

**Privacy: Facebook to face the European Court of Justice (CJEU)  
Austrian Supreme Court refers “class action” to Luxembourg**

The Austrian Supreme Court (“Oberster Gerichtshof”) has decided today, in line with the suggestion by the plaintiff, to refer the question of the admissibility of a worldwide or European wide “class action” against Facebook (“Facebook Ireland Ltd”) to Europe’s top court in Luxembourg.

Facebook has previously argued that the “class action” is inadmissible for procedural reasons and that the Austrian courts have no jurisdiction in this case – hoping to get the case addressing numerous counts of privacy violations off the table on procedural grounds.

National courts like the Austrian Supreme Court have to refer unclear matters of EU law to the CJEU. The CJEU interprets EU law. It’s decisions are binding for all 28 member states.

**Download:** [Supreme Court Decision \(German\)](#)

**Main Question: Who has jurisdiction over a class action?**

Austrian law allows plaintiffs to transfer (“assign”) their claims to another person, who can then exercise the rights of other users collectively (“Austrian style class action”). More than 25.000 consumers have assigned their claims against Facebook on [www.fbclaim.com](http://www.fbclaim.com) to the main plaintiff Max Schrems to form such a “class action”.

According to Facebook consumers lose their right to file at their home court, as soon as they assign their rights to another consumer. The plaintiffs argue that it can’t make a difference if consumers assign their claims to another consumer, as both are legally protected.

The question if a consumer can also file an assigned claim at his home court will have to be decided by the CJEU. Dependent on the decision by the CJEU the “class action” could be admissible for all users worldwide, European users or users in some countries. Otherwise the plaintiffs would have to file hundreds of parallel lawsuits in multiple countries to remedy privacy violations by Facebook.

Dr. Wolfram Proksch (PFR Rechtsanwälte, representing the plaintiff): *“The core question is whether consumers have to file thousands of individual procedures before thousands of judges and courts in different countries, or if such issues can be dealt with in a joint procedure. Of course it would be much more reasonable to have a collective procedure, because this lawsuit addresses the exact same questions and privacy laws are harmonized within the European Union anyways.”*

Dr. Arndt Eversberg (ROLAND ProzessFinanz): *“The referral by the Austrian Supreme Court allows the Court of Justice to facilitate collective enforcement of consumer rights within the European Union. Companies like Facebook use to common market, so they also have to follow the laws of this market and face their customers throughout this market.”*

Max Schrems (plaintiff): *“The Court of Justice was so far rather consumer friendly, when it decided over jurisdictions. I hope that we will see a similar decision in this case. Filing thousands of individual lawsuits before thousands of courts would be an absurd exercise. If one takes a rational look at this matter there are little arguments against our position – but it will be an exciting case.”*

## **Preliminary Question: Does a consumer lose his rights, if he fights for them publicly?**

The lawsuit against “Facebook Ireland Ltd” (the Facebook headquarter for all users outside of the US and Canada, based in Dublin) was filed by an Austrian consumer (Max Schrems, living in Vienna). Within the EU consumers can sue a company at their home court (in this case Vienna). Facebook argues that the plaintiff lost his rights as a consumer, if he publicly fights for his rights..

As first question the Supreme Court therefore refers this argument to the European Court of Justice and asks if the plaintiff lost his rights as a consumer, if he engages in a public fight, raises donations or participated in debates.

Max Schrems (plaintiff): *“Facebook is obviously trying to argue that I am some sort of ‘commercial activist’, so that I can’t sue them in my home court. In simple terms, Facebook says you have to sit at home and be quiet about your claims – if you make your case public, you lose your rights as a consumer. The Austrian courts have highlighted, that the class action is organized on a pro bono basis and that I used my Facebook account in a private capacity. The preliminary question, if I am a consumer, is therefore simple to answer, as I have never made a single Cent though this procedure – to the contrary I invested hundreds of unpaid hours of work.”*

### **Background**

Facebook has previously argued that the class action would be inadmissible for procedural reasons and that the Austrian courts have no jurisdiction in this case – hoping to get the case off the table on procedural grounds.

The Vienna Regional Court (“Landesgericht für Zivilrechtssachen”) has previously held that it is not responsible for the case and has no jurisdiction. The Higher Regional Court has reversed this ruling in second instance. It held that the lower Regional Court has to deal with 20 of 22 counts of the lawsuit – but found that the remaining two counts, that constitute the “class action”, are not admissible. The Austrian Supreme Court has now referred the remaining questions to the CJEU.

Facebook is accused of using invalid privacy policies, illegal processing and sharing of personal data or participation in the US mass surveillance scandal. Currently the plaintiffs ask for a symbolic token amount of € 500 and the profits made by Facebook (“unjust enrichment”). If Facebook loses the case, it would have to fundamentally change its business model – something the internet giant is naturally trying to avoid by all means.

The plaintiff (Max Schrems) has managed to score a landmark ruling before the CJEU last year (C-362/14), when the court invalidated the “Safe Harbor” deal, which allowed EU-US data flows, but also enables US mass surveillance. The CJEU in Luxembourg decided in favor of the student and found the “Safe Harbor” decision by the European Commission to be in violation of fundamental rights and therefore invalid. The CJEU has also recently made headlines when deciding in favor of a “right to be forgotten” against Google and by striking down the “EU data retention directive”.

Further [background information on the procedure and fact sheets can be found here](#).

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