

Excerpt translated from the Hungarian Criminal Procedure Code

„Restraining”

Article 138/A (1) Restraining restricts the right of the accused to free movement and the free choice of the place to stay. The accused under the effect of restraining shall, in line with the rules established by the court decision

*a)* leave the dwelling specified by the court and keep away from such dwelling for a period prescribed by the court,

*b)* keep away from the person specified by the court, and from the place of residence, place of work, education/training institution, attended by the person specified by the court, from the health institution regularly visited by such person for health treatment, from building visited on a regular basis to exercise his/her religion, for the period specified by court,

*c)* refrain from directly or indirectly contacting the person specified by the court.

(2) Restraining may be ordered in the case of a well-founded suspicion of a criminal act to be punished by prison sentence – assuming that the goals intended to be accomplished through restraining – if pre-trial detention of the accused is not necessary but – particularly in view of the nature of the criminal act, the behavior of the accused prior and during the procedure and the relationship between the accused and the aggrieved party – there is good reason to assume that if the accused is permitted to stay in the residential environment.

*a)* the accused could prevent, complicate or threaten the evidentiary procedure by influencing or intimidating the aggrieved witness, or

*b)* would carry out the attempted or prepared criminal act or would commit another criminal act punishable by prison sentence, against the aggrieved party.

(3) If the criminal procedure is based on a private motion the restraining order shall not be issued prior to the submission of the private motion.

(4) Decision on issuing the restraining order shall be made by the court. In such decision the court may prescribe that the accused calls at regular intervals at the investigating authority conducting the criminal procedure constituting the basis of restraining.

(5) The decision ordering restraining shall be forwarded to the prosecutor even if the ordering of restraining was initiated by the aggrieved party, the representative of the aggrieved party or by the legal representative of the minor living in the same household with the accused [Article 138/B (2) *d*)-*f*)].

(6) Until the submission of the bill of indictment the criminal investigation authority or the prosecutor, after the submission of the bill of indictment the court shall – after hearing the accused – promptly take the measures regulated in Article 128.

Article 138/B (1) Restraining shall be ordered by the court for a period between 10 and 30 days.

(2) Ordering of restraining may be initiated by

*a)* the prosecutor,

*b)* the civil suitor,

*c)* the substitute civil suitor,

*d)* the aggrieved party,

*e)* legal representative of the aggrieved party that has no or has limited capacity to act, and

*f)* legal representative of a minor living in the same household with the accused.

(3) If during the period of restraining the place of residence of the person specified in Article 138/A (1) *b)* is changed or material changes occur in the circumstances of life of such

person or those of the accused as would necessitate a change in the decision the court may modify its decision or terminate restraining, on the basis of a motion submitted by those listed in paragraph (2) or by the accused and the defense attorney, or *ex officio* after submission of the bill of indictment. The court shall proceed in the same way if forced measure has been ordered against the accused during the criminal procedure that necessitates modification or termination of restraining.

(4) If the court decides to modify or terminate restraining it shall obtain the statement made by the person that initiated the issuance of the restraining order, along with the declaration issued by the court, the prosecutor, the public suitor or the substitute public suitor. The court shall set a deadline for the submission of the declaration and the proposal: if such deadline has passed without submission the court shall decide in view of the available data. The court shall also forward the decision to the person specified in Article 138/A (1) b).

(5) If a restraining order has been issued against the accused the procedure shall be carried out promptly.

Article 139 (2) If the accused deliberately breaches the rules of restraining and fails to supply adequate reasons therefore in retrospect, his/her pre-trial detention may be ordered or – if the latter is not necessary – a disciplinary penalty may be imposed on the accused.”

In the course of amending Act No. III of 1952 on the Civil Procedure the Government of the Republic of Hungary will submit a motion to empower the court to decide on the right of use of jointly owned dwellings in lawsuits under the family law as provisional measure, including the possibility of applying a restraining order.