FROM THE IUSTORIA BLOG

Secret Recordings in Court: When They Hold Up and When They Backfire

> *A recording made without consent is not automatically barred in court, but it does not win a case on its own. When a court admits one, what must not be recorded and how to keep it so it holds up.*

IUSTORIA TEAM

5 November 2026 · 10 min read

There are two opposite misconceptions about secret recordings. According to the first, a recording made without consent is illegal and no court will accept it, so there is no point in making or submitting one. According to the second, a recording is the best evidence there is: whoever has the conversation on tape has won. We see both at our firm. The client who keeps quiet about a recording of a decisive phone call because they are embarrassed to have made it. And the client who records every meeting and expects that to carry them through the dispute.

The truth lies somewhere in between. A recording made without the knowledge of the person recorded is not automatically barred in court, but the court will admit it only under certain conditions. What matters is what was recorded, in what circumstances, what is at stake in the dispute and whether the same thing could have been proven some other way. We will show where the limits are and how to keep a recording so that it holds up in court.

If you are interested in the opposite situation, where the other side is recording you, read our article It Is Being Recorded: Sentences to Never Say at the Negotiating Table.

Is recording without consent allowed at all?

The Czech Civil Code protects privacy and expressions of a personal nature (Section 81(2)). No one may interfere with another person's privacy without a legal reason; in particular, no one may, without a person's consent, intrude on their private premises, monitor their private life or make an audio or video recording of it (Section 86).

The law does, however, recognise exceptions. Consent is not required if an audio or video recording is made or used to exercise or protect other rights or legally protected interests of other persons (Section 88(1)). This ground must not, however, be used in a disproportionate manner contrary to the legitimate interests of the person recorded (Section 90). The Supreme Court has added that this is an exception to the protection of personality rights and must therefore be interpreted narrowly: it is not enough that the recording helps someone in the proceedings (judgment of 14 August 2018, file no. 21 Cdo 1267/2018).

What is being recorded also matters. According to the Supreme Court, conversations held in the course of a profession or of business or public activity are generally not of a personal nature (judgment of 11 May 2005, file no. 30 Cdo 64/2004, concerning a discussion between co-owners about problems in their company). The decision was made under the old Civil Code, but the Constitutional Court relied on it in the decision we discuss below. A conversation about a notice of termination, a warranty claim or payment of an invoice is therefore something quite different from a recording of a family row or an intimate conversation. Today, however, the work-related nature of a conversation is not enough on its own: in 2018 the Supreme Court refused to admit a recording of work meetings because witnesses had testified to what was said (see below).

Recording a conversation you take part in yourself must be distinguished from intercepting someone else's communication. Intentionally breaching the confidentiality of a voice or text message sent over an electronic communications network, for example by listening in on someone else's phone call, may constitute the criminal offence

of breach of confidentiality of transmitted messages; it carries imprisonment for up to two years or a ban on carrying on an activity (Section 182(1) of the Czech Criminal Code). And a voice recorder planted in someone else's flat is precisely the intrusion on private premises that Section 86 of the Civil Code prohibits.

When a court will admit a secret recording

In civil proceedings, anything that can establish the facts may serve as evidence (Section 125 of the Czech Code of Civil Procedure). For a long time, however, the rule was that a court would not take evidence obtained in breach of the law and of someone else's rights. In 1998, for instance, the Supreme Court rejected a recording of two employees' phone calls that their employer had made without their knowledge (judgment of 21 October 1998, file no. 21 Cdo 1009/98). The prevailing view in the civil courts was then that a recording of a conversation could be used only with the consent of the person recorded.

The turning point came with the Constitutional Court judgment (*nález*) of 9 December 2014, file no. II. ÚS 1774/14. An employee had been given notice on grounds of redundancy and claimed that the real reason was his criticism of the management. At a trade fair, without the knowledge of a member of the company's foreign management, he recorded a conversation in which, according to him, that manager confirmed the real reason for his dismissal. The regional court rejected the recording as inadmissible, and the Supreme Court dismissed his appeal on a point of law (*dovolání*). The Constitutional Court quashed both decisions.

According to the Constitutional Court, the basic criterion is a balancing of the protected rights and interests that collide, and this cannot be done in the abstract. In each case the court must consider:

- the circumstances in which the recording was made,
- the importance of the interest at stake in the dispute,
- what other options the person making the recording had to obtain the information without intruding on the other person's privacy.

At the same time, the Constitutional Court expressly stated that arbitrary recording of private conversations is, in ordinary circumstances, a gross intrusion on privacy, and that it disapproves of covert recording in both private and professional dealings. It is different where the recording forms part of the defence of a victim of crime or is a route to legal protection for a markedly weaker party to a significant dispute, especially an employment dispute. The Constitutional Court likened obtaining the only or the key piece of evidence in this way to acting out of necessity or in permitted self-help.

The Supreme Court adopted and refined this approach in its judgment of 14 August 2018, file no. 21 Cdo 1267/2018, which was published in the Collection of Court Decisions and Opinions. In its view, a secret recording is an exceptional means. It can be used only where it is meant to prove a fact that cannot be proven otherwise, and where the other circumstances also lead to the conclusion that the right to a fair trial outweighs the protection of the personality rights of the person recorded. In that case, the employer wanted to use recordings of two meetings to prove that an employee had threatened it. But each meeting had been attended by one of the people the employee had dealt with, and both testified about them as witnesses. The courts therefore refused to admit

the recordings as evidence, and the Supreme Court agreed. The employer won the case all the same: it proved the threats through the witnesses, and the Supreme Court held the immediate termination of employment to be valid.

A recording is a last resort, not your main evidence. If the same fact can be proven by a witness, an email or another document, the court will usually not admit a secret recording. So do not build your case on it, but do not hold it back either: as a rule, evidence can be proposed only until the end of the preparatory hearing or, if there was none, the first hearing (Section 118b(1) of the Code of Civil Procedure). Propose it in good time together with your other evidence and explain why, without it, it will be one person's word against another's.

Employment disputes: who records whom

In employment disputes, a recording stands the best chance if it is submitted by the employee. In judgment II. ÚS 1774/14 the Constitutional Court pointed out that the courts must take into account the usual difficulty an employee faces in finding evidence when trying to prove that the employer acted unlawfully in ending the employment. It described as manifestly absurd the idea that the privacy interest of a member of management, who said nothing personal on the recording but only information relevant to the employment relationship, should prevail. An employee who has been given notice on a ground they do not believe, and whose superior told them the real reason only orally, therefore has in a recording of that conversation an argument the court cannot brush aside merely because it was made without consent.

The employer is in the opposite position. Unless there is a serious reason arising from the special nature of its activities, it must not intrude on employees' privacy at the workplace by open or covert surveillance, by intercepting and recording their phone calls or by checking their emails (Section 316(2) of the Czech Labour Code). If it does have such a reason, it must inform employees directly of the scope of the monitoring and how it is carried out (Section 316(3)). And as judgment 21 Cdo 1267/2018 shows, if the employer has witnesses, the court will not admit its secret recording. In that case, however, the employer did not even need it; it won thanks to the witnesses.

For businesses, data protection also comes into play. The General Data Protection Regulation (GDPR) does not apply to processing by a natural person in the course of a purely personal or household activity (Article 2(2)(c)), that is, with no connection to a professional or commercial activity (Recital 18). A company that records calls with customers or employees, however, is a controller of personal data. It needs a legal basis, most often legitimate interest (Article 6(1)(f)), and must inform people at the time the data are obtained of, among other things, who is processing the data, for what purpose and on what legal basis (Article 13(1)). That is why a call to a call centre usually begins with the announcement that the call may be recorded. Nor does the exemption for personal activity cover an entrepreneur who covertly records meetings with business partners. Even if a court admits such a recording, that does not mean the information obligation under the GDPR has been met.

Criminal proceedings in brief

In criminal proceedings, anything that may help clarify the matter can serve as evidence, and every party may seek out and submit evidence (Section 89(2) of the Czech Code of Criminal Procedure). A private recording therefore cannot be ruled out in advance. In judgment II. ÚS 1774/14 the Constitutional Court summed up its previous case law as meaning that, in criminal proceedings too, the privacy of the person recorded must always be weighed, and that whether a recording can be used is decided case by case.

A typical situation in which a recording holds up is that of a victim who records threats or extortion. It was precisely a crime victim's defence against the offender that the Constitutional Court gave as an example of when covert recording is justified. If you are considering filing a criminal complaint, first read what happens when someone files one; the recording will become part of a file that the other side will also see.

How to make and keep a recording so that it holds up

The court decides not only whether to admit a recording, but also whether to believe it (Section 132 of the Code of Civil Procedure). The other side will almost always object that the recording has been taken out of context, cut or edited.

Keep the original. Leave the original file on the device you recorded it with and save a copy elsewhere. Do not edit it, cut it, convert it or rename it in a way that would lose the information about when and how it was made. If the other side disputes its authenticity, the court may request an expert statement or appoint an expert (Section 127(1) of the Code of Civil Procedure). You can also obtain an expert report yourself; if it meets all the requirements and contains the expert's declaration, the court will treat it as if it had commissioned the report itself (Section 127a). The expert will want the original, not a recording forwarded via WhatsApp. How to preserve messages, emails and other digital traces is explained in our article "I Have a Screenshot." When Messages and Emails Hold Up in Court.

Submit the whole recording and a transcript. An excerpt with a single sentence looks like a selection of whatever suits you. Give the court the entire recording together with a verbatim transcript and, for a conversation in a foreign language, a translation as well.

Expect the court to play the recording itself. In a case involving camera footage, the Supreme Court stated that a court should not be satisfied with a witness's account of what they saw on the recording, but should play it and perceive it directly (judgment of 13 July 2021, file no. 21 Cdo 678/2021). So it is the court, not your retelling, that will decide what is actually on the recording.

Do not make it public. The exception in Section 88(1) of the Civil Code covers making and using a recording to protect your rights, typically before a court or an authority. Spreading it on social media does not usually serve to protect your rights and can easily become the disproportionate use that Section 90 prohibits. The person recorded can then demand that the interference be stopped and its consequences remedied (Section 82(1)), and claim compensation for non-pecuniary harm (Section 2956).

Do not use the recording to put pressure on anyone. A threat such as "I've got you on tape, and if you don't pay, I'll send it to your boss" is no longer protecting your rights and, depending on the circumstances, may even amount to extortion (Section 175 of the Criminal Code). Keep the recording for the proceedings and decide with your lawyer when and how to use it.

Be especially careful in family disputes. Recording a child, or the other parent's phone calls with the child, often backfires in court on the person who made the recording; more on this in our article When a Child Refuses to Visit the Other Parent.

Before you propose a recording as evidence, write down what else could prove the same thing, and propose all your evidence together and in good time.
After an important meeting, send the other side an email summarising what was agreed. If they confirm it or do not contradict it, you have evidence that nobody can challenge as an intrusion on privacy.
Do not publish the recording anywhere, share it in group chats or use it to make threats. Keep the original on the device that made it and note the date, place and participants of the conversation.

At a glance

Question	Answer	Provision
Is recording without consent prohibited?	Private life may not be captured without consent; the exception is a recording made to protect rights and used proportionately	Sections 86, 88(1) and 90, Civil Code
Will a court automatically reject a secret recording?	No, it must weigh the privacy of the person recorded against the right to a fair trial	Constitutional Court judgment II. ÚS 1774/14
When will a court admit one in a civil dispute?	Only if the fact cannot be proven otherwise and the circumstances favour the person who made the recording	Supreme Court judgment 21 Cdo 1267/2018
Is a work conversation of a personal nature?	Usually not, so the court admits it more readily; even so, it examines whether the same thing could have been proven otherwise	Supreme Court judgment 30 Cdo 64/2004
May an employer record employees' calls?	Only for a serious reason and after informing the employees	Section 316(2) and (3), Labour Code
Is it a crime to listen in on someone else's phone call?	It can be; up to two years' imprisonment	Section 182(1), Criminal Code
Can a recording be used in criminal proceedings?	Yes, it cannot be ruled out in advance; it is decided case by case	Section 89(2), Code of Criminal Procedure

Do you have a recording that could decide a dispute and are unsure whether to use it? We will assess what chance it has in court, what to back it up with and whether you need it at all, and we will propose it in a way that obliges the court to weigh all the circumstances. We handle disputes as part of our dispute resolution practice. Get in touch.

Conclusion

A secret recording is not banned in court, but it will not win the case on its own. It stands the best chance when it captures a work or business conversation, was made by the weaker party or the victim, and the decisive fact cannot be proven any other way. Where there is a witness or an email, the court will turn to those instead, and a recording spread around the internet harms the person who made it.

Sources

- Act No. 89/2012 Coll., the Civil Code, Sections 81, 82, 86, 88, 90 and 2956 (as in force on 6 November 2026).
- Act No. 99/1963 Coll., the Code of Civil Procedure, Sections 118b, 125, 127, 127a and 132.
- Act No. 262/2006 Coll., the Labour Code, Section 316.
- Act No. 40/2009 Coll., the Criminal Code, Sections 175 and 182.
- Act No. 141/1961 Coll., the Code of Criminal Procedure, Section 89.
- Regulation (EU) 2016/679 of the European Parliament and of the Council (GDPR), Articles 2, 6 and 13, Recital 18.
- Constitutional Court judgment of 9 December 2014, file no. II. ÚS 1774/14.
- Supreme Court judgment of 14 August 2018, file no. 21 Cdo 1267/2018.
- Supreme Court judgment of 11 May 2005, file no. 30 Cdo 64/2004.
- Supreme Court judgment of 21 October 1998, file no. 21 Cdo 1009/98.
- Supreme Court judgment of 13 July 2021, file no. 21 Cdo 678/2021.

This article is for information only and does not constitute legal advice. It reflects the law as at the date of publication; whether a court admits a particular recording always depends on the circumstances in which it was made and on what it is meant to prove.

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IUSTORIA team · Published 5 November 2026

https://www.iustoria.cz/en/blog/secret-recording-as-evidence-in-court/

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