

Privacy Class Action against Facebook: Viennese Court forwards “hot potato”

In first instance the Vienna Regional Court found that a European “class action” against Facebook¹ is not admissible on procedural grounds. The court, taking the first decision in this case, has not made any findings on the content of the lawsuit (the numerous alleged violations of EU privacy laws), but has found that it has no jurisdiction on formal grounds.

Vienna Court tries avoiding Decision. In a case that may become the largest privacy class action in Europe the Vienna Regional Court has found that it has no jurisdiction to hear the case and has therefore limited its finding to procedural matters.

The decision is lacking a profound reasoning for this finding. The view expressed by the Regional Court is in stark contrast with all relevant case law and jurisprudence, including the case law by the European Court of Justice and the Austrian Supreme Court.

The courts assessed that the claimant in the case is not a “consumer”, while at the same time finding, that his personal Facebook account is only for private use. This would mean that the claimant has to sue Facebook at its European headquarter in Dublin. The court also rejected jurisdiction as the place where the violation of the users’ right to privacy occurred.

Dr. Wolfram Proksch, the lawyer of the claimant: *„We have expected a number of possible outcomes, but this finding by the court is really very strange. Unfortunately it seems like the court wanted to forward this hot potato to the higher courts.“*

As initially said, the claimants will appeal this first decision. The question where a claim can be brought against Facebook in a consumer class action will therefore, go to a next round and will be decided by the higher courts. The deadline for submitting an appeal is two weeks.

Information on possible Appeals. As previously announced the decision of the Regional Court will be appealed. The matter will therefore be decided in another round at the Higher Regional Court (“Oberlandesgericht”) and can be further appealed to the Austrian Supreme Court (“Oberster Gerichtshof”). Austrian courts are typically rather quick when deciding over appeals and without further oral hearings. As soon as the jurisdictional question is decided, the Regional Court will hear the actual content of the lawsuit – numerous violations of EU privacy laws.

Background and further Timeline. The court has split the procedure in two steps: In a first step it will decide over Facebook’s objections towards the jurisdiction of the court. In a second step it will deal with the core submissions in the class action. The decision by the Regional Court is therefore not final.

More than 25.000 users have assigned their claims against Facebook on fbclaim.com for the class action. Further 60.000 users have registered to join at a later stage.

The class action is financed by [Roland Prozessfinanz AG](#) and organized on a pro bono basis by Max Schrems (main claimant) Every Facebook user outside of the US and Canada can still register to join the class action. The claimants are represented by Dr. Wolfram Proksch ([PFR Rechtsanwälte](#)).

Facebook is accused of various of EU data protection laws, e.g.: void privacy policies; illegal collection and transfer of data; spying on the browsing behavior of users; or the participation in the NSA spy program “PRISM”.

¹ The defendant “Facebook Ireland Ltd” operates “facebook.com” for all users outside of the USA and Canada for reasons of tax avoidance. Facebook International in Ireland thereby manages 82% of all worldwide Facebook users.

The class action is mainly aimed at preventing further misuse of personal data by Facebook, as well as token amount in damages (€ 500 per user). The Austrian Supreme Court has developed very solid case law on data protection matters. So far all lawsuits on privacy policies were upheld. The Austrian courts have also previously awarded damages for illegal data use and found that consumer “class actions” are legal under the Austrian law.

Information in relation to a common question: This civil law case is legally independent from a previous administrative law case in Ireland that recently reached the CJEU.

**Fact Sheets &
Documents**

- [Fact Sheet on the Class Action](#)
- [Initial Law Suit \(English\)](#)
- [Fact Sheet Roland Prozessfinanz](#)
- [Preparing Submission \(German\)](#)
- [Country breakdown of Participants](#)
- [Other Documents & FAQs](#)

More Information.

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