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Conflict of Interest in Public Employment Disciplinary Proceedings

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ABSTRACT
This paper examines the boundaries of conflict of interest in public employment disciplinary proceedings following Supreme Court, Labour Section, judgment no. 26508 of 9 October 2026. Separating administrative procedure rules from private-law employment acts governed by Article 55-bis of Legislative Decree no. 165/2001, the note assesses the exclusion of Article 6-bis of Law no. 241/1990, the internal disciplinary scope of Article 7 of Presidential Decree no. 62/2013, and the distinction from judicial recusal under Article 51 of the Code of Civil Procedure. It concludes by evaluating evidentiary burdens on merits, discrimination claims, and structural defects in collegial disciplinary offices.

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Conflict of Interest in Public Employment Disciplinary Proceedings

Italian Supreme Court of Cassation, Labour Division, Judgment of 9 October 2026, no. 26508: Scope of Recusal in the Disciplinary Office Between Special Statutory Rules and Institutional Friction

CASE DOSSIER

COURT
Italian Supreme Court of Cassation

DECISION
Labour Division, Judgment of 9 October 2026, no. 26508

KEY PROVISIONS
Legislative Decree of 30 March 2001, no. 165, Article 55-bis • Law of 7 August 1990, no. 241, Article 6-bis • Presidential Decree of 16 April 2013, no. 62, Article 7

HOLDING
upheld the Municipality's appeal and quashed and remanded to a differently composed Court of Appeal of Naples

JEL: J45, K31 • EuroVoc: 1046, 557 • Reading 10 min

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LEGAL PRINCIPLE / EDITORIAL HEADNOTE

In privatized public employment, Article 55-bis of Legislative Decree no. 165/2001 excludes Article 6-bis of Law no. 241/1990: institutional friction with the head of the Disciplinary Proceedings Office does not invalidate a sanction without proof of prejudice to defense rights or adjudication on the merits.

KEY TAKEAWAYS

01 Inapplicability of Article 6-bis of Law no. 241/1990
Disciplinary acts in privatized public employment are private-law acts governed by the special regime of Article 55-bis of Legislative Decree no. 165/2001.

02 Internal duty under Article 7 of Presidential Decree no. 62/2013
Failure to abstain may trigger internal disciplinary liability of the official toward the administration, yet does not invalidate the sanction absent independent defects.

03 Institutional friction and personal enmity
Administrative appeals and criminal complaints between colleagues do not amount to personal enmity, nor do they relieve courts from adjudicating the merits of the charges.

04 Substantive defense and competence
Friction with the head of the Disciplinary Office must be litigated through non-existence of the misconduct, proportionality, or discrimination, distinct from structural lack of collegiality.

ABSTRACT

This paper examines the regime governing **conflict of interest in public employment disciplinary proceedings** following Italian Supreme Court of Cassation, Labour Division, Judgment no. 26508 of 9 October 2026. Separating administrative procedure rules from private-law employment management acts, the commentary analyses the exclusion of Article 6-bis of Law no. 241/1990 in light of the **specialty of Article 55-bis of Legislative Decree no. 165/2001**, the purely internal scope of Article 7 of Presidential Decree no. 62/2013, and the distinction from judicial recusal under Article 51 of the Code of Civil Procedure. Finally, it evaluates the employee's evidentiary burdens on remand and the **scope of organizational separation** relative to structural defects in collegial disciplinary offices.

COMPARATIVE & EUROPEAN LEGAL FRAMING

Institutional & EU Nexus: Since the contractualization of the Italian civil service under Legislative Decree no. 165/2001, disciplinary sanctions against public employees are reviewed by ordinary labour courts rather than administrative courts, intersecting with EU anti-discrimination burden-shifting rules (Directive 2000/78/EC) and whistleblower safeguards where retaliatory motives are pleaded. **Comparative Common Law Lens:** Whereas UK public-sector disciplinary panels are scrutinized under natural justice and apparent bias (*nemo iudex in causa sua*), Italian *Civil Law* treats the public employer's Disciplinary Proceedings Office (*UPD*) as an organizational unit of the contracting party rather than a quasi-judicial tribunal, channeling bias allegations into substantive review of misconduct and retaliatory intent.

01. INTRODUCTION: CONFLICT OF INTEREST IN DISCIPLINARY PROCEEDINGS AND SUPREME COURT JUDGMENT NO. 26508/2026

The legal classification of **conflict of interest in disciplinary proceedings** in the public sector returns to the forefront of Supreme Court case law with **Italian Supreme Court of Cassation, Labour Division, Judgment of 9 October 2026, no. 26508**[1], which redraws the boundary between administrative procedural safeguards and private employer prerogatives within public administrations. Whenever a public executive challenges a sanction by alleging hostility on the part of the disciplinary body, defense counsel is tempted to transpose public-law impartiality standards automatically into a contractual employment relationship. The hazard of such overlap is evident.

§ 2 If every friction arising out of administrative duties sufficed to render a **disciplinary sanction null** prior to scrutinizing the substance of the charge, disciplinary procedure would lose its **private-law character** and accountability would stall on preliminary grounds. Conversely, rigid indifference to internal tensions risks leaving employees without effective protection whenever a single-member Disciplinary Proceedings Office exercises punitive power in an atmosphere of open confrontation.

§ 3 The decision under review resolves this dilemma through a **sharp separation of statutory planes**, situating the analysis along the fault line between the specialty of the Consolidated Act on Public Employment and **substantive fact-finding duties** in judicial review. What emerges is a selective architecture in which alleged bias triggers no automatic formal invalidation, but instead operates as a lens for verifying the underlying misconduct and any retaliatory purpose.

02. PROCEDURAL HISTORY AND THE NORMATIVE PLANES OF IMPARTIALITY IN THE DISCIPLINARY OFFICE

§ 4 The dispute decided by **Supreme Court of Cassation, Labour Division, Judgment no. 26508/2026**[1] originated from three disciplinary sanctions imposed in 2018 and 2019 upon an executive of the Municipality of Pompei assigned to two technical departments. The first two charges concerned breaches of fairness and loyal cooperation in correspondence addressed to the Municipal Secretary General, punished with fines of EUR 300 and EUR 500; the third concerned the award of fire-extinguisher maintenance and fire-safety inspection services outside the public administration's electronic marketplace, sanctioned with a **three-day suspension** from service and pay.

§ 5 Whereas the Tribunal of Torre Annunziata dismissed the two consolidated challenges brought by the executive, the Court of Appeal of Naples overturned that ruling and annulled all three sanctions without examining the merits of the charges. The appellate court applied the general **duty to abstain** laid down in Article 6-bis of Law no. 241/1990, emphasizing a long-standing conflict between the charged executive and the colleague who conducted the entire proceeding as the **sole member of the Disciplinary Proceedings Office (*UPD*)**. That friction had manifested in administrative court appeals against resolutions adopted by the colleague and criminal reports filed with the Public Prosecutor's Office, including allegations of omitted disciplinary proceedings against executives facing criminal charges or convictions.

§ 6 Notably, the administrative confrontation between the two officials had originated years earlier over requests to draw from existing municipal **recruitment ranking lists**. Precisely the issue of drawing

from public employment ranking lists and entitlement to appointment[D1] illustrates the dividing line between macro-organizational public-law determinations and private-law management of individual employment contracts. When an administration exercises competitive hiring or staffing powers, public administrative procedure governs validity; when it intervenes in an ongoing contract via a disciplinary measure, the centre of gravity shifts to **private employer prerogatives**.

§ 7 Against this backdrop, the Municipality of Pompei appealed to the Supreme Court on a single ground alleging breach of Article 6-bis of Law no. 241/1990, Article 7 of Presidential Decree no. 62/2013, and Article 51 CPC, while the former executive's counter-appeal was **declared untimely** because filed in September 2024 following service completed the previous January. Referred from chambers to the public hearing of 22 September 2026 due to its systemic significance, the Labour Division upheld the municipal appeal and quashed the judgment with **remand for substantive review** to a differently composed panel of the Court of Appeal of Naples. Grasping the scope of the rule requires following the sequential reasoning by which four distinct statutory planes are isolated.

03. SPECIALTY OF ARTICLE 55-BIS AND THE SCOPE OF CONFLICT OF INTEREST IN DISCIPLINARY PROCEEDINGS

3.1 — Exegesis of Article 55-bis of Legislative Decree no. 165/2001 and Inapplicability of Article 6-bis of Law no. 241/1990

§ 8 The first pillar of the judgment rests upon the **structural incompatibility** between the administrative procedure model and the legal nature of acts managing privatized public employment relationships. In Judgment no. 26508/2026[1], the Court rejects equating the head of the disciplinary office with a public official issuing an authoritative administrative measure, since a disciplinary sanction does not express public administrative power but rather a **private-law employer prerogative**. Consequently, the broad mandate whereby Article 6-bis of the Administrative Procedure Act requires competent officials to abstain—"must abstain in the event of a conflict of interest, reporting every situation of conflict, even potential"—remains confined to administrative action properly so called.

§ 9 This exclusion of the general administrative statute aligns with the text of Article 55-bis of Legislative Decree no. 165/2001 in the wording applicable *ratione temporis* to post-2017 conduct. Paragraph 2 grants each administration **organizational autonomy** free from mandatory collegiality or rigid subjective prerequisites: "Each administration, according to its own internal regulations and within its organizational framework, designates the office for disciplinary proceedings competent for offences punishable by a sanction greater than a verbal reprimand and assigns its leadership and responsibility." Paragraph 9-bis reinforces this design by striking down with **nullity any procedural aggravations** introduced by internal regulations or collective clauses seeking to impose "formal or procedural requirements additional to those set out in this article or otherwise aggravating the disciplinary proceeding."

§ 10 The architecture is completed by the **saving rule** of paragraph 9-ter, under which breaches of time limits and procedural provisions "do not result in forfeiture of disciplinary action nor in the invalidity of the acts and of the sanction imposed, provided that the employee's right of defense is not irremediably impaired" and subject solely to the peremptory deadlines for charging misconduct and concluding the proceeding. Read in sequence, these three paragraphs establish a **self-contained statutory micro-system** onto which interpreters may not graft automatic invalidations absent from the statutory text. The

ensuing step explains why neither the national code of conduct nor the Code of Civil Procedure bridges that gap.

PRIVATE-LAW SPECIALTY AND VALIDITY OF SANCTIONS UNDER ARTICLE 55-BIS

In privatized public employment, the validity of a disciplinary measure does not turn on the public-law paradigm of potential conflict under Article 6-bis of Law no. 241/1990, but on compliance with peremptory deadlines, organizational separation of the Disciplinary Office from the employee's unit, and effective defense rights.

3.2 — Internal Duty Under Article 7 of Presidential Decree no. 62/2013 and Distance from Judicial Recusal Under Article 51 CPC

§ 11 Having excluded the general administrative procedure statute, the Supreme Court examines Article 7 of Presidential Decree no. 62/2013, frequently invoked by claimants as a supplementary rule for disciplinary proceedings. This regulatory provision requires public employees to abstain where personal interests are involved or persons with whom there is "pending litigation or serious enmity or significant credit or debit relationships", as well as "in any other case in which serious reasons of convenience exist", entrusting the decision on abstention to the head of the relevant office. Nevertheless, the judgment clarifies that this provision governs exclusively **internal duties toward the administration**, and its breach may at most give rise to disciplinary liability of the non-compliant official without affecting *ex se* the **validity vis-à-vis third parties** of an act free from independent defects.

§ 12 Equally sharp is the demarcation from Article 51 of the Code of Civil Procedure, designed to safeguard the impartiality of a judicial body standing outside the disputing parties. As the Court had already held in Supreme Court of Cassation, Labour Division, Order of 4 March 2024, no. 5733[2], the independence of the Disciplinary Proceedings Office must not be conflated with the **impartiality proper to a judge**. Notwithstanding its procedural guarantees, disciplinary action remains an activity conducted by the public employer, who is a substantive party to the employment contract.

> ***The independence of the disciplinary office reflects an internal organizational separation within the employer and is not equivalent to judicial impartiality; accordingly, any friction bears on the merits of the charge rather than operating as an automatic nullity of the sanction.***

§ 13 Within the reasoning of Judgment no. 26508/2026, one must therefore separate the binding ***ratio decidendi*** from supplementary arguments adduced in support of the holding. The decisive point lies in the direct inapplicability of the civil-procedure paradigm to public disciplinary proceedings; the reference to case law construing "pending litigation or serious enmity" under Article 51(1)(3) CPC performs instead a **subordinate, reinforcing function**, demonstrating that even under that stricter standard the executive's complaint would have failed.

§ 14 This dual-tier reasoning strengthens the **systemic coherence of the holding** and narrows the room for dilatory procedural objections. Even under the Code of Civil Procedure, personal incompatibility demands private animosity sufficient to warrant presuming a predetermined adverse ruling, whereas in disciplinary proceedings the statutory guarantee remains anchored to **organizational separation** between the employee's operational unit and the disciplinary office. It remains to examine how overt institutional conflict is treated.

3.3 — Institutional Friction, Criminal Reports, and Distinction from Personal Interest

§ 15 The most sensitive point of the dispute concerns the line between friction arising in the performance of public duties and a private interest capable of tainting disciplinary assessment. Judgment no. 26508/2026 draws a bright boundary between **conflict tied to administrative acts** and the involvement of **personal interests** of the head of the Disciplinary Office, ruling out that administrative appeals or criminal complaints suffice by themselves to paralyze disciplinary action. Previously, Italian Supreme Court of Cassation, Labour Division, Judgment of 9 February 2023, no. 3981[3] had upheld the dismissal of an appeal by a municipal executive who had lodged reports and criminal complaints against the head of the disciplinary office, clarifying that such steps do not establish **mutual personal enmity** extraneous to official duties. Were a unilateral complaint enough to disqualify the disciplinary authority, any employee could **block the competent body** through a mere litigation filing.

§ 16 Significantly, the Supreme Court's reasoning also addresses the parallel drawn by the Court of Appeal of Naples with whistleblower protection. The justices observe that **whistleblowing legislation had never been invoked** by the employee in the merits proceedings, so that the appellate court could not convert prior lawsuits and reports *ex officio* into an automatic procedural nullity grounded on presumed retaliation. Reporting alleged disciplinary omissions or challenging municipal resolutions does not extinguish the duty to adjudicate the charges brought against the employee; rather, it requires the merits court to verify concretely the existence of the offence, the **proportionality of the sanction**, and any discriminatory nature of the measure.

EXAMINED PROFILE	INSTITUTIONAL FRICTION	PERSONAL INTEREST OR RETALIATION
Origin of friction	Administrative court challenges to resolutions, reports or complaints over official acts, and organizational disputes	Private grounds of mutual animosity extraneous to public duties or discriminatory and retaliatory intent
Effect on UPD proceeding	No automatic nullity of the sanction nor forfeiture under Article 55-bis of Legislative Decree no. 165/2001	Potential internal disciplinary liability of the official and strict judicial scrutiny on the merits
Forum of protection	Substantive adjudication of whether the charges occurred and proportionality of the penalty	Facilitated evidentiary regime where specific discriminatory elements are pleaded and shown

04. CASE-LAW COUNTERPOINTS, GREY AREAS, AND LITIGATION DEFENSE

4.1 — Dialogue with Precedents and the Structural Boundary of the Collegial Disciplinary Office

§ 17 Placed alongside the most recent rulings of the Labour Division, Judgment of 9 October 2026, no. 26508[1] completes a coherent trajectory on the meaning of impartiality in **conflict of interest in disciplinary proceedings**. A first line of cases includes Order no. 5733/2024[2], which ruled out the invalidity of a dismissal notwithstanding the presence within the collegial office of the brother-in-law of an individual involved in the underlying criminal events, and Judgment no. 3981/2023[3] on the **irrelevance of criminal complaints** filed by the charged executive. Along the same trajectory, Italian Supreme Court of Cassation, Labour Division, Order of 20 May 2024, no. 14003[4] upheld the **validity of delegating** the functions of head of the Disciplinary Office by the Municipal Secretary General even to the

employee's **direct hierarchical superior**, reaffirming the absence of an automatic bar on overlapping roles.

§ 18 An essential counterpoint nonetheless arises from Italian Supreme Court of Cassation, Labour Division, Order of 7 May 2025, no. 12047[5], which marks the boundary beyond which organizational flexibility cannot extend. Although that ruling concerned a written reprimand issued in 2014 under the pre-2017 statutory framework and concluded with a **declaration of inadmissibility** of the Ministry's appeal, the dispute illuminates a clear structural threshold: where an administration's internal regulations entrust disciplinary proceedings to a collegial body, monocratic adoption of the measure by an individual manager without collegial involvement or disciplinary fact-finding infringes the **statutory competence of the body**. No contradiction therefore exists between the two lines of authority, since failure of a duly appointed member to abstain differs fundamentally from unilateral replacement of a collegial office mandated by the administration's own organizational model.

DECISION / COURT	STANCE	CORE PRINCIPLE
Supreme Court of Cassation, Labour Div., no. 26508/2026	Under Review	Article 6-bis of Law no. 241/1990 does not apply to public disciplinary proceedings; institutional friction triggers no nullity without adjudication on the merits.
Supreme Court of Cassation, Labour Div., no. 5733/2024	Aligned	Non-abstention of a collegial UPD member linked by affinity does not void the sanction if organizational separation and defense rights are preserved.
Supreme Court of Cassation, Labour Div., no. 14003/2024	Aligned	Delegation of disciplinary conduct even to the employee's direct hierarchical superior is lawful absent an absolute duty to abstain.
Supreme Court of Cassation, Labour Div., no. 3981/2023	Aligned	Reports and criminal complaints filed against the head of the UPD regarding official duties do not constitute personal enmity nor void the sanction.
Supreme Court of Cassation, Labour Div., no. 12047/2025	Distinguishing	Under the pre-2017 regime, a sanction adopted monocratically by a manager without fact-finding or participation of the prescribed collegial UPD remains unlawful.

4.2 — How to Prove Prejudice by a Single-Member Disciplinary Office: Burden of Proof and Merits Remedies

§ 19 To establish prejudice stemming from hostility on the part of a sole disciplinary officer, the employee must move beyond alleging past friction and prove in court the non-existence of the charged conduct, the disproportionality of the sanction under the collective agreement, or circumstantial indicators of discriminatory or retaliatory intent.

§ 20 Precisely the monocratic configuration of the office puts the practical soundness of the principle under strain, marking the main **grey area of the ruling**. Where the Disciplinary Office operates as a collegial panel, as in Order no. 5733/2024, the presence of other members mitigates the weight of an individual member's incompatibility; where instead a single person concentrates investigation, evaluation, and final decision, purely organizational separation from the employee's unit ensures no internal dialectic. In such settings, the charged employee risks facing a **unilaterally skewed assessment** despite formal compliance with jurisdictional rules.

§ 21 In litigation practice, this approach shifts defense strategy entirely from preliminary objections to **evidentiary scrutiny on the merits**. Counsel cannot rely solely on seeking procedural annulment for conflict of interest in disciplinary proceedings, but must challenge the **factual existence of the alleged breaches** item by item, produce exculpatory administrative records, and contest the proportionality of the sanction. A **clear boundary of application** nonetheless remains intact: the rule does not apply where the measure was issued outside the office's statutory competence or in breach of organizational separation, as in the unilateral displacement of a collegial panel examined in Order no. 12047/2025, nor where the peremptory deadlines of Article 55-bis of Legislative Decree no. 165/2001 were exceeded.

§ 22 Where institutional confrontation conceals a persecutory or retaliatory aim, the 2026 judgment opens a specific avenue through the **facilitated evidentiary regime** governing anti-discrimination protection. On remand or in judicial challenges, the employee will therefore bear the task of pleading **precise and concordant circumstances**—such as systematic disparate treatment compared with colleagues in analogous positions or selective initiation of disciplinary charges immediately following official reports—capable of raising a presumption of discrimination subject to rebuttal by the administration.

05. CONCLUSIONS

§ 23 Italian Supreme Court of Cassation, Labour Division, Judgment of 9 October 2026, no. 26508[1] consolidates a strictly selective framework for **conflict of interest in disciplinary proceedings** in the public sector, shielding the private-law specialty of Article 55-bis of Legislative Decree no. 165/2001 from wholesale transplantation of procedural nullities belonging to authoritative administrative action. Distinguishing organizational independence of the Disciplinary Office, internal ethical duties under Article 7 of Presidential Decree no. 62/2013, and judicial impartiality under Article 51 CPC prevents institutional friction from functioning as a preliminary immunity barring adjudication of the charged misconduct.

§ 24 At the same time, remanding the case to the merits court does not amount to uncritical endorsement of employer choices made amid tension between public officials. Effective judicial review of the non-existence of misconduct, the proportionality of the sanction, and any discriminatory motive remains the substantive safeguard balancing the broad organizational autonomy granted to public administrations in structuring their disciplinary offices.

AUTHORITIES & REFERENCES

Table of Authorities & References Cited

I. STATUTORY PROVISIONS

Legislative Decree of 30 March 2001, no. 165, Article 55-bis – Forms, deadlines, and competence of the Disciplinary Proceedings Office in privatized public employment.

Law of 7 August 1990, no. 241, Article 6-bis – Duty to abstain and report conflicts of interest in administrative proceedings.

Presidential Decree of 16 April 2013, no. 62, Article 7 – Internal duty of abstention under the Code of Conduct for Public Employees.

Italian Code of Civil Procedure, Article 51 – Grounds for mandatory judicial recusal.

II. CASE LAW CITED

[1] **Italian Supreme Court of Cassation, Labour Division, Judgment of 9 October 2026, no. 26508** OUTCOME: upheld the Municipality's appeal and quashed and remanded to a differently composed Court of Appeal of Naples. PARA.: §§ 4–13 (Article 6-bis of Law no. 241/1990 does not apply to public disciplinary proceedings under Article 55-bis of Legislative Decree no. 165/2001 and institutional friction does not annul a sanction without adjudication on the merits).

[2] **Italian Supreme Court of Cassation, Labour Division, Order of 4 March 2024, no. 5733** OUTCOME: dismissed the employee's appeal confirming the lawfulness of the disciplinary dismissal. PARA.: §§ 1–2 (failure of a collegial UPD member to abstain does not invalidate the sanction where organizational separation and defense rights are preserved).

[3] **Italian Supreme Court of Cassation, Labour Division, Judgment of 9 February 2023, no. 3981** OUTCOME: dismissed the executive's main appeal and declared the conditional cross-appeal absorbed. PARA.: § 1.1 (filing reports and criminal complaints against the head of the UPD over official matters does not establish personal enmity).

[4] **Italian Supreme Court of Cassation, Labour Division, Order of 20 May 2024, no. 14003** OUTCOME: upheld the Municipality's appeal and quashed and remanded to the Court of Appeal of Naples. PARA.: reasoning on grounds 1–4 (delegation of disciplinary functions even to the employee's hierarchical superior is lawful absent an absolute duty to abstain).

[5] **Italian Supreme Court of Cassation, Labour Division, Order of 7 May 2025, no. 12047** OUTCOME: declared inadmissible the Ministry's appeal, confirming annulment of the sanction. PARA.: § 2 (under the pre-2017 regime, where internal rules provide for a collegial UPD, monocratic adoption without collegial fact-finding breaches disciplinary competence).

III. LEGAL SCHOLARSHIP CITED

[D1] Metodo Giuridico, Scorrimento della graduatoria nel pubblico impiego e diritto al posto [Drawing from Public Employment Ranking Lists and Entitlement to Appointment]. Analysis of the boundary between macro-organizational public-law powers and private-law governance of public employment.

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