

Austrian Court of Appeal holds plaintiff is a “Consumer” and can bring his claims in Vienna Court “Class Action” status still disputed, appeal to Austrian Supreme Court granted

The Vienna Court of Appeal (Oberlandesgericht Wien) has issued a written decision on the “Facebook privacy class action”. On 20 of 22 claims that the Vienna Regional court has previously rejected, claiming it lacks jurisdiction, the Appeals Court has found in favor of the plaintiff. The initial decision by the Vienna Regional Court, dismissing all claims on procedural grounds, was in this respect overturned. There was no decision on the content of the lawsuit so far, as the Regional Court has split the procedural questions (jurisdiction of the court and admissibility of the lawsuit) from the content of the lawsuit.

Plaintiff not a “professional litigant”

Facebook had tried to argue that Mr Schrems was a “professional litigant”, which the Appeals Court fully rejected. The Court found that Mr Schrems acts as a consumer and can thereby bring his claims at his home court in Vienna. The Court of Appeals clarified that Mr Schrems acts outside of any professional capacity when claiming his rights for his private Facebook account.

The Appeals Court did not grant an appeal to the Austrian Supreme Court on these questions. Facebook therefore will have to face an Austrian civil court ruling over claims that its privacy policies are against EU law, it grants US spy agencies mass access to user data or that it illegally tracks users on the internet, even when they are not on facebook.com – among other claims. Facebook will also have to disclose the profits it makes from illegal data usage – a very delicate issue for them.

Schrems, on his personal claims: *“I am very happy with this interim result. Facebook’s campaign claiming that I would act with the intent to make money on this issue has totally failed. This was also rather absurd, given that I work on this project for years without pay. The Austrian courts will now have to deal with Facebook’s misuse of my personal data for sure.”*

Class Action still disputed

The Court of Appeals has not granted Mr Schrems to represent other consumers via an Austrian “class action” system yet, saying that EU law does not allow assigning claims to other consumers and still rely on the home court of the said consumer. The Appeals Court has found in favor of Facebook on the remaining two claims of the lawsuit relating to users other than Mr Schrems.

However the Court of Appeal ruled that this particular situation of a “class action” was not dealt with by the Austrian Supreme Court so far and granted an appeal on the relevant two points of the lawsuit, effectively meaning that the remaining two points will be decided by the Austrian Supreme Court.

On the Class Action: *“I have said from the beginning of this procedure that the question if this is admitted as a class action will be decided by the Austrian Supreme Court or the European Court of Justice. We will of course file this appeal immediately. I think we have very good arguments on this*

and we are awaiting the final decision. The argument of Facebook that a user loses his consumer rights if he assigns his consumer claim to another consumer is not really logical. The Appeals Court has not really considered the submissions by either party on this in great detail and basically left this issue for the Supreme Court to decide. In any event we now have the first foot in the door and will see what the Supreme Court will say on the other feet.”

This new setback for Facebook comes after a court in Ireland has decided yesterday in another case that the Irish Data Protection Authority has to investigate Facebook’s data sharing with the NSA, after the European Court of Justice has struck down the EU-US ‘Safe Harbor’ data sharing deal. More Information on this decision at www.europe-v-facebook.org/MU_HC.pdf