„Facebook Class Action“: Appeals Court allowed „Model Case“
Admissibility of “Class Action” will be decided by the Austrian Supreme Court

The Austrian “class action” against Facebook Ireland Ltd (Facebook’s international headquarter in Dublin) over alleged privacy violations has now reached the Austrian Supreme Court (“Oberster Gerichtshof”). The Vienna Court of Appeals (“Oberlandesgericht”) has decided previously that the plaintiff (Max Schrems) can file his personal claims at his local court in Vienna, as he falls under the relevant consumer protection laws. The court also ruled that other similar claims cannot be joined to form a “class action” on the basis of EU procedural law (Judgement in German, PDF). Both parties – Facebook and the plaintiff – have now appealed the case to the Supreme Court.

Positions. The plaintiff wants to ensure that he can not only file a “model case”, which the Court of Appeals has allowed, but wants to join other identical claims of other Facebook users.

Schrems: “*It would not make a lot of sense for the court or the parties before it to file these claims as thousands of individual lawsuits – which we can still do if a ‘class action’ is not allowed. We therefore think that the ‘class action’ is not only legal but also the only reasonable way to deal with thousands of identical privacy violations by Facebook.*”

Facebook still takes the position that the entire lawsuit cannot is not admissible in Vienna – or in fact anywhere else in the world. At the same time Facebook continues to stay absolutely silent on the content of the lawsuit. Schrems: “*Facebook continues to spam the court with countless wrong and already dismissed accusations to avoid even facing the court on the content of the lawsuit. I doubt that this strategy will work at the Supreme Court.”*

Experts’ Opinion supports Plaintiff. The class action is also supported by a legal opinion (PDF) of two law professors and experts on European procedural law: Prof. Frauenberger-Pfeiler (University of Wien) und Prof. Klicka (University of Münster). Dr. Wolfram Proksch, lawyer representing the plaintiff: “*The expert opinion, which we have requested in the interest of legal certainty, makes it clear that there is no legal reason not to certify the ‘class action’ under EU law*.”

Multiple Options. The Austrian Supreme Court has a number of options to decide, given the countless arguments and objections.

“*The Austrian Supreme Court will not have to decide if the class action will be allowed. The case may also be referred to the European Court of Justice*” Arndt Eversberg, CEO of ROLAND ProzessFinanz (the procedure financing company that finances the case) explains. “*If the Austrian Supreme Court or the European Court of Justice allows the lawsuit, Mr Schrems may write a bit of legal history in the privacy field for the second time – after the ‘safe harbor’ decision*.”

No matter if the Supreme Court allows the case as a “model case” or a “class action”, Facebook will have to answer all questions of a user over its compliance with strict European data protection laws before an independent court. The decision of the Austrian Supreme Court is expected at the beginning of the coming year. It will be delivered in writing and without a previous hearing. Once the admissibility of the lawsuit is decided, the Vienna Regional Court (“Landesgericht”) will set a date for the first hearing.