

SCHREMS

Court of Justice of the European Union

Case C-362/14

Judgment of the Court of 6 October 2015

«Mr Schrems, an Austrian national residing in Austria, has been a user of the Facebook social network (“Facebook”) since 2008.

Any person residing in the European Union who wishes to use Facebook is required to conclude, at the time of his registration, a contract with Facebook Ireland, a subsidiary of Facebook Inc. which is itself established in the United States. Some or all of the personal data of Facebook Ireland’s users who reside in the European Union is transferred to servers belonging to Facebook Inc. that are located in the United States, where it undergoes processing.

On 25 June 2013 Mr Schrems made a complaint to the Commissioner by which he in essence asked the latter to exercise his statutory powers by prohibiting Facebook Ireland from transferring his personal data to the United States. He contended in his complaint that the law and practice in force in that country did not ensure adequate protection of the personal data held in its territory against the surveillance activities that were engaged in there by the public authorities. Mr Schrems referred in this regard to the revelations made by Edward Snowden concerning the activities of the United States intelligence services, in particular those of the National Security Agency (“the NSA”).

Since the Commissioner took the view that he was not required to investigate the matters raised by Mr Schrems in the complaint, he rejected it as unfounded. The Commissioner considered that there was no evidence that Mr Schrems’ personal data had been accessed by the NSA. He added that the allegations raised by Mr Schrems in his complaint could not be profitably put forward since any question of the adequacy of data protection in the United States had to be determined in accordance with [*the EU Data protection legislation*¹] and the Commission had found in that decision that the United States ensured an adequate level of protection.

Mr Schrems brought an action before the High Court challenging the decision at issue in the main proceedings. After considering the evidence adduced by the parties to the main proceedings, the High Court found that the electronic surveillance and interception of personal data transferred from the European Union to the United States serve necessary and indispensable objectives in the public interest. However, it added that the revelations made by Edward Snowden had demonstrated a ‘significant over-reach’ on the part of the NSA and other federal agencies.

According to the High Court, Union citizens have no effective right to be heard. Oversight of the intelligence services’ actions is carried out within the framework

¹ Decision 2000/520

of an *ex parte* and secret procedure. Once the personal data has been transferred to the United States, it is capable of being accessed by the NSA and other federal agencies, such as the Federal Bureau of Investigation (FBI), in the course of the indiscriminate surveillance and interception carried out by them on a large scale.

The High Court stated that Irish law precludes the transfer of personal data outside national territory save where the third country ensures an adequate level of protection for privacy and fundamental rights and freedoms. The importance of the rights to privacy and to inviolability of the dwelling, which are guaranteed by the Irish Constitution, requires that any interference with those rights be proportionate and in accordance with the law.

The High Court held that the mass and undifferentiated accessing of personal data is clearly contrary to the principle of proportionality and the fundamental values protected by the Irish Constitution. In order for interception of electronic communications to be regarded as consistent with the Irish Constitution, it would be necessary to demonstrate that the interception is targeted, that the surveillance of certain persons or groups of persons is objectively justified in the interests of national security or the suppression of crime and that there are appropriate and verifiable safeguards. Thus, according to the High Court, if the main proceedings were to be disposed of on the basis of Irish law alone, it would then have to be found that, given the existence of a serious doubt as to whether the United States ensures an adequate level of protection of personal data, the Commissioner should have proceeded to investigate the matters raised by Mr Schrems in his complaint and that the Commissioner was wrong in rejecting the complaint.

However, the High Court considers that this case concerns the implementation of EU law [...] and that the legality of the decision at issue in the main proceedings must therefore be assessed in the light of EU law. According to the High Court, [*the EU Data protection legislation*²] does not satisfy the requirements flowing both from Articles 7 and 8 of the Charter and from the principles set out by the Court of Justice in the judgment in *Digital Rights Ireland and Others* (C-293/12 and C-594/12, EU:C:2014:238). The right to respect for private life, guaranteed by Article 7 of the Charter and by the core values common to the traditions of the Member States, would be rendered meaningless if the State authorities were authorised to access electronic communications on a casual and generalised basis without any objective justification based on considerations of national security or the prevention of crime that are specific to the individual concerned and without those practices being accompanied by appropriate and verifiable safeguards.

² Decision 2000/520

The High Court further observes that in his action Mr Schrems in reality raises the legality of the safe harbour regime which was established by [*the EU Data protection legislation*³] and gives rise to the decision at issue in the main proceedings.

[...]

In those circumstances the High Court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Whether in the course of determining a complaint which has been made to an independent office holder who has been vested by statute with the functions of administering and enforcing data protection legislation that personal data is being transferred to another third country (in this case, the United States of America) the laws and practices of which, it is claimed, do not contain adequate protections for the data subject, that office holder is absolutely bound by the Community finding to the contrary contained in [*the EU Data protection legislation*⁴] having regard to Article 7, Article 8 and Article 47 of [the Charter], [...]?’

(2) Or, alternatively, may and/or must the office holder conduct his or her own investigation of the matter in the light of factual developments in the meantime since that Commission decision was first published?’»

³ Decision 2000/520

⁴ Decision 2000/520