

Recognition of Protective Measures in Civil Matters in the European Union: the Case of Poland and Sweden



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The issue of protecting victims of crimes in civil matters should be considered at the national level and at the level of international law. The article focuses on solutions developed in European Union law and their implementation in the legal systems of two countries: Poland and Sweden. The solutions appear to have greater practical significance due to the facilitated and increasing cross-border movement of European Union citizens. The analysis focuses on Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on Mutual Recognition of Protection Measures in Civil Matters. The author considers the extent to which the analysed countries are passive recipients of protection measures issued in other Member States and to what extent they are states issuing such protection measures.

Key words: protection of victims of crime in civil cases, Regulation No 606/2013, Polish civil procedure, Swedish law

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1. Introductory remarks

Article 21.1 of the Treaty on the Functioning of the European Union¹ (hereinafter: TFEU) provides for the principle of free movement of citizens of the Member States of the European Union. It is one of the four basic freedoms underlying the functioning of the European Union. It presupposes that every citizen of the Member States has the right to leave or enter the country of their choice, as well as the right to stay for a specified

period in another Member State.² To guarantee the exercise of that freedom, it is essential to have instruments for the protection of nationals of one Member State who become victims of crime on the territory of the country of their residence.³ In addition, Art. 82.1

2 K. Kowalik-Bańczyk, “Article 21”, in *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz* (Treaty on the Functioning of the European Union. Commentary), vol. 1, D. Miąsik, N. Półtorak, A. Wróbel eds. (Wolters Kluwer, 2012), 455.

3 E. Bieńkowska, “Ochrona ofiar przestępstw w sytuacjach transgranicznych – regulacje polskie na tle

1 The Treaty on the Functioning of the European Union, Official Journal C 326 of 2012, 47–390.

TFEU regulates the cooperation of judicial authorities, which is based on the principle of mutual recognition of judgments and court decisions.⁴

One of the crucial acts perceived as a turning point, which laid the foundations for the advancement of a consistent system of victim protection in the European Union, was the Stockholm Programme (Programme). At its core, it established a five-year plan and included priorities in the fields of security, freedom and justice within the European Union. One of the goals of the aforesaid Programme was to safeguard freedom of movement, especially for women who are victims of domestic violence. The objective of the Programme was to provide protection for citizens of one Member State on the territory of another.⁵ In the course of the implementation of the Stockholm Programme, it was decided that three legislative initiatives would be taken. The first of them consisted in the adoption of Directive 2011/99/EU of the European Parliament and of the Council on 13 December 2011 on the European protection order (Directive EPO);⁶ the next one involved the adoption of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards in rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA; and the last one materialised as Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on Mutual Recognition of Protection Measures in Civil Matters.⁷ Among the above-mentioned acts of EU law the first and the third act are relevant from the perspective of this work since these acts concern

the protection of victims in criminal and civil matters at the cross-border level.⁸

As part of the resolution on the roadmap for strengthening the rights and protection of victims, in particular in the criminal proceedings of 10 June 2011, the Council indicated that the protection of victims should not only concern the sphere of measures to protect victims in broadly understood criminal law cases, but also the creation of measures enabling protection of victims in civil matters.⁹

As a result of the work undertaken, another regulation was adopted: Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on Mutual Recognition of Protection Measures in Civil Matters¹⁰ (Regulation 606/2013). Pursuant to Art. 22 of Regulation 606/2013, the effective date of the regulation was 11 January 2015. This indicates that the Member States had over a year to adopt the relevant solutions.

I have decided to approach the topic using a comparative method¹¹ since it widens the perspective and provides invaluable data on the functioning of the cross-border instruments of protection for particular categories of citizens. What is more, the selected countries have been interconnected for many years, not only geographically but also because of migration processes, which makes it a reality for many people to live in two countries and potentially receive the protection stipulated by Regulation 606/2013. To present raw statistical data, currently 98,387 Polish citizens live in Sweden, which makes it the second biggest minority after citizens of Finland.¹²

The viewpoint adopted in this paper will not only allow us to reconstruct the path of protection of Pol-

wymogów prawa unijnego” (Protection of Victims of Crime in Cross-Border situations – Polish Regulations against the Background of EU Law Requirements), *Prokuratura i Prawo* (2016) No. 5, 5–6.

4 Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, Preamble point 2, *Official Journal L* 338 (2011), 2–18.

5 J. Oliveras, “Directive 2011/99/EU on the European protection order”, in *The European Protection Order. Its Application to the Victims of Gender Violence*, B. Steible et al. eds. (tecnos, 2015), 33.

6 *Official Journal L* 338 (2011), 2–18.

7 Oliveras, “Directive”, 34.

8 E. Bienkowska, “Nowe środki ochrony i pomocy dla pokrzywdzonych i świadków” (New Protection and Assistance Measures for Victims and Witnesses), *Prokuratura i Prawo* 10 (2015), 8.

9 Directive EPO, Preamble point 5.

10 *Official Journal L* 181 (2013), 4–12.

11 I will use the model of comparison proposed by: K. Zweigert, H. Kötz, *Introduction to Comparative Law* (Oxford University Press, 1998).

12 Source <https://www.statista.com/statistics/525822/sweden-number-of-european-immigrants-by-country-of-birth/> (access: 11.08.2023).

ish citizens living in Sweden and *vice versa* but also to describe the areas with respect to which Regulation 606/2013 might need improvements.

2. General characteristics of Regulation 606/2013

In accordance with recital 6 of Regulation 606/2013, protection of natural persons is contingent upon such persons being at risk in life, health, personal freedom and sexual integrity. One of the basic categories of

an approach may lead to tentative situations in which Regulation 606/2013 and the ENO will intersect. In these cases, the issue of delimiting the application of these acts needs to be decided through the practice of the Court of Justice of the European Union.¹⁵

What is more, in point 11 of the Preamble to Regulation 606/2013, matrimonial matters and matters related to parental responsibility, covered by the Brussels IIa,¹⁶ were excluded from the scope of application of Regulation 606/2013, thus the scope of application



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individuals who are granted protection are victims of violence.

Regulation 606/2013 concerns the safety of victims in civil matters. The concept of matters which can be designated as civil, in compliance with recital 10 of the Preamble should be understood from the perspective of European Union law. This means that from the point of view of the Member States, these can be measures which according to domestic law are regulated in administrative, criminal or civil law acts.¹³ Obviously, this is quite a general term and causes certain ambiguity. The literature on Regulation 606/2013 indicates that in practice these will be all measures not issued in criminal cases and not covered by the scope of Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order.¹⁴ Nevertheless, such

of Regulation 606/2013 has been restrained, accordingly.¹⁷ Further on, point 13 of the Preamble to Regulation 606/2013 provides that protection measures in

No. 1, 173; more about EPO: J. Barcik, "Europejski nakaz ochrony (analiza krytyczna)" (European Protection Order (Critical Analysis)), *Państwo i Prawo* (2016) No. 1, 40–54; E. Bieńkowska, "Europejski nakaz ochrony – istota i znaczenie" (European Protection Order – Essence and Meaning), *Zeszyty Prawnicze* 12 (2012) No. 4, 151–173.

15 A. Witzell, "Finns det civilrättsliga skyddsåtgärder i svensk rätt? En analys av den svenska implementeringen av förordning (EU) 606/2013" (Are There Civil Law Protection Measures in Swedish law? An Analysis of the Swedish Implementation of Regulation (EU) 606/2013), *JURM02 Examensarbete* (2017), <https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=8909024&fileId=8918156> (access: 26.05.2024), 15.

16 Council Regulation (EC) No 2201/2003 of 27 November 2003 Concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and the Matters of Parental Responsibility, Repealing Regulation (EC) No 1347/2000, Official Journal L 338 of 2003, 1–29.

17 D. Olczak-Dąbrowska, "Article 795¹⁴ [Wydanie zaświadczenia]" (Issuance of a Certificate), in *Kodeks postępowania cywilnego. Komentarz* (Code of Civil Procedure. Commentary), vol. 2, T. Szancilo ed., (C.H. Beck, 2023), 947.

13 H. Pietrkowski, "Article 795¹⁴ [Wydanie zaświadczenia]" (Issuance of a Certificate), in *Kodeks postępowania cywilnego. Komentarz* (Code of Civil Procedure. Commentary), vol. 5, *Postępowanie egzekucyjne* (Enforcement Proceedings), T. Ereciński, H. Pietrkowski eds. (Wolter Kluwer, 2016), par. 1, 251.

14 A. Dutta, "Cross-border protection measures in the European Union", *Journal of Private International Law* 12 (2016)

civil matters may be issued by judicial authorities and administrative authorities. Concurrently, Regulation 606/2013 directly excluded police authorities from the scope of its application.

Point 12 of the Preamble to Regulation 606/2013 stresses the fact that the regulation is already based on the existing solutions. As a matter of fact, it aims to implement them. It stipulates that Regulation 606/2013 regulates the issues of ensuring protection under a specific measure and does not cover, *inter alia*, the process of implementing a specific measure or the consequences of the failure to comply with the conditions imposed on the person under the protection measure. This is not a novelty, since Directive EPO does not provide for the obligation to introduce protection measures in criminal cases into the domestic legal systems of the Member States, which means that they should be based on the existing solutions.

Point 19 of the Preamble to Regulation 606/2013 provides guidance on the range of specific protection measures in civil matters. In accordance with this point, protection measures should cover places of residence, workplace, or places that a person visits repeatedly. Moreover, it has been established that, in the case of a protection measure, the identification of a specific address of residence is less important, and what is more important is place of is the place of central importance for the day-to-day living activity of the person, understood as the place of residence of the mother, sister, etc.

In agreement with Directive EPO, Regulation 606/2013 includes a glossary of basic terms. One of the central concepts in Regulation 606/2013 is the notion of a protection measure. Pursuant to Art. 3, point 1 of Regulation 606/2013, a protection measure is a decision, regardless of its designation, issued by an authority of a Member State, imposing one or more prohibitions on an individual in order to protect the physical or mental integrity of another. The terminology used in the aforementioned provision indicates that it is a situation in which both the physical and mental integrity of certain individuals are at risk.

The decision may impose three types of prohibitions. The first is the prohibition or restriction of access to the place where the protected person “resides, works or regularly visits or regularly stays.” Another prohibi-

tion as part of a protection measure is the restriction or total ban on contact, not only physical but also that involving the use of e-mail or phone calls with the person protected under the measure.¹⁸ The protection measure may also include, pursuant to Art. 3.1.c, a restriction or prohibition on “approaching a certain distance to the protected person.” As part of the work done on Regulation 606/2013, the proposal to introduce an additional protection measure in the form of the possibility of exclusive use of their dwelling by the protected person was not taken into account.¹⁹ This is quite important from the perspective of Polish law, since, as will be shown in the following part of this article, it excludes a number of measures already existing in various Polish acts.

3. Protection measures in civil matters in Poland

In the Polish legal system, articles concerning Regulation 606/2014 are provided for by the Code of Civil Procedure of 17 November 1964²⁰ (CCP), and, more specifically, the provisions set forth in Art. 795¹⁴–795¹⁷, Art. 1115³¹, 1153¹⁹, 1153²², 1153²³, 1153²⁵. What is more, the Polish legislator decided to refer directly to Regulation 606/2013 itself, and thus the provisions contained in the Code of Civil Procedure constitute only a fragmentary regulation, while the essential regulation on protection measures in civil matters is found in Regulation 606/2013, which naturally is not an uncommon solution. It should be emphasised that Regulation 606/2013 introduces automatic enforceability in another Member State in relation to the judgments indicated therein. This means that there is no need to declare them enforceable in the state where they are to be enforced.²¹ The above-mentioned state

18 M. Kostwiński, “Article 794¹⁴ [Wydanie zaświadczenia]” (Issuance of a Certificate), in *Kodeks postępowania cywilnego. Komentarz* (Code of Civil Procedure. Commentary), vol. 2, J. Jankowski ed. (C.H. Beck, 2019), 1764.

19 E. Bieńkowska, “Wzajemne uznawanie środków ochrony w sprawach cywilnych” (Mutual Recognition of Protection Measures in Civil Matters), *Zeszyty Prawnicze* 14 (2014) No. 2, 13.

20 Polish Journal of Laws of 2020, Item 296.

21 Ośrodek Badań, Studiów i Legislacji, “Opinia do projektu ustawy z dnia 28 maja 2014 r. o zmianie ustawy – Kodeks

of affairs is highlighted in point 4 of the Preamble to Regulation 606/2013, which states that a protection measure issued in one Member State should be treated as one issued in the state where it should be implemented.

An intriguing question arises with respect to the status of Poland within the framework of Regulation 606/2013. Poland's status could be either that of the

lation 606/2013, since this issue was not included in Regulation 606/2013.²³

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recipient of protection measures in civil cases issued by other countries or that of the issuing country.

An analysis of the above issue should start with the Polish law of 29 July 2005 on counteracting domestic violence²² (CDM) and, to be more precise, articles 11a and 11 aa of this act. Art. 11a of the CDM states that if the behaviour of a family member consisting in the use of domestic violence makes cohabitation particularly burdensome, the person affected by this violence may demand that the court oblige this person to leave the jointly occupied dwelling and its immediate surroundings or forbid him or her to approach the dwelling and its immediate surroundings. It is quite obvious that the part of Art. 11a stipulating that the person should leave the apartment cannot be taken into account from the perspective of Regu-

lation 606/2013, since this issue was not included in Regulation 606/2013.²³ It should be stressed that the scope of application of Art. 11a of said law has been significantly broadened. From the year 2020 onwards, it has been possible to impose additional restrictions on a family member, such as the obligation to forbid this person from entering the immediate surroundings of the victim. It is stated that this solution furnishes the possibility of providing additional protection after the person leaves the place of joint residence. This person is forbidden to approach not only the, e.g. apartment but also the stairs leading up to the apartment, basement, etc.²⁴ At the same time, it is stated that the wording used in the revised version of Art. 11a of the CDM provides that the person is protected only in the place of residence and the immediate surroundings of the place of residence of the victim. In other words, this measure concerns not the victim but the broadly-understood place of residence.²⁵ From the perspective of Regulation 606/2013, it is still not a situation in which Poland can be a country issuing the protection measure in civil cases because it may be seen as an instrument that protects the victim at the place of residence.

The next article which gives solid grounds for issuing protection orders in civil cases is the newly added

postępowania cywilnego oraz ustawy o kosztach sądowych w sprawach cywilnych” (Centre for Research, Studies and Legislation, ‘Opinion to the bill of 28 May 2014 amending the Act – Code of Civil Procedure and the Act on Court Costs in Civil Cases), <http://obsil.kirp.pl/wp-content/uploads/2016/01/Opinia-z-dnia-24-sierpnia-2014-r.-do-projektu-zmian-KPC-i-ustaw-o-kosztach-s%C4%85dowych.pdf> (access: 5 August 2023), 2.

22 Polish Journal of Laws of 2015, item 1390.

23 Olczak-Dąbrowska, “Article 795¹⁴”, 947.

24 G. Wrona, “Article 11a [Obowiązek opuszczenia mieszkania]” (Obligation to Vacate the Dwelling), in *Ustawa o przeciwdziałaniu przemocy w rodzinie. Komentarz*, (Domestic Violence Prevention Act. Commentary) (C.H. Beck, 2021), 123–125.

25 *Ibidem*.

Art. 11aa of the CDM.²⁶ It allows the issuing of a court order prohibiting the person using domestic violence to approach the victim within a distance expressed

regularly frequented by the victim, such as school, an educational institution, a care or artistic institution, a work area, recreational areas, etc.²⁸



From the year 2020 onwards, it has been possible to impose additional restrictions on a family member, such as the obligation to forbid this person from entering the immediate surroundings of the victim.

in metres or forbidding the person using domestic violence to contact the victim, when the person using domestic violence, with his/her behaviour involving the use of domestic violence, poses a threat to the life or health of the victim. Art. 11aa, part 2 of the CDM also provides for the protection of a person in situations where the violence results from the use of means of remote electronic communication, causing in them a sense of threat, humiliation or anguish, or significantly violating their privacy.

According to the working papers on the amendment, Art. 11aa of the CDM expands the catalogue of requests with which a person who is a victim of violence may apply to the court in civil proceedings to grant them the right to request a restraining order or prohibiting contact with the victim.²⁷

As a result, the newly added article 11aa of the CDM places the victim and not the place of residence at the core of the protection measure. The protection in civil cases according to Art. 11aa of the CDM covers places

With the introduction of the protection measure under article 11aa of the CDM, Polish citizens can seek protection based on Regulation 606/2013, since it meets all the requirements of a protection order in civil cases.

The protection measure which should be taken into consideration is that stipulated by Art. 24 § 1 of the Civil Code of 23 April 1964.²⁹ Under this article, a person can seek a ban against another person which prevents infringement of his/her personal rights by forbidding that person to enter his/her place of residence or to contact him/her in a specific manner.³⁰ Under this article, a request made in order to protect one's interests from being infringed has a preventive character,³¹ hence it can be perceived as a protection measure in civil matters which can be taken into account from the standpoint of Regulation 606/2013.

In the Polish legal system, it is indicated that a protection measure within the meaning of Regulation 606/2013 may potentially also be a decision issued pursuant to article 113⁶ of the Family and Guardianship

26 Ustawa o zmianie ustawy – kodeks postępowania cywilnego oraz niektórych innych ustaw z dnia 13 stycznia 2023 r. (Act Amending the Act – Code of Civil Procedure and Certain other Acts of 13 January 2023), Polish Journal of Laws of 2023 r., item 289.

27 Amendment to „Ustawa o zmianie ustawy – kodeks postępowania cywilnego oraz niektórych innych ustaw z dnia 13 stycznia 2023 r.” (Centre for Research, Studies and Legislation, ‘Opinion to the bill of 28 May 2014 amending the Act – Code of Civil Procedure and the Act on Court Costs in Civil Cases’), Polish Journal of Laws of 2023, item 289.

28 *Ibidem*.

29 Polish Journal of Laws of 1964, item 93.

30 Kostwiński, “Art. 794¹⁴”, 1764–1765.

31 J. Panowicz-Lipska, “Art. 24 [Środki ochrony]” (Measures of protection), in *Kodeks cywilny. Komentarz* (Civil Code. Commentary), vol. 1, M. Gutowski ed. (C.H. Beck, 2021), 212; J. Sadowski, “Article 24 [Środki ochrony]” (Measures of Protection), in *Kodeks cywilny. Komentarz* (Civil Code. Commentary), W. Borysiak ed. (Legalis/el., 2024), par. 1.

Code of 25 February 1964³² (FGC), that is, a decision to limit or bar contact with a child by persons other than the parents.³³ Still, in each case there is a need to determine whether the measure is regulated under Brussels IIa, since in a situation whereby its provisions are in conflict with those set forth in Regulation 606/2013, priority is given to Brussels IIa.

courts and court executive officers³⁴ are the authorities responsible for the recognition and enforcement of the protection measure. It seems, however, that in practice the court executive officer will most often be the authority.

The information concerning competent authority provided by Poland pursuant to article 5 of Regulation



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As a result, Poland can not only be the recipient of the protection measures in civil cases but also the issuing country. Considering the protection of victims of violence in civil cases in the European Union, this is a significant step, especially if one takes into account the fact that Polish citizens work and live in various EU Member States.

The final aspect which needs to be examined is the question of the competent authority in Poland in accordance with Regulation 606/2013 and relevant articles of the CPC. The above aspect is crucial when one considers the application of protection measures in civil matters based on Regulation 606/2013 since the victim seeking protection has to apply for the recognition and enforcement of a protection measure. This question is regulated in point 30 of the Preamble and Art. 10 of Regulation 606/2013 which stipulates that the issuing authority in a Member State is required to provide assistance to the person to whom the protection measure has been issued with the information about which authority is responsible for the execution of the measure in a particular state to which the person is to go. Under article 18 of Regulation 606/2013, lies the obligation of each Member State to inform the Commission, *inter alia*, of which authority will be responsible for recognizing and enforcing the protection measure. In the Polish system, district

606/2013 enumerates only courts,³⁵ excluding court executive officers, which should be perceived as an error. Undoubtedly, the details provided to Commission are for informational purposes only; nevertheless, the goal of Regulation 606/2013 is to provide protection to victims, that is why information provided by Poland in practice might be misleading.

4. Protection measures in civil matters in the Kingdom of Sweden

The major discussion surrounding the implementation of Regulation 606/2013 into the Swedish legal system concerned the question of the existing protection measures in civil matters in Swedish law. The first choice was the restraining order (*kontaktförbud*) (KF) regulated by the law on restraining orders of 25 of May 1988,³⁶ and the second one was the family law restraining order (*familjerättsliga besöksförbud*) regulated by the Marriage Code of 14 of May 1987 and the

32 Polish Journal of Laws of 1964, item 59.

33 Kostwiński, "Art. 794¹⁴", 1764–1765.

34 J. Jagiela, "Article 1153¹⁶ [Postanowienie w przedmiocie dostosowania]" (Order for Adjustment), in *Kodeks postępowania cywilnego. Komentarz* (Code of Civil Procedure. Commentary), vol. 5, A. Marciniak ed. (C.H. Beck, 2020), 579–580.

35 Source https://e-justice.europa.eu/352/EN/mutual_recognition_of_protection_measures_in_civil_matters?POLAND&member=1 (access: 23 February 2023).

36 *Lag (1988:688) om kontaktförbud* (Act (1988:688) on restraining order).

Cohabitees Act of 1 of July 2003.³⁷ It was concluded that neither the first nor second protection measure can be interpreted as a protection measure under Regulation 606/2013.³⁸

In the case of the first measure provided for by the KF, § 1 of the KF regulates that it covers contact with other persons or following individuals under the that condition there is a risk of committing a crime against the victim. In assessing whether there is such a risk, special consideration is given as to whether the person against whom the restraining order is intended to apply has committed a crime against a victim's life, health, liberty or peace.

Generally adopted viewpoint is that in Swedish legal system the purpose of a restraining order is to protect a person from crime and other unwanted behaviours. This procedure is initiated by a prosecutor. It is also worth mentioning that the question of a restraining order can under certain conditions be tried as a criminal case. From the perspective of the perpetrator, the restraining order is registered in the criminal record registry. At the same time, a violation of the conditions of a restraining order can lead to punishment in the form of a fine or imprisonment for up to one year. It is stressed, however, that from the Swedish perspective, it is clear that a restraining order is not to be considered as a protection measure in civil matters which can be issued by a Swedish court under Regulation 606/2013, since it is regulated by public law.³⁹ At the same time, it can be seen as a protection measure in civil matters under Regulation 606/2013, when Sweden will be addressed Member State.⁴⁰

The second measure that may be relevant from the perspective of Regulation 606/2013 is a family law contact ban stipulated by the Marriage Code of 17 May 1987 (*Äktenskapsbalk*)⁴¹ and the Cohabitees Act of 12 June 2003 (*Sambolag*).⁴² As underlined in the Swedish legal writing, a family law constraining order differs from a criminal law restraining order, hence the question arises as to whether it can be a protection measure in civil matters as defined by Regulation 606/2013.⁴³ The most important difference is that it covers not only spouses but also cohabitants. What is more, the risk assessment does not play a crucial role in issuing a family law contact ban, since it is usually sufficient for one of the spouses or cohabitants to apply for it. Its aim is to make the transition period between the decision to part till the period of the final dissolution of the marriage peaceful. In this sense, it most definitely meets the criteria of a protection measure in civil cases. Nevertheless, it is underlined that this type of protection measure is not based on risk assessment and its character is reciprocal.⁴⁴ This is the main argument against categorising a family law contact ban as a protection measure in civil matters defined by Regulation 606/2013.⁴⁵

From the Swedish perspective, the procedure of issuing the certificate in accordance with Art. 5 of the Regulation 606/2013 is not applicable, since the Kingdom of Sweden, contrary to Poland, is, according to the current domestic legislation, only a recipient of the certificates of protection issued by other Member States.

37 *Äktenskapsbalk (1987:230)* (Marriage Code (1987:230), translation after: Svensk/engelsk ordlista Swedish/English Glossary, 2019, source https://www.domstol.se/globalassets/filer/gemensamt-innehall/for-professionella-aktorer/svensk-engelsk_ordlista_2019.pdf (access: 23 February 2023).

38 *Regeringens proposition 2014/15:51 EU-förordning om civilrättsliga skyddsåtgärder* (Government Proposal 2014/15:51 EU Regulation on civil protection measures), 18.

39 M. Bogdan, *Remissyttrande: EU-förordning om civilrättsliga skyddsåtgärder* (Ds 2014:35) (Consultation response: EU regulation on civil protection measures (Ds 2014:35), (Lund University, 2014), 2; *Regeringens proposition...*, 16.

40 *Ibidem*.

41 *Äktenskapsbalk (1987:230)* (Marriage Act).

42 Translation after Svensk/engelsk ordlista Swedish/English Glossary, Sveriges Domstolar, mars 2019, source https://www.domstol.se/globalassets/filer/gemensamt-innehall/for-professionella-aktorer/svensk-engelsk_ordlista_2019.pdf (access: 11 August 2023).

43 A. Witzell, "Finns det civilrättsliga skyddsåtgärder i svensk rätt? En analys av den svenska implementeringen av förordning (EU) 606/2013" (Are There Civil Law Protection Measures in Swedish law? An Analysis of the Swedish Implementation of Regulation (EU) 606/2013) (Lund Universitet, 2017), 21–23.

44 *Regeringens proposition 2010/11:45 Förbättrat skydd mot stalkning* (Government Proposal 2010/11:45 Improved protection against stalking), 33.

45 *Regeringens proposition 2014...*, 17–18.

The authorities which are competent to order protection measures in Sweden are subject to § 2 of the law 2015:197 with supplementary provisions to the EU regulation on protection measures in civil matters⁴⁶ (KSC). Under par. 2, the prosecutor acting in the area where the measure will be enforced or where the person against whom the ban is intended to apply has his or her domicile or resides more permanently⁴⁷ is the competent authority.

The adjustment of the measure is processed under § 3 of the KSC before a district court, where the com-

measure stipulated by Regulation 606/2013 and of the data on the issued protection measures in civil cases for victims of violence shows the need for the existence and an improvement of Regulation 606/2013.

Regulation 606/2013 will certainly be analysed and possibly amended following the experience of the first years of its application. As of today, Regulation 606/2013 has been amended only once, in connection with the withdrawal of the UK from the European Union.⁵¹



From the Swedish perspective, the procedure of issuing the certificate is not applicable.

petent prosecutor prosecutes his or her cases. This is also the court that rules on appeals against the decisions of the prosecutor concerning restraining orders.⁴⁸ On the other hand, the refusal to recognise the order is perceived as a purely civil matter and, as a result, it does not concern the prosecutor. As a consequence, the legislator decided to detach these proceedings from the district court in which the prosecutor has the competence to act and pointed out in § 3.2 that in cases concerning refusal of recognition, the district court of Stockholm will be solely competent.⁴⁹

5. Current practice and future of protection under Regulation 606/2013

The statistics on the application of Regulation 606/2013 are in practice quite fragmentary; however, it can already be underlined that the measure is not used too frequently.⁵⁰ The analysis of the protection

The implementation of Regulation 606/2013 indicates that protection measures are mainly issued in cases of violence against women, which is why it is logical that this is an area requiring further actions with regard to the cross-border protection of victims of violence.

In light of the current state of the protection of victims, an attempt to strengthen this protection both in civil and criminal cases was made in the form of the proposal of a Directive of the European Parliament and of the Council on combating violence against women and domestic violence⁵² (Proposal). The proposal was regrettably vetoed by Poland without providing any valid arguments.

of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, 9.

51 Exiting The European Union Family Proceedings Senior Courts Of England And Wales Family Court, England And Wales Mental Capacity, England And Wales The Family Procedure Rules 2010 and Court of Protection Rules 2017 (Amendment) (EU Exit) Regulations 2019, source https://assets.publishing.service.gov.uk/media/5c63f6d3ed915d04782b9f8c/Family_procedure_rules_and_court_protection_rules_EU_Exit_SI.pdf (access: 5 August 2023).

52 Proposal for a Directive of the European Parliament and of the Council on Combating Violence Against Women and Domestic Violence, COM/2022/105 final.

46 *Lag (2015:197) med kompletterande bestämmelser till EU:s förordning om skyddsåtgärder i civilrättsliga frågor*, (Act (2015:197) with supplementary provisions to the EU Regulation on safeguards in civil matters).

47 *Regeringens proposition 2014*, 10.

48 *Ibidem*, 26–27.

49 *Ibidem*, 27.

50 Report from the Commission to the European Parliament, the council and the European economic and social committee on the application of Regulation (EU) No 606/2013

This study does not concern the Proposal directly; nonetheless, it touches upon the question of the protection of victims of violence, that is why the connection between the Proposal and Regulation 606/2013 deserve a mention, without getting into details about the individual solutions adopted in the Proposal.

The explanatory memorandum regarding the Proposal states that the need for an additional instrument is dictated by the fact that there is no protection specially adjusted to domestic violence against women.⁵³ An analysis of the connection between the Proposal and Regulation 606/2013 is provided in Art. 21 of the Proposal, which stipulates that Member States should ensure that the competent authorities inform victims of the possibility of applying for cross-border protection *i.e.* under Regulation 606/2013.

Both of the above-mentioned articles demonstrate that the Proposal aims at implementing and strengthening the protection of victims where needed, and that the existing system should be constantly improved. This is in line with the above-mentioned need to widen the scope of the protection in civil matters within the meaning of Regulation 606/2013.

6. Protection in Sweden based on a certificate of protection issued in Poland and vice versa

The final part of this paper would be recreating the path of protection in civil matters under Regulation 606/2013 in Sweden in a situation in which the protection order is issued in Poland. To date the protection order in civil matters could be issued in Poland,



States should ensure that competent authorities inform victims of the possibility of applying for cross-border protection.

This is also an answer to the problem which was indicated in the report regarding the functioning of Regulation 606/2013. The report mentioned that countries should promote the awareness of the possibility of seeking cross-border protection under Regulation 606/2013.⁵⁴

It is also worth mentioning that Art. 48 of the Proposal states that the Proposal will not affect the application of other legal acts regulating protection of victims of violence, one of which is Regulation 606/2013.

since as mentioned above, Swedish law does not regulate protection measures in civil cases. Nevertheless, protection based on orders issued in Sweden is still available based on the EPO once the restraining order or a similar protection measure in a criminal case is issued in Sweden and recognised in Poland.

As mentioned earlier, Art. 11aa of the CDM, Art. 24 § 1 of the Civil Code and possibly Art. 113⁶ of the FCG are relevant protection measures which can be the basis of constitute the issuing of certificates of protection. Once the certificate of protection is issued in Poland, an individual can apply for protection in Sweden to the prosecutor, who – provided that protection is granted – transforms it into a restraining order which is effective for a specified period of time.

In the event of adjusting the certificate, the competent court is the district court with jurisdiction over the district of the relevant prosecutor. Conversely, in cases of refusal to recognize a protection order, the competent court is the district court of Stockholm.

53 Proposal for a Directive of the European Parliament and of the Council on Combating Violence Against Women and Domestic Violence, COM/2022/105 final, point 11, 23.

54 Report from the commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, 10.

The process of recognition, adjustment and refusal to recognise the protection order in civil matters between the two countries turns out to be quite simple and transparent, hence in practice the process of protection under Regulation 606/2013 seems to be well adjusted to achieve the intended goals of the cross-border protection of victims of violence.

7. Conclusions

Juxtaposing the two chosen systems with divergent legal histories and different legal solutions made it possible to highlight different aspects of Regulation 606/2013. The first area concerns difficulties in identifying regulations containing solutions regarding protection orders in civil cases. It became apparent that Swedish law does not regulate this type of order, which

make it possible to issue a certificate under Art. 11a of the CDM. This is of great importance for individuals living in two EU Member States with the appropriate interpretation of the notion of place of residence.

What is more, the statistics on the application of Regulation 606/2013 indicate that both partitioners and individuals⁵⁵ are not aware of the possibility of providing or receiving cross-border protection. The EU is aware of such a state of affairs and in the Proposal it obliged state entities to inform potential recipients of such protection about the possibility of cross-border protection.

The pressing issue which falls within the interest of Regulation 606/2013 is the question of the protection of victims of violence from outside the EU, who were forced to flee their countries because of war to seek pro-



Regulation 606/2013 is a much-needed instrument which in order to reach its maximum potential needs to be advertised, constantly improved and adapted to the changing reality.

positions Sweden solely as a recipient of the certificates of protection. On the other hand, the mechanism set forth in Regulation 606/2013 guarantees protection on the territory of Sweden in the form of a restraining order. In addition, the implementation of Regulation 606/2013 encouraged discussion in Swedish literature concerning the need for the adoption in Swedish law of new regulations introducing protection measures for victims of violence in civil matters.

At the same time, Poland is both a receiving and issuing country. This is especially noticeable with the wave of amendments aiming to strengthen the protection of victims of violence and Art. 11aa of the CDM is a prime example. The analysis of the Polish legislation reveals the need to widen the range of protection within the meaning of Regulation 606/2013, with orders concerning the domicile of a victim (home, flat, etc.). In the Polish context, this amendment would

tection in the European Union. The best example is the case of millions of Ukrainian citizens who are fleeing the war. The vast majority of these people are women. With this, statistics concerning domestic violence in Ukraine should be of great interest to the EU. Prior to the war and the pandemic, in 2019, according to the data provided by the OSCE, 67% of Ukrainian women aged 15 and older claimed that they had experienced psychological, physical or sexual violence by a partner or another person.⁵⁶ Following the withdrawal of the

⁵⁵ This was also confirmed in private conversations the author of this article had with judges, advocates and court executive officers in preparation for writing this paper.

⁵⁶ Дослідження насильства над жінками в Україні. Проведено під керівництвом обсяг добробут і безпека жінок. Україна. Доповідь про результати дослідження (A study of violence against women in Ukraine. Conducted under

ban forbidding men to leave Ukraine, victims of violence in Ukraine are not protected by the European Union based on the protection orders issued in their country of origin. This might be especially problematic for Poland,⁵⁷ to a great extent also for Sweden,⁵⁸ but also for the majority of EU Member States. This new geopolitical state of affairs creates the need to adopt new instruments, and in the case at hand, instruments allowing one to take into account protection measures issued in Ukraine. That is why the current EU framework of protection under Regulation 606/2013 can temporarily enacted for the protection of victims of violence, specifically citizens of Ukraine residing in EU Member States due to the ongoing war. However, due to its significance, this topic warrants analysis in a separate work.

The analysis provided in this paper clearly indicates that Regulation 606/2013 is a much-needed instrument which in order to reach its maximum potential needs to be advertised, constantly improved and adapted to the changing reality.

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- 57 According to official data currently almost 1 million Ukrainian citizens, mostly children and women received the status of temporary protection on the territory of Poland because of war in Ukraine. Source <https://www.gov.pl/web/udsc/obywatele-ukrainy-w-polsce--aktualne-dane-migracyjne> (access: 10.08.2023).
- 58 According to data of Swedish Migration Agency over 50 thousand Ukrainians fled from war and settle in Sweden. Source <https://www.migrationsverket.se/Om-Migrationsverket/Statistik/Sokande-fran-Ukraina.html#:~:text=Antal%20ans%C3%B6kningar%20om,i%20nytt%20f%C3%B6nster> (access: 14 August 2023).
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