



FROM THE IUSTORIA BLOG

It Is Being Recorded: Sentences to Never Say at the Negotiating Table

Czech law knows no settlement privilege. What you say in settlement talks may one day be read by a judge. A guide to what your sentences will turn into two years later, in a courtroom.

MGR. JAN VYTŘÍŠAL

15 September 2026 · 12 min read

Czech law knows no settlement privilege. What you say in settlement talks may one day be read by a judge. Most people — lawyers included — talk at the negotiating table as though the words evaporated. They do not. This is a guide to what your sentences will turn into two years later, in a courtroom.

The myth of confidentiality

Let me start with what most business owners believe, because they have seen it in American television: that whatever is said in settlement talks is "off the record". Common-law systems really do have the *without prejudice* doctrine — communications made in a genuine attempt to settle are in principle inadmissible. It is that rule which lets the parties afford to speak openly: to concede a weakness, to float a compromise, to name the price at which they would walk away.

Czech civil procedure has nothing of the kind. Section 125 of the Code of Civil Procedure provides that **any means capable of establishing the facts of the case** may serve as evidence. Your e-mail proposing a settlement. The minutes of a meeting. The testimony of a person who sat at the table. Your text message written at ten in the evening after the third beer. There is no provision saying: this was said in an attempt to settle, so it does not count.

The single genuine exception is formal mediation under Act No. 202/2012 Coll. — and even there, mind the detail almost nobody knows: the duty of confidentiality binds **the mediator, not the parties**. A registered mediator may not testify about what they learned. But the person who sat across from you? They can retell your sentences to a court whenever it suits them — unless you expressly contracted for confidentiality. And even contracted confidentiality has its limits: breaching a confidentiality agreement gives rise to a claim in damages, but evidence once put before a court does not disappear from the courtroom again.

THE PRACTICAL UPSHOT

In the Czech Republic you always negotiate on the record. Even when no minutes are taken. Even when nothing is being recorded. The other side's memory is a recording device that cannot be switched off.

And when it really is being recorded

The second layer, discussed even less: a recording made without your consent. Section 86 of the Civil Code protects privacy and expressions of a personal nature — as a rule, nobody may capture them without permission. Yet Constitutional Court case law weighs that protection against the right to a fair trial: a covert recording may be usable in proceedings where it is the only or a decisive way of proving a right and the interference with privacy is proportionate. Between two business people negotiating a commercial dispute — that is, outside the intimate sphere, in professional dealings — the courts admit such recordings fairly generously.

I am not going to advise you to record. I will tell you something more useful: **always negotiate as if the other side were recording**. It is the only assumption whose being wrong costs you nothing.

Anatomy of a quotable sentence

Over years at negotiating tables I have developed a taxonomy of the sentences that come back to haunt people. Three categories, in descending order of frequency:

Category	How it sounds at the table	How it reads two years later from the record
Bravado	"I'll happily drag this out for ten years, I don't care."	A threat, an obsession or harassment — and the judge also rules on costs
Unintended admission	"Well obviously we knew it had defects, but for that money..."	"The defendant conceded knowledge of the defects." Nobody cares about the rest of the sentence
Conditional capitulation	"If we were hypothetically to go to a million..."	"The defendant himself conceded the figure of one million at the meeting."

Bravado is treacherous precisely because it yields no tactical gain whatsoever: it convinced nobody, it moved nothing, it merely got written down. It is pure emission of risk with no return.

Unintended admissions most often arise when you are defending something else: you concentrate on defending point B and hand over point A in passing. An opponent who knows how to listen is not taking notes at the table on what you assert. They are taking notes on what you concede.

Conditional capitulation has a property people underrate: the conditional mood is the first thing to evaporate from anyone's memory. A settlement offer made without a protective formulation becomes an anchor you will never negotiate below again — and, at worst, the other side will present it as your acknowledgement of the basis of the claim.

How to frame a concession so it is not an admission

None of this means you may not make offers at the table. Without offers you never reach a deal. It means the offer needs a construction that separates it from the merits. The craft looks like this:

Always anchor an offer to economics, not to the facts. Not "we accept we owe something, let's discuss how much", but "we consider our position fully sound; the figure X reflects solely the price of the time and uncertainty a dispute would cost us". The difference is legally decisive: the first sentence is an acknowledgement of the basis of the claim, the second is a commercial calculation from which nothing can be extracted.

Put a time limit on the offer and say so out loud. "This proposal stands until the end of the month; after that we are talking about different numbers." Beyond creating pressure, it documents that this was a one-off proposal for a deal, not a standing position on the merits.

And if you keep minutes of the meeting — which I recommend always, sending the other side a summary the same day, because whoever writes the minutes writes the history — set out the offer passages expressly: "The parties discussed possibilities of an amicable resolution; no statement made in the course of these discussions consti-

tutes an acknowledgement of the claim or any part of it." It is not bulletproof. It is far better than nothing.

When to concede a weakness on purpose

Now let me turn it around, because an honest guide cannot end at "admit nothing". There is a situation in which a statement against your own interest is the strongest move available — and I use it.

Credibility at a negotiating table is not built by asserting "trust me". It is built by telling the other side something that cuts against you. When I say at a meeting "our claim has a weak spot and it is X; we have priced it in", something remarkable happens: everything else I have said and will say acquires weight. A liar does not concede weaknesses. Whoever uncovered one themselves is believed about their strong cards too. This mechanism has long been described in the psychology of judgment — information running against the speaker's interest earns a credibility premium — and it works reliably.

But it has rules. The concession is made **under control**: a weakness I selected, in wording I drafted in advance, to an extent I can live with in the record. Never in the heat of the moment, never under the pressure of a question, never a weakness the other side does not yet know about and would not find on its own. And never from an overall weak position — a concession works as seasoning on a strong position, not as a substitute for one. I will devote a separate text to the controlled concession, because it deserves one.

The five-sentence checklist

Before every negotiation worth the name, I prepare five formulations in writing. I recommend you do the same — it takes twenty minutes and it is the cheapest insurance you will buy in the whole dispute:

#	The sentence	What it is for
1	The one with which I make my offer	Anchored to economics, not to the facts
2	The one with which I refuse	Without bravado — "that is not acceptable to us" closes just as firmly
3	The one that answers the most unpleasant question	Otherwise you will answer it in the heat of the moment, and badly
4	The one with which I break off	Walking away from the table is a legitimate move, not a defeat
5	The one I will never say	A trap once named stops being a trap

The rest of the negotiation may be improvised. These five sentences may not.

What to take away

In the Czech Republic there is no protective wrapper around settlement talks. Everything you say is potential evidence — and an opponent with a good memory or a good phone is a recording device. That does not mean staying silent; it means speaking like someone who knows it is going on the record. It weakens strong positions not at all. It kills weak sentences — and that is exactly the difference you will see in a courtroom two years later.

On how the other side reads your conduct and what the judge does with it, see [Statutes are just the foundation: psychology and tactics in a legal dispute](#) and [The psychology of the parties: how a judge decides](#). Whether to head for the table rather than the courtroom at all is taken apart in [When to go to court and when to mediate](#).

Preparing the wording for a specific negotiation — including the sentences that are never said — is part of the work we do in the [War Room](#).

Facing a negotiation that actually matters? Five sentences prepared in advance are the cheapest insurance in the whole dispute — and they cannot be bought once you are at the table. [Get in touch](#), or read what the preparation looks like in the [War Room](#).

This text is a general commentary, not legal advice; every situation requires its own assessment. The example sentences are generalised and refer to no specific matter or person. Law as at August 2026.

It Is Being Recorded: Sentences to Never Say at the Negotiating Table

Mgr. Jan Vytřísal · Published 15 September 2026

<https://www.iustoria.cz/en/blog/it-is-being-recorded-sentences-never-to-say-at-the-table/>

This text is protected by copyright. Sharing the document whole and unaltered is welcome; reuse of parts in other texts requires attribution. © IUSTORIA, advokátní kancelář, s.r.o.