

# Organizational and Legal Form of Local Development Tasks – Innovation or Break in the Model of Administration Activities?

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*Legal and organizational structure of the local action group as an entity responsible for local development, within which we can observe a fusion of local government units and other persons and entities in a corporation operating on the basis of the EAFRD Act and provisions relating to local development with the participation of the local community. This innovatively shapes bonds between public administration bodies and non-public entities, because they are based on close bonds of partnership cooperation within the association with a special status. This ensures the diversification of views and prevents monopolization of operations by one of the parties. Nevertheless, such legal and organizational structure, and especially its statutory property jurisdiction, breaks the established rules for the implementation of public tasks, as well as a breaches the forms adopted in the doctrine. This is undoubtedly related to the latest tendencies to move away from imperious unilateral forms of public administration, in favor of consensual forms characteristic of private law. This also has its source in the tendencies to use public management methods in public administration activities, and especially in the dynamic development of the planning function, which is significant to the activities of the EU structures. This is justified by certain ideological and economic views, which are reflected in the European Union law and affect the change of paradigms of public administration in Poland, which follows the role of the performer in favor of the role of a co-creator. It is particularly evident in the area of shaping development policy, including local development.*

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## 1. Introduction

Among the various factors that transform the function of public administration, we should pay attention to the impact of the European Union law, which by shaping a specific legal culture of the entire European Community, in a way enforces changes in the legal systems of the Member countries, in such a way that they need to adapt native legal orders. Abovementioned legal culture is the effect of the influence of specific ideologies, which then shape certain type of legal norms,

grounding or reflecting current trends and views on the organization as well as the functions of state organisms, and the role of citizens.

The literature<sup>1</sup> draws attention to the problems of so-called Europeanization of law, which causes a kind of dismantling of a coherent order in law. The phenomenon occurs in several fields of law. Within administrative law, it can be observed at various levels, ranging from subjective rights, through transformations in the sources and the catalog of principles of administrative law, and administrative procedure, in the catalog of values, as well as in individual parts of substantive law, and finally at the level of administrative tasks and how they are implemented. Traditional, solidly shaped forms of implementation of administrative tasks are developing, it is well visible in the developing field of planning in administration.

An essential example of the discussed transformation is the form of implementation of tasks relevant to local development, which was introduced to the native regulations as a consequence of implementing the rural development support system through a local development partnership, whose genesis reaches the EU regulations that refer to its regulations concerning community development policy that was in force until 2007. This short study is aimed at presenting the characteristics of the new form of administrative tasks implementation that derives from the corporate form of achieving private goals, which on the one hand is an innovative solution, and on the other hand, by its different nature, can be seen as a breakthrough in the normally understood model in which public administration uses legally defined forms of their activities<sup>2</sup>.

## 2. Characterization and genesis of organizational and legal forms of local development

The local action group was introduced to the Polish reality as an organizational and legal form of implementing local development tasks at the level of local government administration with the use of solutions of the Council Regulation No. 1698/2005 of 20 September 2005 to support rural area

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- 1 Andrzej Wróbel, „Europeizacja prawa administracyjnego – pojęcie i konteksty”, [in:] *Europeizacja prawa administracyjnego*, ed. Roman Hauser, Zygmunt Niewiadomski, Andrzej Wróbel (Warszawa: Wydawnictwo C. H. Beck: Instytut Nauk Prawnych PAN, 2014), 31.
  - 2 Irena Lipowicz, „Prawne formy działania administracji publicznej – między stabilizacją a potrzebą wyłomu” *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, No. 4 (2016): 41. Also see the joint study: *Ewolucja prawnych form administracji publicznej. Księga jubileuszowa z okazji 60 rocznicy urodzin Profesora Ernesta Knosali*, ed. Lidia Zacharko, Andrzej Matan, Grzegorz Łaszczycza (Warszawa: Wolters Kluwer Polska, 2008).

development by the European Development Fund Rural Areas<sup>3</sup> as part of pilot activities that shaped organizational and financial conditions relevant to establishing local partnerships. It is agreed for its participants to be local governments and local community, they act as cooperation network entities who stimulate the activity in rural areas<sup>4</sup>.

The postulates to create multi-stakeholder cooperation networks in rural areas were rooted in the assumptions of the common agricultural policy, defined by the European Council in 2001 in the Strategy for Sustainable Development, which supplemented the Lisbon Strategy. The strategy highlighted that obtaining positive and satisfactory results of development progress, in the light of contemporary threats and disproportions, requires treating rural development with special care, as it was previously underestimated and supplanted by the priorities of social and economic policies. The Strategy for Sustainable Development, updated in 2006, referred to newly admitted countries, including Poland. Previously mentioned policies assumed, above all, that in a given area, the proper development progress is achievable not through the administrative activities of central and local authorities, but through the strong involvement of the community itself and by allowing it to shape development guidelines in a bottom-up and territorially coherent manner.

As Poland didn't have any sufficient legal basis to create such partnerships, they would most often take the legal form of associations, foundations or fusion of associations<sup>5</sup>. The assessment of the adequacy of these organizational and legal solutions compared to the requirements outlined in the EU regulations in 2004-2006 indicated that foundations was the most appropriate form. Foundations create the possibility of reflecting the desired representation of public and social sector entities in the group of founders and

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3 Dz. Office. EU I 277/1.

4 I am referring to a pilot program financed from the EU sources in the initial period of Poland's membership in its structures, the LEADER I initiative launched in 1991-1993, LEADER II – in 1994-1999 and LEADER + implemented since 2000. The name – the acronym originates from the French term „Liaisons Entre Actions de Developpement de l'Economie Rurale”, Links between the *rural* economy and *development actions*. For more information please visit: *Budowa kapitału społecznego do wykorzystania w procesie zarządzania rozwojem kierowanym przez społeczność*, ed. Michał Thulon (Warszawa: Ministerstwo Rolnictwa i Rozwoju Wsi, 2015), 14.

5 Jarosław Supera, „Lokalne grupy działania – tworzenie i funkcjonowanie”, [in:] *Podstawy prawne podejścia LEADER i ich stosowanie w praktyce*, ed. Maria Supera-Markowska, Jarosław Supera (Warszawa: Samorząd Województwa Mazowieckiego, 2008), 70 n.

the possibility of statutory formation of decision-making bodies at the stage of establishing a foundation. On the other hand, a regulation introduced under Article 30 of the then Act on public finance<sup>6</sup>, which banned establishing foundations sponsored with commune budget or public funds, became a significant obstacle.

Introduced on 7<sup>th</sup> of March 2007, the Act on supporting rural development with the participation of the European Agricultural Fund for Rural Development<sup>7</sup> (hereinafter referred to as the Act on the EAFRD) simplified the previously indicated issues. It clarified the norms in force for the EU regulations concerning agricultural policy, and introduced a direct legal basis for the creation of local action groups to finally specify its organizational and legal forms. It anticipated that the local action group could be established as association with legal personality, while referring to the regulations of creating and operating of associations outlined in the provisions of the Act of 7 April 1989 - Law on Associations<sup>8</sup>, with the exceptions provided for therein.

The provisions of the abovementioned Act introduced certain deviations from the general rules of how associations should function. Above all, they defined the membership of local government units in associations in a different way. It should also be noted that, in the deviation scope includes establishing associations by local government units – outlined in the constitutional provisions of the Act<sup>9</sup> of 8 March 1990 on commune self-government and the Act of 5 June 1998 on powiat self-government<sup>10</sup>.

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- 6 Original: (Journal of Laws of 2005, No. 249, item 2104, as amended). The provisions currently in force are introduced by the Act of 20 February 2015 on supporting rural development with the participation of the European Agricultural Fund for Rural Development for the years 2014-2020, (consolidated version: Journal of Laws of 2018, item 627). They are supplemented by the provisions of the Act of 20 February 2015 on local development with the participation of the local community (vol.: Journal of Laws 2018, item 140).
  - 7 Original: (Journal of Laws of 2007, No. 64, item 427, as amended).
  - 8 T. uni.: (Journal of Laws 2017, item 210, as amended).
  - 9 T. one.: (Dz. U. 2018 pos. 994 as amended), art. 84, which provides that in order to realize the idea of self-defense and the common interests of municipalities can form associations, including the districts and provinces. The minimum number of founding members must be 3.
  - 10 T. uni.: (Journal of Laws 2018, item 995, as amended), art. 75, which specifies that poviats can form associations, including municipalities and provinces, place an association a minimum of 3 founding members is required.

This particular characteristic that describes how local action groups are created and operate, relates to the following issues: the nature of a local government unit membership in an association, the freedom to shape internal bodies, the freedom to choose members of an association's bodies and the supervisory body.

First of all, it should be noted that in Polish law the institution of the association is an exemplification of constitutionally guaranteed individual civil liberties i.e. freedom of association. Secondly, it should be stated that the association as a corporation generally involves natural persons, who are its ordinary members, which results in pursuing certain entitlements stated in it. According to the legal definition taken from the provisions of the Law on Associations, the association is a voluntary, self-governing, permanent association with non-profit purposes. The elements that define an association have a specific meaning<sup>11</sup>. Voluntariness is associated with the lack of coercion in matters of establishing an association, which reflects the freedom to create, join and leave an association, which is implemented by individuals as an expression of their willingness to participate or cease. Self-governance is strongly related to independence – the independence of an association's members from external entities in connection with the right to freely shape the goals of an association, its structure and decisions. The interference of external entities is allowed only in cases specified in law and is carried out under the supervision of authorized bodies indicated by legal norms. The supervision itself is also based on legally defined criteria and forms. The permanent nature of an association embodies the nature of its objectives, which are to be pursued on a continuous basis, regardless of staff movement. The goals and tasks of associations must be long-term and independent of time<sup>12</sup>. The non-profit nature of the association is related to the voluntary involvement of its members in achieving the objectives of the association, which interrelates with the constraints concerning the disposal of financial resources (obtained from contributions, donations and subsidies) solely to implement the statutory objectives of the association<sup>13</sup>.

As it has already been indicated, the existence and activity of associations are a reflection of the constitutionally guaranteed freedom of association, consequently, it is an association of natural persons who, through their

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11 Paweł Sarnecki, *Prawo o stowarzyszeniach. Komentarz* (Kraków: Kantor Wydawniczy „Zakamycze”, 2002), 27-29.

12 *Organizacje pozarządowe w Polsce. Podstawy prawno-finansowe*, ed. Mirosław Granat (Warszawa: Instytut Spraw Publicznych, 2000), 285.

13 Hubert Izdebski, *Fundacje i stowarzyszenia. Komentarz, orzecznictwo, skorowidz* (Warszawa: Oficyna Wydawnicza Transit, 1998), 101.

participation in associations, exercise their civil rights<sup>14</sup>. Both natural persons with legal capacity and minors can form associations. Their participation acquires the character of so-called ordinary. The law of associations relates to the nature of membership in such a way that it lists natural persons as members. The membership of any legal entities has been explicitly excluded from ordinary associations, whereas it is explicitly stated that a legal entity may only be a supporting member<sup>15</sup>. No regulation defines the concept of a supporting member or specify its rights and obligations, as it already is to be deduced from the name itself, the task of such a member is to support the association in any form<sup>16</sup>. The regulations governing the creation and operation of a local action group define the membership of a legal person in a different and special way. In this case, local government units are permitted to join associations as ordinary members on an equal footing with other (natural) persons. This significantly changes the nature of their membership in the association and influences the scope of their rights and obligations. Hence, their catalog includes, above all, active and passive electoral rights<sup>17</sup>, local government units participating in the local action group (this applies to municipalities and poviats) directly gain the right to participate in bodies and to make decisions regarding any issues related to the functioning of their association. The legal person acts through its authorized bodies, and the local government unit in accordance with the constitutional provisions is represented externally by its executive body authorized to make declarations of will on its behalf.

The freedom to shape internal organs and choose their members in the local action group has been modified in comparison to the general regulations of the Law on Associations. These restrictions come directly from the EAFRD Act, as well as from the regulations implementing it<sup>18</sup>. The latter introduce parity related to the subjective catalog of members of the local action

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- 14 A separate thread is the concept and nature of human freedom and citizen rights, as well as their genesis, hence it will be omitted here.
- 15 T. Uni.: (Journal of Laws of 2017, item 210), art. 42, section 1, item 3 and Article 10, section 3.
- 16 Paweł Suski, *Stowarzyszenia w prawie polskim* (Warszawa: LexisNexis, 2002), 179-180, 182.
- 17 These include the right to elect and be elected to organs, the right to adopt resolutions of the general meeting, attend meetings of bodies that make decisions on the activities of the association, the right to take initiative, motions and complaints, the right to appeal internal acts, and more. Ibidem, 202.
- 18 Regulation of the Minister of Agriculture and Rural Development of May 23, 2008 on detailed criteria and how to choose a local action group for the implementation of a local action strategy under the Rural

group treated as an organizational form of partnership. They are to be all municipalities covered by local development strategy, and public sector entities: public universities, research and development units, independent public health care institutions, state or local cultural institutions, state or local legal entities that perform public tasks (established under separate provisions), social sector entities, in particular natural persons who promote rural development, trade unions, socio-occupational organizations of farmers, associations, civic movements, other voluntary associations and foundations from the area of activity of the local action group, entities of the economic sector – local businesses. The broadly defined scope aims to enable the implementation of the postulate of social inclusion arising from the concept of multi-level governance, and the adoption of a decentralized model and bottom-up development policy<sup>19</sup>.

An additional restriction is the demand to maintain an equal representation of individual entities on the management board as a decision-making body and in the council, an obligatory body whose competences include making decisions regarding the selection of projects and tasks aimed at implementing association's prior objectives<sup>20</sup>.

The chairman of the Board of the Province (province marshal) exercises supervision over the operation of the local action group. It is an innovative solution because, as a rule, supervision over associations is exercised by the registration body, which is the court of the association's local jurisdiction, and this supervision is based on the criterion of compliance with the law. Due to the associative nature of the local action group, it should be listed in National Court Register on general principles and supervision, like other associations. Application of legal structure which provides for the province marshal as a supervisory body aims to include supervision and control, especially

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Development Program for 2007-2013, (Journal of Laws of 2008 No. 103, item 659).

- 19 Jerzy Hausner, „W kierunku rządzenia interaktywnego”, [in:] *Nowe zarządzanie publiczne i public governance w Polsce i Europie*, ed., Adam Bosiacki, Hubert Izdebski, Aleksander Nielicki, Igor Zachariasz (Warszawa: Wydawnictwo Liber, 2010), 96 n; Krystyna Lisiecka, Tomasz Papaj, Ewa Czyż-Gwiazda, *Public governance koncepcją zarządzania w administracji publicznej* (Katowice: Wydawnictwo Uniwersytetu Ekonomicznego, 2011), 42-43; *Administracja i zarządzanie publiczne. Nauka o współczesnej administracji*, ed. Dawid Sześciło (Warszawa: Stowarzyszenie Absolwentów Wydziału Prawa i Administracji Uniwersytetu Warszawskiego, 2014), 37 n.
- 20 Consolidated text: (Journal of Laws of 2013, item 173, as amended), Article 15 in connection with consolidated text: (Journal of Laws 2018, item 140), Article 4, section 3 point 4 and section 4.

financial one, into the discussed system. He then becomes the entity responsible for the implementation of regional development policy, as well as the entity acting as an intermediate body, whose primary task is to manage public funds from the EU funds for rural development<sup>21</sup>.

### 3. Local Action Group as a Unit Enforcing Public Tasks

The basic activity scope of local action group includes preparation and implementation of a local development strategy. It is a planning document prepared by associations, which is then adopted for implementation as the basis for determining local development goals and priorities, as well as actions and their financing. This strategy is adapted to the specifics of local conditions and takes into account specific development needs. The legislator did not specify the scope of local development concept of, nor did they specify requirements as to the essential elements of the strategy. The legislator also left the freedom to set goals and priorities, as well as to choose methods to achieve them. Local development strategy is to support the implementation of local development created by the local action group. Hence, local development can be understood as the actual desirable state, the state of compliance with certain criteria which, by describing the development plane in the microscale, indicate the progress in specific areas. The basic factor indicating local development is the existence of its determinants, among which the literature emphasizes local community, its relationship with the inhabited territory (emotional, cultural, traditional, and economic) and its forms of influence (transformation through individual activities and collective activities)<sup>22</sup>.

The role of local government in local development boils down to participating in local systems and to fulfilling the role, not so much, of steering as stimulating specific processes<sup>23</sup>. It should also be noted that, emphasized in the literature, the role of local government boils down to being a development-oriented entity, which is closely knitted with the nature of local government tasks, especially municipal, although at the same time there is no direct indication as to the local government's institutional responsibility for

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21 Competences and role of local government units in agriculture and rural development, comp. Ministry of Agriculture and Rural Development, Warszawa 2015, 6, [https://www.senat.gov.pl/gfx/senat/userfiles/\\_public/k8/agenda/seminaria/2015/150527/material\\_ministrstwa\\_rolnictwa\\_i\\_rozalu\\_wsi.pdf](https://www.senat.gov.pl/gfx/senat/userfiles/_public/k8/agenda/seminaria/2015/150527/material_ministrstwa_rolnictwa_i_rozalu_wsi.pdf).

22 Andrzej Sztando, „Oddziaływanie samorządu lokalnego na rozwój lokalny w świetle ewolucji modeli ustrojowych gmin” *Samorząd Terytorialny*, No. 1 (1998): 12-13.

23 *Ibidem*, 15.



local development<sup>24</sup>. The above discussed assumption is reflected in the local government unit participation in the structures of the local action group, which is a specific, formalized system of many participants, who have been given the right to formulate crucial from local conditions point of view development objectives and methods of fulfilling them – these methods should be listed in the local action strategy.

The activity of achieving the aims described in the adopted strategy may be financed from various financial sources from support funds of different areas from the EU budget<sup>25</sup>. The Board of the Province, which is competent for the area of activity of the local action group, distributes funds for the implementation after a previous competition<sup>26</sup>. The basis for the transfer of funds is a framework agreement, which, under pain of nullity, is declared in writing on the basis of a template developed by the minister for agriculture. Next to indicating the amount of financial resources and obligations, it also includes the date and place of implementation of the local strategy of operation; principles of its implementation; indications of entities implementing individual operations (tasks); grantees; monitoring, evaluation and control rules; principles of cooperation of the local action group with the local community and entities involved in the implementation of the strategy, commitments to apply these guidelines<sup>27</sup>.

The implementation of a local development tasks, which is also the primary and obligatory goal of the association, makes it difficult to grasp its real character. The difficulty may be associated with the mechanisms of privatization of public tasks<sup>28</sup> or contracting them under administrative law with the use of methods characteristic to civil law (contracts for the implementation of a public task). It can also be identified with the model of statutory delegating public tasks to certain associations, as is the case when legal norms explicitly specify unique, so-called special status associations, as competent for some of the state's tasks. In the first instance, we deal with non-public

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24 Adam Szewczuk, Magdalena Kogut-Jaworska, Magdalena Ziolo, *Rozwój lokalny i regionalny: teoria i praktyka* (Warszawa: Wydawnictwo C. H. Beck, 2011), 13.

25 These may be the funds from the European Agricultural Fund for Rural Development, the European Regional Development Fund, the European Social Fund, (vol.: Journal of Laws 2018, item 140), Art. 1.

26 Ibidem, Art. 9.

27 Ibidem, Art. 14.

28 Małgorzata Stahl, „Niepubliczne podmioty administrujące”, [in:] *Podmioty administrujące*, ed., Roman Hauser, Zygmunt Niewiadomski, Andrzej Wróbel (Warszawa: Wydawnictwo C.H. Beck: Instytut Nauk Prawnych PAN, 2011), 542.

entities that participate in the system of public tasks, however their task is to support public authorities, and their role is of a subsidiary nature. The most commonly understood privatization is preceded by a procedure; public procurement, or public task order competitions, which is based on specific system standards<sup>29</sup>. The second instance refers to the issue of decentralized administrative entities, among which social organizations and associations are indicated and permanently inscribed in the system of performing public tasks by the law<sup>30</sup>.

In these instances, however, we are talking about associations operating under the provisions of the law on associations, as well as other provisions regulating in detail the status of the, so called special association, but in the above discussed instances, public administration body is never a participant of the corporation of natural persons with the status of ordinary member. Public entities and their organs, including organs of local self-government units, standing as if on the side of the state, retain their separateness and, most importantly, the competence to carry out public tasks, and thus the responsibility for its implementation.

The above described institutional model for local development and the legal form of its implementation belong to solutions closer to public management than to administrative law. Creating a development strategy is a task of strategy management nature, in which local government takes part, but in a completely different role. Public-legal relations are disturbed, in favor

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29 I refer particularly to the regulation of the Act of 23 April 2003 on public benefit activities and volunteering (vol.: Journal of Laws 2018, item 410), which comprehensively regulates the issue of relations between public administration bodies and non-governmental organizations, which associations are recognized. Jolanta Blicharz, *Udział polskich organizacji pozarządowych w wykonywaniu zadań administracji publicznej* (Wrocław: Kolonia Limited, 2005), 95-106, elaborates on the problem.

30 For example: The Polish Hunting Association and hunting associations are authorized under Art. 32 and 33 of the Act of 13 October 1995 - Hunting Law, (consolidated version: Journal of Laws of 2017, item 1259, as amended) to perform tasks related to hunting economy, through breeding and hunting of animals, as well as activities for its protection by regulating the population; Volunteer Fire Brigades have been indicated in art. 19, section 1 a of the Act of 24 August 1991 on fire protection, (consolidated version: Journal of Laws of 2018, item 620), as entities authorized to fight fires, natural disasters and other local threats; The Polish Red Cross, whose status is regulated by a separate Act of 16 November 1964 on the Polish Red Cross, pursuant to art. 3, acting as a voluntary social organization, performs tasks in the field of health care (Journal of Laws of 1964, No. 41, item 276).

of relations significant for private law, the participation of a public entity, a local government administration body in corporate and personal structures, on an equal footing with natural persons and other entities to which the attributes of public subjectivity and administrative authority are not attributed. Admittedly, the provisions of the administrative law provide for planning activities, but this is done at the level of the local government, which is obliged to perform regional development tasks by developing and implementing the regional development strategy<sup>31</sup>, which includes the so-called sectoral strategies, covering tasks in the area specified in substantive law<sup>32</sup>. However, each time a task is performed in its own name and on its own responsibility, even when to perform them a collective agreement was concluded, or their performance is carried out through self-government organizational units<sup>33</sup>.

#### 4. Essence

Legal and organizational structure of the local action group as an entity competent for local development, within which we can observe a fusion of local government units and other persons and entities in a corporation operating on the basis of the EAFRD Act and provisions relating to local development with the participation of the local community that innovatively shapes bonds between public administration bodies and non-public entities, because they are based on close bonds of partnership cooperation within the association with a special status, which are intensified especially when it comes to cooperating upon decisions that concern the work of the bodies of this association, in whose participation of representatives of particular categories of entities is based on the principle of parity and balance. This ensures the diversification of views and prevents monopolization of operations by one of the parties. Nevertheless, such a legal and organizational structure, and especially its statutory property jurisdiction, breaks the established rules for the implementation of public tasks, as well as breaches the forms adopted in the doctrine. This is undoubtedly related to the latest tendencies to move away from imperious unilateral forms of public administration, in favor of consensual

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31 Act of 5 June 1995 on voivodship self-government, (consolidated text: Journal of Laws of 2018, item 913, as amended), Article 11.

32 Renata Cybulska, Jadwiga Glumińska-Pawlic, „Komentarz do art. 11 ustawy o samorządzie województwa”, [in:] *Ustawa o samorządzie województwa. Komentarz*, ed. Bogdan Dolnicki (Warszawa: Wolters Kluwer Polska, 2012), lex/el 8704. An example may also be the voivodship strategy for social policy, indicated in the Act of 12 March 2004 on social assistance, (consolidated version: Journal of Laws 2017, item 1769, as amended), Article 21, paragraph 1.

33 Uniform: (Journal of Laws 2018, item 913, as amended), Article 2, paragraph 2 in conjunction with Article 6, section 1 and art. 8 paragraph 1.

forms characteristic of private law. This also has its source in the tendencies to use public management methods in public administration activities, and especially in the dynamic development of the planning function, which is significant to the activities of the EU structures. This is justified by certain ideological and economic views, which are reflected in the European Union law and affect the change of paradigms of public administration in Poland, which follows the role of the performer in favor of the role of a co-creator. It is particularly evident in the area of shaping development policy<sup>34</sup>, including local development.

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34 M. Rzeszutko-Piotrowska, „Strategiczne planowanie rozwoju gospodarczego w Polskich gminach”, *Nierówności społeczne a wzrost gospodarczy* No. 34 (2013): 162.

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