**Notable Constitutional Decisions**

*Summaries*

1. **Rudolph Maduro v. Commissioner of the Virgin Islands Police Force et al** HCVAP 2009/016

High Court granted a declaration of unconstitutionality in relation to section 308 of the Criminal Code 1997. In so doing, the Court held the said section created an impermissible reverse burden of proof. Thus, there was a breach of the Applicant’s right to be presumed innocent, until proven guilty contrary to section 16 of the Constitution. Appeal to the Court of Appeal.

*Issues on appeal:* Whether the judge erred in declaring that section 308 of the Criminal Code 1997 was unconstitutional, without first determining whether the section could be adapted or modified to bring it into conformity with the Constitution pursuant to section 115 of the Constitution. In addition, whether non-conformity with the Constitution, without more, renders a statutory provision unconstitutional.

The Court of Appeal allowed the appeal and set aside the High Court’s declaration that section 308 of the Criminal Code 1997 is unconstitutional. The matter was remitted to the High Court so that the exercise envisaged by section 115 of the Constitution could be conducted. Thereafter, the constitutional fate of section 308 of the Criminal Code could be determined.

1. **Desmond Emmanual Alphonso v Attorney General of the Virgin Islands** Claim No. BVIHCV2010/105

Applicant convicted of offence punishable with imprisonment for three months or more. Governor issued deportation order. Applicant appealed the deportation order. Applicant filed Originating Motion in High Court challenging his deportation, and that Governor should not hear the appeal since the Governor made the Order. Appeal stayed, pending hearing of the High Court proceedings.

Issues to be determined: Whether Applicant has a right to be given reasons for the making of the deportation order - exercise of executive powers of - Right to deport or expel an alien at pleasure - Sections 40 (I) and 40 (3) of the Immigration and Passport Act, Cap. 130. Section 16 (9) of Constitution, right to fair hearing in determining "civil rights and obligations". Non-applicability of section 16 (9) to deportation proceedings. Freedom of movement, section 18 of Constitution and principles of natural justice. Whether Governor could be impartial on hearing an appeal of an order made by him – *audi alteram partem* and *nemo judex* in *causa sua* rules inapplicable. Claim dismissed.

1. **Tova King et al v. Attorney General** BVIHCV2013/0324 – Applicant sought a declaration that his deportation would constitute a disproportionate interference with the Applicant’s constitutional right to private and family life protected by section 19 of the Constitution. Relief sought, granted.
2. **Partnerselskabet Parsifal v. The Attorney General** BVIHCV2014/0151 – Applicant sought a declaration that section 464 of the Merchant Shipping Act, 2001 is unconstitutional, null and void. Declaration sought on the basis that the legislature’s purported delegation of powers to the Governor in Council (i.e. Cabinet) in consultation with the Secretary of State for Transport of the United Kingdom, to make secondary legislation by Order which could include provisions to repeal or amend “*any provision of any enactment*” breached the doctrine of separation of powers, and accordingly any secondary legislation made in accordance with the said section 464 is unconstitutional, null and void. Relief sought, granted.

1. **Mark Defreitas v Attorney General** BVIHCV208/2014 – Applicant sought a declaration that an order for Applicant’s deportation constituted a disproportionate interference with the Applicant’s fundamental right to private and family life and right to marry and found a family enshrined in sections 9, 19 and 20 of the Constitution. Claim dismissed.
2. **Peter Gray et al v Attorney General et al** BVIHCV2016/0037 and BVIHCV2016/0050 – Applicants sought a declaration that the deportation of the First Applicant constituted a disproportionate interference with the Applicants’ fundamental right to private and family life protected by section 19 of the Constitution. First and Second Applicants also sought a declaration that the deportation of the First Applicant constituted a disproportionate interference with their right to marry and found a family as protected by 20 of the Constitution. Claim dismissed.
3. **Mark Vanterpool v. Julian Willock et al** BVIHCV2019/0087 – Issue to be determined by the Court - Whether Applicant could resign as a Member of the House of Assembly pursuant to section 67(3)(a) of the Constitution, prior to taking the Oath; and whether the Applicant’s resignation letter addressed to the Clerk of the House, and not the Speaker as required by section 67(3)(a) of the Constitution, was valid for the purposes of resignation. Relief sought, granted (*i.e. a declaration that the Applicant should be sworn in as the Representative of the Fourth Electoral District*).