly manifested. When dealing with the form of a double-specified administrative act²¹, and this category undoubtedly includes the said provision, its content also contradicts the form given. Provisions, similarly to administrative decisions, are characterized by power – understood as the possibility of unilaterally shaping the procedural situation of the addressee, regardless of his will²². Meanwhile, confirmation of certain objectively existing facts can hardly be regarded as imperious, and at the same time the legal situation of the recipient of such a provision is not shaped. Giving such content to the said provision implies a number of further problems, primarily related to its control.

First of all, it is necessary to ask a question about the scope of possible instance control, which, as in the case of administrative decisions, covers all the authority's activities, regardless of the allegations raised in the complaint. According to the content of art. 144 of the Code of Administrative Procedure in matters not covered in chapter 11 of the Code of Administrative Procedure (on complaints) the rules on appeals apply accordingly. This means that, as in the case of an appeal (see art. 128 of the Code of Administrative Procedure), a complaint is a formalized measure that does not require detailed justification. However, the scope of the review carried out by the appeal body in the event of such a complaint is unclear.

¹⁹ Cf. Z.R. Kmieciak, *Instytucja zaświadczenia w prawie administracyjnym*, Lublin 2002, p. 18 et seq.; K. Klonowski [in:] H. Knysiak-Molczyk (ed.), *Kodeks postępowania administracyjnego. Komentarz*, Warszawa 2015, p. 116; M. Stahl [in:] *System prawa...*, p. 382-383. C. judgment of Provincial Administrative Court in Gorzów Wielkopolski of 24 July 2019, II SA/Go 398/19.

²⁰ Cf. G. Łaszczycza, *Postanowienie...*, p. 353. This view is grounded in the Polish doctrine of administrative law – J. Pokrzywnicki, *Postępowanie administracyjne. Komentarz. Podręcznik*, Warszawa 1948, p. 123.

²¹ It is an act addressed to a specific entity in a specific case.

²² Cf. A. Adamczyk, *Publicznoprawne formy...*, p. 179; G. Łaszczycza, *Postanowienie...*, p. 57, 58.

As previously noted several times, the decision issued on the basis of art. 122f § 1 of the Code of Administrative Procedure it has a different content from “normal” provisions. Its certifying nature makes it difficult to indicate what types of allegations could appear in a possible complaint. Since we are dealing with a statement of knowledge, the logical conclusion is that challenging the decision in this respect is in fact challenging the facts that the order confirms. Therefore, it is necessary to consider whether the appeal body can check the correctness of the tacit confirmation of the case, and if so, to what extent.

As mentioned before, there is a connection between the tacit confirmation of the case and the proceedings ending with the issue of the certifying decision. This proceeding is secondary to the tacit confirmation of the case. It is therefore one and the same matter substantially, but from a formal point of view we are dealing with a separate administrative procedure. The design adopted by the legislator in the provisions regulating the tacit confirmation of the case excludes, in my opinion, the possibility of verifying by way of complaint the fact of tacit confirmation of the case, because the controlled administrative act alone does not prejudge anything but merely certifies the existence of certain circumstances that have already occurred. Adopting the opposite view would lead to the conclusion that the appeal authority would have the power to question the facts, which seems to go beyond the scope of the boundaries of the certification procedure. The resolution issued pursuant to art. 122f § 1 of the Code of Administrative Procedure it is only of a confirming nature, and the issuing authority does not have the power to examine the legitimacy of a tacit confirmation of the case or to question the content of the annotation of that fact. Hence the conclusion that, in essence, the assessment of the contested order is limited to examining its formal correctness and possibly the content of the decision in terms of compliance with the said annotation.

V

To sum up, it should be stated that, although the introduction to the Code of Administrative Procedure of the institution of tacit confirmation of the case should be considered to be the correct and advisable measure, while trying to create a mechanism to control such proceedings, the legislator created unintentionally significant problems. The withdrawal from the form of a simple certificate in favor of a specific hybrid, combining the features of both a certificate (statement of knowledge) and an administrative decision (provisions, and thus a specific declaration of will of the authority) creates a number of complications, only some of which are indicated in this study. Due to the assumed framework, wider theoretical considerations regarding the very essence of imperious administrative acts were omitted here, as well as the entire complex issue of verifying provisions under extraordinary administrative procedures (resumption of proceedings,

annulment)²³. Practice will show if the fears signalled were real. At present, relatively few substantive law regulations provide for settling the matter in a tacit manner, although it cannot be ruled out that their number may increase significantly in the near future.

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²³ Cf. judgment of the Supreme Administrative Court of 11 January 2018, I OSK 435/18, in which it was noted that the certificate confirms the facts, but it is not imperious or binding, it may be revoked or changed in the event of changes in the circumstances on which it was issued. It is not covered by the *res iudicata* rule. Hence, there is doubt as to the nature of the certifying decision and the fact that both the parties to these proceedings and administrative bodies are bound with it. A similar view was included in the judgment of Provincial Administrative Court in Krakow of 23 March 2018, II SA / Kr 167/18.