

THE HIGH COURT

JUDICIAL REVIEW

Record No. 2013/ 765 /JR

Between:

MAXIMILIAN SCHREMS

APPLICANT

AND

DATA PROTECTION COMMISSIONER

RESPONDENT

AFFIDAVIT OF MAXIMILIAN SCHREMS

I, Maximilian Schrems, Phd Student, of [REDACTED] Vienna, Austria, aged 18 years and upwards make oath and say as follows:

1. I am the Applicant herein and I make this affidavit from facts within my own knowledge, save where otherwise appears, and where so otherwise appears I believe those facts to be true and accurate. I make this affidavit for the purposes of grounding an application by way of Notice of Motion for a Protective Costs Order (hereinafter "PCO") in these proceedings in my favour.

General public importance of the issue

2. I say that the matters in issue in the within proceedings are of general public importance in that the protection of the fundamental right to privacy in EU law of approximately one billion persons is at stake and this case has raised an issue which has been held by the Court to require a Preliminary Reference to the CJEU.
3. The Court has found that this case goes even beyond merely Facebook or Ireland. Given the scope of the question referred to the CJEU it will directly affect the protection of fundamental rights in transatlantic data flows and the duty of member states to protect its citizens against espionage of the NSA. This also affects international relations between the European Union and the United States of America as a whole.

Public interest requires that those issues should be resolved

4. I say that the public interest requires that these issues should be resolved. I say that this is because it is necessary for the Respondent in the performance of his duties to adhere to the law and it must be in the general public interest that all reasonable steps are taken to ensure compliance with the law by the Respondent.

Private interest in the outcome

5. I say that my interest in the outcome of these proceedings is not "private" but rather that my primary aim is and always has been to bring about a recognition that European data protection law is not being adhered to on a massive scale. The outcome affects all subscribers to "Facebook" resident anywhere in the World outside the USA and Canada. This is roughly one Billion people.
6. While I naturally have a personal interest in the protection of my personal data (which is the basic requirement to have standing) my personal interest is insignificant among the masses of people affected by the question that was referred to the CJEU.

My financial situation

7. In regard to my financial situation I would like to disclose my financial situation to the Court: [REDACTED]

[REDACTED] regular income of [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

My factual regular income is therefore [REDACTED]
[REDACTED] do not have any other relevant assets or regular income.

8. I was advised that Irish law does not know a limitation of court costs that can be awarded against the losing party. Given previous experiences, I was advised that the costs in this case could be very significant.
9. I say that having regard to my financial resources and to the amount of costs that are possibly involved it is fair and just to make the order sought. I am not able to pay a costs order that could be made against me from my income and it would also not be reasonable to jeopardise the asset that is generating my income.

Crowd Funding

10. An Austrian NGO (German: "Verein") named "europe-v-facebook.org" has raised money for legal costs of the 23 pending complaints before the Respondent. The NGO has currently about 55.000€ on account. I chair the NGO, but it was set up as an independent legal entity. Under Austrian laws NGOs have to adhere to strict accounting principles, which do not allow to simply forward money to me.
11. While "Complaint 23" is the only case that is currently before the Courts, it seems that all other 22 complaints will might face the same future, given the violations of Irish and EU law by the Respondent that I assert. It is possible that in other matters that we will face further references to the CJEU. Given the number of complaints pending before the DPC the NGO has so far received donations that cover €2.400 per complaint, which will not even cover "out of pocket" expenses.
12. At present the NGO only pays for my travel expenses, which is decided individually for each trip. I do not have any legal right or contract that would allow me to reimburse my legal costs from it. There is no capacity within the NGO to fund this case beyond mere expenses.

Reasonable reaction

13. I am personally used to a legal system that respects the financial possibilities of claimants and therefore limits the costs of courts proceedings. As a comparison I would like to highlight that the maximum amount that is payable for losing a constitutional challenge before the Austrian constitutional court is currently €2,856 (including fees and taxes). Compared to these costs, the Irish system seems very expensive to me.
14. While I greatly respect other legal traditions and systems, in my opinion it would be unthinkable for any reasonable Austrian to take the financial risk of a simple Irish Judicial Review procedure, given the extremely high costs.
15. I say that if the order sought is not made and there is no other option to limit my personal risk I may well have no other option and probably would discontinue the proceedings and would be acting reasonably in so doing given the current situation.

Reasonable expectation of costs

16. From the outset I have been very apprehensive and nervous about the personal financial risk that I expose myself to by pursuing these proceedings. In this regard I beg to refer to exhibit "BH4" in the affidavit of Billy Hawkes sworn herein on the 16th December 2013 which is a letter from me to the Respondent dated the 7th October 2013 in which

I sought agreement in relation to my costs for the reasons set out therein. This request was refused and it was with some considerable hesitation that I thereafter decided to pursue these proceedings.

17. While I would be inappropriate to go into all details of the Courts judgement of June 18th 2014, I want to say that it seems to me that a referral to the CJEU was not reasonably expected by either party given the case and the facts before the court. Until I received the judgement I was personally of the opinion that the Court would avail of one of the many other aspects that would have allowed the case to be decided.

Financial arrangement with my representatives

18. I say that my legal representatives are not acting for me in these proceedings on a "pro bono" basis. However, I have put considerable time and effort into finding "pro bono" representation in Ireland, but no one in the field of data protection or privacy law was able or willing to assist me.
19. I was more than willing to represent myself in court, but given the procedural rules in Ireland that require actual presence in Dublin, this seemed impossible to do for me. Given that it is not possible to fly from Vienna to Dublin and back within one day, I would have needed to spend unreasonable amounts of time and money on travelling and would not be able to take care of my daily business and studies given that the case was likely to be "mentioned" before the court many times.

The respondent's reaction

20. The Respondent seems to also view the matter to be of general public importance, that the public interest requires that these issues should be resolved and that this case goes far beyond my private interest. In this regard I beg the court to refer to the press statement of the Respondent in relation to the judgement of June the 18th 2014, upon which marked with the letter "MSI" I have signed my name prior to the swearing hereof.

Usual approach to final cost orders

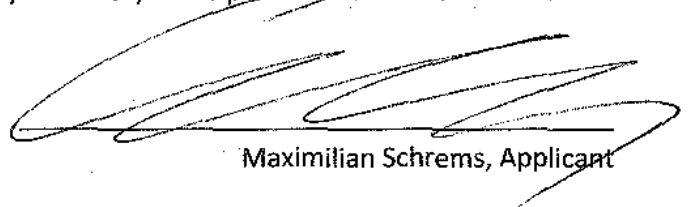
21. As I understand Irish courts are sometimes not making costs orders against litigants in public interest cases such as this. I was advised that a cost order in the given case would be unlikely. However I do not think that an average citizen, or even a student, should take the risk of being one of the "unlikely" cases. Just the possibility that my personal future could be destroyed by this case would be deeply troubling for me for

the next number of years. It is not predictable which court will in the end determine costs and on what basis. There is currently no legal certainty for me.

Conclusion

22. While I very much welcome the Court's Order from a personal political perspective, I do not think that it would be just to have a student (or any individual data subject of roughly a billion of affected people) take the considerable financial risk in a case that unexpectedly reaches a highly political, fundamental and transatlantic scale.
23. While it seems reasonable that I spend another one or two years of my personal time on a case that was only intended to clarify the question if the local Irish DPC has rightfully refused my complaint, it would not be just if I would also have to fear bankruptcy, total financial ruin and consequent destruction of my future.
24. Finally I want to highlight that EU common law, developed by the CJEU requires an "effective procedure". Article 47 CFR is equally requiring an "effective remedy", a "fair trial", a possibility to have legal representation and legal aid. Similar case law was developed in respect to Article 6 ECHR.
25. I say that in the circumstances outlined above it would be fair and just for this Honourable Court to make an Order in the terms of the Notice of Motion herein and I pray this Honourable Court for same.

I, Mag. Maximilian Schrems, applicant in these proceedings, make oath and say as follows: (a) I have read this statement; (b) so much of this statement as relates to my own acts and deeds is true, and so much of it as relates to the acts and deeds of any and every other person I believe to be true.



Maximilian Schrems, Applicant

Sworn by the said Maximilian Schrems on this 27th day of June 2014 before me Ian Devine, Third Secretary of the Embassy of Ireland, Vienna and the deponent has been identified to me by Austrian Passport No. P6488900, issued by the City of Vienna.



Ian Devine, Embassy of Ireland, Vienna



THIS AFFIDAVIT IS FILED ON BEHALF OF THE APPLICANT BY AHERN RUDDEN SOLICITORS OF 5 CLARE STREET, DUBLIN 2 THIS DAY OF JUNE 2014.

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MAXIMILIAN SCHREMS

APPLICANT

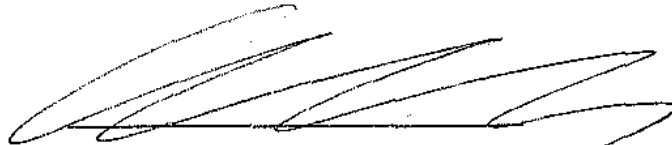
AND

DATA PROTECTION COMMISSIONER

RESPONDENT

AFFIDAVIT OF MAXIMILIAN SCHREMS

EXHIBIT "MS1"



Maximilian Schrems



Ian Devine, Embassy of Ireland, Vienna



27/6/2014

Date