



NEWS REPORT

Date:	7 December 2011
Expert:	Janka Debrecéniová
Title:	Audio recording admitted as evidence in civil proceedings concerning the principle of equal treatment
Country:	Slovakia
<u>Context</u>	
Issue at stake:	On 28 April 2011, the Regional Court in Banská Bystrica confirmed the admissibility of audio recordings as evidence for cases where the principle of equal treatment is involved.
Ground of discrimination:	All grounds
Source:	National court decision (File No 14Co/82/2011; 6710201619)
Field:	The case concerned employment but all fields covered by the directives are concerned in principle.
Legislative provisions:	Section 125 of the Criminal Procedure Act

Content

Case: The case concerned a female plaintiff alleging gender-based discrimination in the field of employment. During the (still pending) proceedings before the District Court in Zvolen (a first instance court), she submitted evidence in the form of an audio recording captured during a meeting with her employer in which she was notified with her dismissal (two employer's representatives, one trade union organisation's representative, and the plaintiff were present to that meeting). Upon this evidence, the defendant initiated criminal proceedings against the plaintiff, alleging that she had committed a crime of "breaching the confidentiality of oral expression and of other expression of personal character" (Section 377 of the Criminal Code) and asked that the first instance court suspend the pending anti-discrimination proceedings till a decision in the criminal proceedings was passed. One of the main arguments of the plaintiff was that evidence that was obtained illegally could not be used in civil proceedings, hence the proceeding needed to be suspended. The court of first instance

decided not to suspend the proceedings, arguing that the criminal proceedings in question was not a kind of proceedings that could be relevant for the decision of the court in the case concerning a breach of the principle of equal treatment. It also stated that the aim of the evidence submitted was to prove that the plaintiff had been discriminated in the field of employment. It added that it is up to the first instance court to decide whether the evidence submitted will be used or not, and further noted that by suspending the pending proceeding, the question whether this type of evidence could be used in civil proceedings would not be resolved, as the subject of criminal proceedings was to decide about crime and punishment, and not about legality of evidence submitted in civil proceedings. Therefore the criminal proceeding, as the first instance court concluded, did not have any relevant meaning for the decision of the first instance court.

The defendant appealed the decision and the case got to a second instance court, the Regional Court in Banská Bystrica.

Decision of the Court: On 28 April 2011 the Regional Court in Banská Bystrica upheld the decision of the first instance court, and stated that it identified itself with the grounds of the decision of the first instance court. It further stated that “if a plaintiff submitted a sound recording as evidence ... in [civil] proceedings, with which she is proving a breach of the principle of equal treatment in an employment relationship, the district court [i. e. the first instance court] ... will have to evaluate this evidence with regard to the subject matter of the given proceeding. ... Also with regard to other evidence submitted, the district court will therefore evaluate and judge whether it will use this evidence further in the proceeding. Not even a regional court can intervene into such evaluation of the first instance court in this stage of proceeding.”

Internet link source and additional information: The decision is not available online.