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A two-step theory in the doctrine of German public law

Summary

This paper deals with *Zweistufentheorie*, a two-step theory developed in the doctrine of German public law. The theory is based on a thesis that in the event of public aid granted in a legal form of a civil law agreement a public administration law body is asked to establish whether such agreement has been concluded or renounced, a decision issued by this administrative body states a decision made under public law regulations and takes a legal form of an individual administrative act.

The two-step theory emerged in German public law in the fifties of the 20th century and was a reaction of the German public law doctrine to the insufficient legal protection of subjects seeking state-provided public aid. Before that theory was developed, public aid had been granted in the form of civil law agreements. This meant that such agreements were only under the supervision of common courts of law. Such legal protection was, however, unsatisfactory and only the exercise of the two-step theory made it possible to regard a decision establishing whether an agreement has been concluded or renounced as an individual administrative act, consequently subjected to the cognition of administrative courts.

Apart from creating a concept of an administrative law agreement, the development of a two-step theory constitutes one of the important accomplishments of the German civil law doctrine, which continues to be used in German public aid law notwithstanding the introduction in 1977 of an administrative law agreement.

In this paper, the leading opinions on the two-step theory present in the German public law doctrine have been presented.

Key words: two-step theory, public aid, legal forms of public administration acts, a public law agreement