

## **Defeat for Facebook: Vienna Court admits Model GDPR Lawsuit**

Facebook fails with an attempt to block Max Schrems' model lawsuit. The Vienna Higher regional court ("Oberlandesgericht Wien") admits the lawsuit that was attempted to be blocked by Facebook since 2014 ([link to decision, in German](#)).

**Principle Clarification: Civil Lawsuits under the GDPR possible.** The decision of the Higher Regional Court represents a very important clarification of principle: Every citizen can not only file a complaint with the data protection authority, but also submit a lawsuit in courts. Facebook previously denied any right to submit lawsuits under the GDPR and the Vienna Regional Court ("Landesgericht Wien") previously sided with Facebook in the first instance.

**The judge found twice that she was not competent.** Previously, the judge at the Vienna Regional Court had declared herself incompetent for the second time in December 2018 after a 20-minute hearing. She took the view that the data protection authority had exclusive jurisdiction – not the civil courts. Schrems challenged this decision at the Vienna Higher Regional Court (OLG).

**Schrems: "Blockade soon completely dissolved".** Max Schrems on the stage victory: *"After a good four-and-a-half years, we have now slowly resolved various blockade attempts on Facebook. But this case shows that as a normal consumer has almost no chance that his or her lawsuit is heard. I'm already looking forward to having Facebook's countless privacy violations before a public court soon"*.

**Admissibility of the lawsuit was decided upon seven times.** The admissibility of the lawsuit has been before the courts since July 2014 (about 4.5 years) and led to seven decisions: The (i.) Vienna Commercial Court referred the complaint to the (ii.) Regional Court, which considered the lawsuit inadmissible for the first time. The case then moved to the (iii.) Vienna Higher Regional Court, (iv.) the Austrian Supreme Court and the (v.) CJEU in Luxembourg and back to the (vi.) Vienna Regional Court, which found the action inadmissible a second time. Now the Higher Regional Court Vienna found the lawsuit to be admissible in the seventh decision – and only allowed for a limited appeal to the Supreme Court on a technical issue.

**Austrian Supreme Court is to decide whether the Commercial Court is competent.** The Higher Regional Court allows the appeal to a detailed question, namely whether the Regional Court for Civil Matters (LGfZRS) or the Commercial Court (HG) is competent for the action. Facebook is expected to appeal to the Austrian Supreme Court on this issue, which should clarify the matter within months.

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### **Further Questions:**

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