
STATUTORY INSTRUMENTS

2007 No. 1678

The Virgin Islands Constitution Order 2007

THE CONSTITUTION OF THE VIRGIN ISLANDS

CHAPTER 2

FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Provisions to secure protection of law

16.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence shall—

- (a) be presumed to be innocent until he or she is proved guilty according to law;
- (b) be informed promptly, as prescribed by law, in a language that he or she understands and in detail, of the nature of the offence charged;
- (c) be given adequate time and opportunity for the preparation of his or her defence;
- (d) be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal practitioner of his or her own choice or where he or she is unable to afford to retain a legal practitioner and the interests of justice so require, by a legal practitioner at the public expense provided through an established public legal aid scheme as prescribed by law;
- (e) be entitled to examine in person or by his or her legal practitioner the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his or her behalf before the court on the same conditions as those applying to witnesses called by the prosecution;
- (f) be permitted to have without payment the assistance of an interpreter if he or she cannot understand or speak the language used at the trial of the charge; and
- (g) when charged on indictment in the High Court, have the right to trial by jury,

and except with that person's own consent the trial shall not take place in his or her absence, unless he or she so behaves in the court as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence.

(3) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(4) No person who shows that he or she has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(5) No person shall be tried for a criminal offence if he or she shows that he or she has been granted a pardon for that offence, either free or subject to lawful conditions.

(6) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(7) Every person who has been convicted by a court of a criminal offence shall have the right—

(a) to receive free of charge a copy of his or her conviction record and any sentence imposed as a consequence thereof; and

(b) to appeal to a superior court against the conviction or the sentence or both as may be prescribed by law.

(8) When a person has, by a final decision of a court, been convicted of a criminal offence and, subsequently, the conviction has been quashed, or that person has been pardoned, on the ground that a newly-disclosed fact shows that there has been a miscarriage of justice, he or she shall be compensated out of public funds for any punishment that he or she has suffered as a result of the conviction unless it is proved that the non-disclosure in time of that fact was wholly or partly his or her fault.

(9) For the determination of the existence or extent of his or her civil rights and obligations, every person shall have the right to a fair hearing within a reasonable time before an independent and impartial court or other authority established by law.

(10) Except with the agreement of all the parties thereto, all proceedings for the trial of any criminal charge or for the determination of the existence or extent of any person's civil rights or obligations before any court or other authority, including the announcement of the decision, shall be held in public.

(11) Nothing in subsection (10) shall prevent the court or other authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority may—

(a) by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of the welfare of minors or the protection of the private lives of persons concerned in the proceedings; or

(b) by law be empowered or required to do in the interests of defence, public safety, public order or public morality.

(12) Nothing in any law or done under its authority shall be held to contravene—

(a) subsection (2)(a), to the extent that the law in question imposes on any person charged with a criminal offence the burden of proving particular facts;

(b) subsection (2)(e), to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

(c) subsection (4), to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force; but any court so trying and convicting such a member shall in imposing any sentence take into account any punishment imposed on that member under that disciplinary law.