

Constitutional Court Ruling No. 18/2564 (2021)

Court of Appeals

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Applicant

Respondent

Constitution, section 26;

Act on Establishment of Kwaeng Courts and Criminal Procedures in Kwaeng Courts, B.E. 2499 (1956), section 9;

Penal Code, section 95.

Section 9 paragraph one of the Act on Establishment of Kwaeng Courts and Criminal Procedures in Kwaeng Courts, B.E. 2499 (1956) prohibited a public prosecutor from filing a prosecution upon the expiration of the period under section 7, except where leave was granted by the Attorney General or a public prosecutor holding a position not lower than a Director General for Public Prosecution or Director General for Regional Public Prosecution as designated by the Attorney General.

The period under section 7 was an expediting period to ensure that criminal cases for minor offences were tried expeditiously. If the prosecution could not file the case against a suspect in the Kwaeng Court within the time limit, or upon the expiration of the indictment and remand period, the inquiry official or public prosecutor no longer had the power to detain the suspect in custody. However, there was still a right to take criminal proceedings against the suspect within the criminal limitation period under section 95 of the Penal Code. In this regard, the public prosecutor had to seek leave to file a prosecution from the Attorney General or a public prosecutor holding a position not lower than a Director General for Public Prosecution or Director General for Regional Public Prosecution as designated by the Attorney General. This is to ensure that proceedings were taken prudently and a report on leave for indictment should be filed with the Attorney General for acknowledgement to enable reviews, scrutiny of exercises of discretion and checks and balances of functions within the public prosecution organisation to safeguard the rights and liberties of a suspect and maintain justice. Section 9 of the Act on Establishment of Kwaeng Courts and Criminal Procedures in Kwaeng Courts, B.E. 2499 (1956) was therefore a provision which aimed to protect both the injured person and suspect. The provision was not contrary to the rule of law, not an excessive burden or restriction of right or liberty of a person, not prejudicial on human dignity, and was generally applicable without being directed to any particular case or person. The provision was therefore neither contrary to nor inconsistent with section 26 of the Constitution.