



# Right to Evidence in the Slovak Labor Law

Marek Švec, Peter Mészáros and Andrea Olšovská

There is no specific comprehensive legislation to govern court proceeding in labor law. In general, labor law disputes are dealt with in the same way civil law disputes are addressed. The general procedural law is Act no. 160/2015 Coll. Civil Dispute Code, as amended (hereinafter referred to as the "CDC"), coming into force on July 01, 2016. Proof of evidence basically arises from the adversarial principle<sup>1</sup> (procedural diligence of the parties), which is, in the case of labor disputes, overridden by the application of the investigative principle.

## Disputes with protection of the weaker party

The CDC has introduced certain specific features in the context of so-called 'weaker party' disputes (consumer, anti-discrimination and individual labor disputes). Under § 316 para. 1 of the CDC, an individual labor dispute is a dispute between an employee and an employer arising from labor relations and from analogous relations similar to that (collective employment disputes are not covered by the regulation). We briefly mention only those differences which relate to the area of evidence proving:

- the court may, at its discretion, also take evidence not motioned for by the employee if this is necessary to rule in the case (the investigation principle). The law expressly imposes a duty on the employer to provide assistance if it can fairly be required to do so;
- the employee may produce or identify all facts and evidence to prove their allegations not later than before the court has ruled on the merits (this does not apply to the employer, who may identify or produce evidence under the rules on the concentration of proceedings).

## Evidence

The issue of evidence is generally regulated by the fourth chapter of the CDC (§ 185 et seq.) and applies *mutatis mutandi* also to the area of labor disputes. Pursuant to § 191 para. 1 of the CDC, assessment of evidence belongs to the court's discretion, each evidence to be assessed individually and all the evidence to be assessed collectively in its respective context, taking careful account of everything that has come to light in the proceeding. That provision is based on the principle of free evaluation of evidence<sup>2</sup> to be done by the court, while the court must properly adjudicate its ruling. It thus creates the concept of the so-called *procedural truth*<sup>3</sup> and, at the same time, there is a rule

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<sup>1</sup> In short, this means that the court rules according to the evidence adduced and taken (the general rule enshrined in Articles 8 and 9 of the CDC).

<sup>2</sup> "The conclusion about the evidence adduced that the judge arrives at... is a matter of their inner conviction ... The evaluative reasoning of the court must always conform to the principles of formal logic, be based on the established facts of the case...the court must carefully weigh the importance given to each piece of evidence." Števček, Bajánková In: Števček, Ficová, Baricová, Mesiarkinová, Bajánková, Tomasovič. et al.: Civil Dispute Procedure. Prague: C.H.Beck 2016, pp. 729-730).

<sup>3</sup> Finding of the Constitutional Court of the Slovak Republic, no. III. ÚS 86/2020: "without due substantiation, a general court cannot "believe" and identify with one piece of evidence (specific witness testimonies) and without further

saying that *"no evidence shall have a prescribed legal force which would not admit proof to the contrary."*<sup>4</sup> In addition, the above provision establishes *"the rule of the so-called substantive litigation"*<sup>5</sup> according to the social concept of civil litigation. Both institutes normatively complement the concept of the so-called strong judge."<sup>6</sup> Thus, a free assessment of evidence does not mean the assessment is arbitrary.

Pursuant to § 185 para. 1 of the CDC, the court shall decide which of the evidence motioned for it will take. Pursuant to § 187 para. 1 of the CDC, anything that may contribute to proper clarification of the matter, subject to having been produced lawfully from among the proofs, may serve as evidence. Pursuant to Article 16 para. 2 of the CDC, in hearing and ruling on the matter, the court shall disregard facts and evidence obtained contrary to law, unless the taking of evidence obtained contrary to the law is justified by the application of Article 3 para. 1 of the CDC. The principle of legality applies to the entire court proceeding and is specifically enshrined in that provision governing the area of evidence proving<sup>7</sup>. *"Unlawful facts and evidence shall be disregarded. However, this principle is modified by the requirement to consider the principle of proportionality. In deciding whether or not to admit unlawful evidence, a conflict between the right to a fair trial and the interest in ensuring that injustice does not give rise to justice exists. Thus, the court must subject this conflict to the so-called proportionality test."*<sup>8</sup>

### **Unlawfully obtained evidence**

The term "unlawful" evidence is not recognized in the CDC and legal theory shows two approaches thereto: *"unlawfully obtained evidence, that is, evidence that has been obtained by violating the rights of another person.. as well as unlawfully executed evidence."* Unlawfully executed evidence cannot be admissible (*"cannot be the basis for a court ruling"*), while unlawfully obtained evidence may be admissible.<sup>9</sup>

The CDC is based on the principle of legality, but in relation to proving by evidence, its application is not absolute. *"An exception may be considered if taking of evidence obtained in violation of the law is justified...by a constitutionally consistent interpretation of the law...this is typically the case of evidence obtained in violation of the provisions of the Civil Code on the protection of personality."*<sup>10</sup> Prior to the adoption of the CDC, no established doctrinal or jurisprudential opinions on the procedural admissibility of evidence obtained in an unlawful manner existed, but gradually (also due to the influence of the ruling of the Constitutional Court of the Czech Republic, II.ÚS/1774/2014) *"the concept of extraordinary admissibility of unlawfully obtained evidence in the*

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*"disbelieve" and reject other evidence (other witness statements). The General Court is obliged to ascertain the procedural truth in the proceedings, which is precisely what proving evidence is supposed to achieve."*

<sup>4</sup> Explanatory report on CDC, § 191.

<sup>5</sup> Material truth means that the court is not bound by the facts of the case as pleaded by the litigants, but the court also ascertains those for itself.

<sup>6</sup> Števček, Bajánková In: Števček, Ficová, Baricová, Mesiarkinová, Bajánková, Tomašovič. et al.: The Civil Dispute Procedure. Prague: C.H.Beck 2016, p. 729.

<sup>7</sup> Each provision is to be interpreted in accordance with the Constitution, public order, legal principles, obligations under the international law, the case law of the European Court of Human Rights and the Court of Justice of the European Union, and with constant regard to the values protected thereby.

<sup>8</sup> Zámožík In: Gešková, K., Smyčková, R., Zámožík, J.: Repetitorium of Civil Procedural Law. Second, revised and supplemented edition. Bratislava: IURIS LIBRI 2021, p. 46.

<sup>9</sup> Gešková, K. In: Števček, Ficová, Baricová, Mesiarkinová, Bajánková, Tomašovič et al.: The Civil Dispute Procedure. Prague: C.H.Beck 2016, p. 715.

<sup>10</sup> Števček, Čentík In: Števček, Ficová, Baricová, Mesiarkinová, Bajánková, Tomašovič et al.: The Civil Dispute Procedure. Prague: C.H.Beck 2016, pp. 64-65.

*CDP, based on the proportionality test, has been accepted.*"<sup>11</sup> That is the proportionality test of mutually conflicting constitutional rights.<sup>12</sup>

On the issue of the admissibility of unlawfully obtained evidence in civil proceedings, we conclude that such an approach is acceptable in exceptional circumstances and that such an approach must be justified. *"The court may admit evidence obtained in violation of the law if the right of the defendant is assessed in line with the constitution in the particular case as a right stronger than the violated right of the party at whose expense it is taken."*<sup>13</sup>

**Marek Švec**

doc. JUDr. PhD. LL.M., univ. prof. (Faculty of Law, Matej Bel University in Banská Bystrica, Slovakia).  
University Professor

**Peter Mészáros**

Mgr. PhD. (Faculty of Law, University of Trnava in Trnava, Slovakia)  
Assistant professor

**Andrea Olšovská**

prof. JUDr. Mgr. PhD. (Faculty of Law, University of Trnava in Trnava, Slovakia)  
Professor

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<sup>11</sup> Števček, Čentík In: Števček, Ficová, Baricová, Mesiarkinová, Bajánková, Tomašovič et al.: The Civil Dispute Procedure. Prague: C.H.Beck 2016, p. 65.

<sup>12</sup> According to the literature, the proportionality test is not always necessary: *"It is necessary to distinguish whether the object of the unlawful evidence is the documentation of an unlawful act or an act that does not exhibit elements of unlawfulness."* Čentík In: Števček, Ficová, Baricová, Mesiarkinová, Bajánková, Tomašovič. et al.: The Civil Dispute Procedure. Prague: C.H.Beck 2016, p. 67.

<sup>13</sup> Explanatory report on CDC. Art. 16.