

## Avalaht>Kohtuasja algatamine>Euroopa justiitsatlas tsiviilasjades>Tsiivilasjades määratud kaitsemeetmete vastastikune tunnustamine Mutual recognition of protection measures in civil matters

Prantsusmaa

### Article 17 - Information made available to the public

In civil matters, since the introduction of Law No 2010-769 of 9 July 2010, the **Family Court (*juge aux affaires familiales*)** can issue a **protection order (*ordonnance de protection*)**. This measure is governed by the following provisions:

**Articles 515-9 *et seq.* of the Civil Code,**

**Articles 1136-3 *et seq.* of the Code of Civil Procedure** for the rules of procedure

Articles 1136-16 *et seq.* of the Code of Civil Procedure for the rules of procedure on ordering the wearing of electronic bracelets to alert victims of domestic abuse;

A protection order is issued in the following situations: in cases of **domestic violence**, whether or not the parties are cohabiting; in cases of **violence by a former spouse or partner**, whether or not the parties have cohabited; for an **adult threatened with forced marriage**.

The violence must have the consequence of **endangering one of the members of the couple and/or their children**. A court will issue a protection order if it considers there to be **serious reasons for considering it likely that the alleged acts of violence took place and that the victim is in danger**.

The Family Court can issue a protection order independently of any divorce proceedings and without the need for ongoing criminal proceedings.

The court may order the following measures:

an order prohibiting the defendant from meeting and making contact with certain specifically designated persons;

an order prohibiting the defendant from going to certain places, specifically designated by the family court, frequented by the applicant;

an order prohibiting the defendant from possessing or carrying a weapon;

an offer to the defendant of health, social or psychological care or a course to prevent and combat sexist and domestic violence and encourage perpetrators to take responsibility for their behaviour;

for married couples: an order for the spouses to reside separately specifying which of the two spouses will continue to reside in the marital home. Except in specific circumstances, the applicant for the protection order is usually granted permission to remain in the home, even if he/she has been provided with emergency accommodation;

for cohabitants or partners who have contracted a civil partnership (PACS): the court may issue an order on the common home. Except in specific circumstances, the applicant for the protection order is usually granted permission to remain in the home, even if he/she has been provided with emergency accommodation;

organisation of the rules for exercising parental authority and setting a contribution towards the maintenance and upbringing of any children, a contribution to the costs of married life or other material assistance for partners in a civil partnership. When the protection order is granted, the court must give specific reasons for not ordering the exercise of rights of access in a designated meeting space or in the presence of a trusted third party;

authorisation for the protected person to conceal his/her domicile or residence and to specify as an address for service the address of his/her lawyer or of the public prosecutor;

authorisation for the protected person to conceal his/her domicile or residence and to indicate as an address for the needs of his/her daily life the address of a qualified legal person;

provisional approval of legal aid for both parties;

subject to agreement of both parties, the judge may order the defendant to wear an electronic bracelet which will alert the applicant when the defendant approaches within a certain distance.

These measures (in particular the order prohibiting meetings or contacts with certain persons) are, above all, preventive in nature. They may therefore fall within the scope of Regulation No 606/2013. These measures are **temporary**: they can only be ordered for a **maximum period of six months**. However, they can be extended if, before the expiry of that period, an application is made for divorce, legal separation or relating to the exercise of parental authority (Article 1136-13 of the Code of Civil Procedure). In this case, the protection order continues to have effect until the decision has become final, unless the court decides otherwise. However, the order to wear a bracelet can only be issued and renewed for a period of six months.

### Procedure:

Law No 2019-1480 of 28 December 2019 on action against domestic violence amended Article 515-11 of the Civil Code to require the protection order to be issued within a maximum of six days from the date on which the date of the hearing is set.

**Referral to the court:** the applicant may bring an action before the Family Court by an application submitted in person or sent to the Registry. On receipt of the application, the family court issues an order setting the date of the hearing. This starts the six-day period referred to in Article 515-11 of the Civil Code.

The applicant then has two days to have the date of the hearing, his/her application and his/her documents served by a bailiff (*huissier de justice*) on the other party. The costs of bailiffs are borne by the State, so that referral to the court is free of charge for victims of domestic violence. Under Article 1136-3 of the Code of Civil Procedure, the date of the hearing can also be notified by administrative means (e.g. by the police or a prison governor) where there is serious and imminent danger to the safety of a person affected by a protection order or if there is no other means of notification.

**Summons of parties:** the Family Court summons the parties to the hearing by court order. The order is served as described above.

**Hearing:** the procedure is oral. The parties argue their own cases but may be assisted or represented by a lawyer.

**Notice:** A protection order is served by a bailiff unless the court decides that it should be served by the Registry by registered letter with acknowledgment of receipt or through administrative channels where there is serious and imminent danger to the safety of a person affected by a protection order or if there is no other means of serving the order.

The court also communicates the decision to the public prosecutor in order to ensure that the measures ordered are followed up. The public prosecutor sends the decision, for information, to the appropriate police or gendarmerie services. In addition, if the procedure reveals the existence of a child in danger, the court refers the matter to the public prosecutor after the hearing.

**Register:** there is no special register of measures ordered in connection with protection orders. However, prohibitions imposed by a protection order are registered in the Wanted Persons Database (ban on contact, ban on being in certain places, ban on leaving the territory, etc.).

**Appeal:** the decision is subject to appeal within 15 days of being served. The defendant may also make an application for the lifting or amendment of the protection order or for a temporary waiver of some of its obligations.

**Enforcement of the protection order:**

The measures ordered in connection with a protection order are **enforceable on a provisional basis**, i.e. they must be put into effect immediately after the decision has been served (even if the defendant appeals), with the assistance of the law enforcement services if necessary. The protected person may refer the matter to the police or the gendarmerie in the event of a breach of one or more of the measures ordered by the Family Court.

Failure to comply with the measures concerned constitutes a punishable offence under Article 227-4-2 of the Criminal Code (*code pénal*). The offence is punishable by two years' imprisonment and a fine of €15 000. If the parents have joint parental authority, the court authorising the concealment of the victim's address must also lay down the arrangements for maintaining the link between the person causing the risk and the child through a third party or through the use of a meeting place, as well as the payment of any maintenance allowance by bank transfer.

**Article 18 (a)(i) - the authorities which are competent to order protection measures and issue certificates in accordance with Article 5**

The Family Court orders all protection measures and issues the certificates provided for in Article 5.

A Family Court with territorial jurisdiction is:

the court of the place where the family's residence is;

if the parents live separately, the court of the place of residence of the parent with whom the minor children habitually live in the case of joint exercise of parental authority, or the court of the place of residence of the parent who exercises parental authority alone;

in other cases, the court of the place where the person who did not initiate the proceedings resides.

The application for the certificate must be submitted in duplicate and must include a precise indication of the supporting documents. Representation by a lawyer is not required. A refusal to issue the certificate can be challenged before the President of the Combined Court (*tribunal judiciaire*) as the appeal need not be made through a lawyer.

Requests based on Articles 11 and 13 of the Regulation pursuant to [Article 509-8](#) of the Code of Civil Procedure are brought before the President of the Combined Court ruling in accordance with the expedited procedure on the merits of the case. This procedure, which was created by Article 5 of Decree No 2019-1419 of 20 December 2019 and is referred to in [Article 481-1 of the Code of Civil Procedure](#) can be used to obtain a hearing date at short notice without having to prove urgency. The urgency is inferred by the nature of the procedure, which can be used only where a text expressly provides for it.

**Article 18 (a)(ii) - the authorities before which a protection measure ordered in another Member State is to be invoked and/or which are competent to enforce such a measure**

The authorities before which a protection measure ordered in another Member State must be invoked and/or which are competent to enforce such a measure are **the police and the gendarmerie**.

**Article 18 (a)(iii) - the authorities which are competent to effect the adjustment of protection measures in accordance with Article 11(1)**

The applicant can ask the requested Member State to adjust the factual elements of the protection measure in order to give effect to it in that Member State on the basis of Article 11 of the Regulation. Requests based on Articles 11 and 13 of the Regulation pursuant to [Article 509-8](#) of the Code of Civil Procedure are brought before the President of the Combined Court ruling in accordance with the expedited procedure on the merits of the case and decided on in accordance with that procedure.

Thus, if Article 1136-6 of the Code of Civil Procedure provides for an oral procedure without mandatory representation in the case of an application for a protection order brought before a French court, the request for recognition in France of a civil protection order decided on by another Member State is dealt with in accordance with the expedited procedure on the merits of the case with mandatory representation pursuant to Articles 509-2 and 760 of the Code of Civil Procedure.

With regard to territorial jurisdiction, the rules derived from case-law giving priority to the requirements of the sound administration of justice are applied. It will therefore be possible to make the application to the President of the Regional Court of the place where the protected person plans to stay or to reside.

**Article 18 (a)(iv) - the courts to which the application for refusal of recognition and, where applicable, enforcement is to be submitted in accordance with Article 13**

The applicant is notified of the issuance of the certificate and may object to it on the basis of Article 13 of the Regulation by bringing the matter before the court of the requested Member State. An application for refusal of recognition or enforcement must be submitted to the President of the Combined Court ruling in accordance with the expedited procedure on the merits of the case (given the subject of the case, it may be delegated to a Family Court).

Representation by a lawyer is not required.

With regard to territorial jurisdiction, the rules derived from case-law giving priority to the requirements of the sound administration of justice are applied. It will therefore be possible to make the application to the President of the Regional Court of the place where the protected person plans to stay or to reside.

**Article 18 (b) - the language or languages accepted for translations as referred to in Article 16(1)**

French

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