

**DOTTORATO DI RICERCA IN RAPPORTI GIURIDICI TRA PRINCIPI COMUNITARI,  
COSTITUZIONALI ED INTERNAZIONALIZZAZIONE DEL MERCATO - IX CICLO**

***THE MANAGEMENT OF UNEXPECTED CHANGES IN CONTRACTS WITH THE PUBLIC  
ADMINISTRATION: THE RENEGOTIATION.***

**ABSTRACT**

The risk of unexpected changes – which is greater when the lapse of time between the establishment of a contract and its execution is particularly lengthy – can highlight big differences between the initial agreement of the parties and the actual situation, hence causing a series of issues with the managing of the contractual relationship. Therefore, in order to avoid using traditional methods, which would lead to a termination of the contract, it would instead be desirable to use methods that can guarantee a prosecution of the contractual relationship (with either an agreement of the parties or with a judicial statement) hence allowing to modify the agreement's contents. This solution guarantees a higher flexibility in the execution of the contract, which is absolutely fundamental when considering the natural economic incompleteness of contractual relations that are supposed to last for a great period of time. The interest in the application of the “renegotiation” of contracts with the public administration, is due to the high frequency of contractual relationships in which it is involved, which depends on the high economic importance of these contracts. Once clarified that it is possible to achieve public goals and to pursue the principles of efficiency, impartiality and cheapness by using consensual methods, the public administrations starts to make a more frequent use of civil law instruments, bypassing the *dogmas* of incompatibility between the discretion of the public administration and the contractual autonomy, and of the use of public authority as the only mean for the achievement of public interests. The regulations that govern the action of the public administration cannot guarantee neither the prearrangement, nor the “persistenza” of a balanced regulation of all the interests involved. Therefore, the need to protect the contractual balance also concerns contracts involving the public administration. From this point of view, the research's aim is to analyze the limits in the “renegotiation” of contracts of the public administration as means to prevent conflicts and to preserve public interest. However, in contracts concerning public administration, there is the necessity to avoid distortions in the competition and to ensure the principle of the *par condicio* among participants. This generates certain distrust in relation to the institute of renegotiation, which has been considered forbidden, both during the phase of the competition for the stipulation of the contract, and after its conclusion. This prohibition is considered as a sign of the impossibility of negotiation with competitors for the stipulation of contracts with the public administration, because the possibility of changing the contents of the agreement collides with the necessity of preserving the *par condicio* between the competitors of a procedure, which is definitely concluded and therefore intangible. The problem is supposed to be analyzed also in relation to the criteria of efficiency and cheapness, and to the fundamental principle of the good performance of the public administration. The interaction between these two principles allows for consideration for the “renegotiation”, in case of important and unexpected changes, as a way to guarantee the interests of both the public administration and the winner of the competition. Therefore, the “renegotiation” does not always violate the principles of transparency and competition. If it is only limited to the cases of important unexpected modifications and with the purpose to restore the existing economic balance in the moment the contract was signed, it does not violate the above mentioned principles and, at the same time, it renders a correct balance between the interests involved. This demonstrates that it is impossible to give an overall judgement concerning the renegotiation, and that it is necessary to verify in every single case what are both the effects produced, and the pursued goals.

The prospected solution results from the valorisation of the contractual capacity of the public administration – which can be used not only in the moment in which the contract is signed, but also during the execution phase – and of the provision of good faith as a general clause of our system, not only as an interpretative criteria, but also as a clause which can complete the content of a contract, in order to ultimately ensure the preservation of the economic and legal balance of the contract.