

(h) **SUBSEQUENT APPEAL RIGHTS OF ACCUSED NOT AFFECTED.**—An appeal under paragraph (4) of subsection (a), and a decision on such appeal, shall not affect the right of the accused, in a subsequent appeal from a judgment of conviction, to claim as error reversal by the military judge on remand of a ruling appealed from during trial.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2601.)

PRIOR PROVISIONS

A prior section 950d, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2620, related to appeal by the United States, prior to the general amendment of this chapter by Pub. L. 111-84.

§ 950e. Rehearings

(a) **COMPOSITION OF MILITARY COMMISSION FOR REHEARING.**—Each rehearing under this chapter shall take place before a military commission under this chapter composed of members who were not members of the military commission which first heard the case.

(b) **SCOPE OF REHEARING.**—(1) Upon a rehearing—

(A) the accused may not be tried for any offense of which the accused was found not guilty by the first military commission; and

(B) no sentence in excess of or more than the original sentence may be imposed unless—

(i) the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings; or

(ii) the sentence prescribed for the offense is mandatory.

(2) Upon a rehearing, if the sentence approved after the first military commission was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first military commission.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2602.)

PRIOR PROVISIONS

A prior section 950e, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2621, related to rehearings, prior to the general amendment of this chapter by Pub. L. 111-84.

§ 950f. Review by United States Court of Military Commission Review

(a) **ESTABLISHMENT.**—There is a court of record to be known as the “United States Court of Military Commission Review” (in this section referred to as the “Court”). The Court shall consist of one or more panels, each composed of not less than three judges on the Court. For the purpose of reviewing decisions of military commissions under this chapter, the Court may sit in panels or as a whole, in accordance with rules prescribed by the Secretary of Defense.

(b) **JUDGES.**—(1) Judges on the Court shall be assigned or appointed in a manner consistent with the provisions of this subsection.

(2) The Secretary of Defense may assign persons who are appellate military judges to be judges on the Court. Any judge so assigned shall be a commissioned officer of the armed forces, and shall meet the qualifications for military judges prescribed by section 948j(b) of this title.

(3) The President may appoint, by and with the advice and consent of the Senate, additional judges to the United States Court of Military Commission Review.

(4) No person may serve as a judge on the Court in any case in which that person acted as a military judge, counsel, or reviewing official.

(c) **CASES TO BE REVIEWED.**—The Court shall, in accordance with procedures prescribed under regulations of the Secretary, review the record in each case that is referred to the Court by the convening authority under section 950c of this title with respect to any matter properly raised by the accused.

(d) **STANDARD AND SCOPE OF REVIEW.**—In a case reviewed by the Court under this section, the Court may act only with respect to the findings and sentence as approved by the convening authority. The Court may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, the Court may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the military commission saw and heard the witnesses.

(e) **REHEARINGS.**—If the Court sets aside the findings or sentence, the Court may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If the Court sets aside the findings or sentence and does not order a rehearing, the Court shall order that the charges be dismissed.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2603; amended Pub. L. 112-81, div. A, title X, §1034(c), Dec. 31, 2011, 125 Stat. 1573.)

PRIOR PROVISIONS

A prior section 950f, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2621; amended Pub. L. 110-181, div. A, title X, §1063(a)(6), Jan. 28, 2008, 122 Stat. 322, related to review by Court of Military Commission Review, prior to the general amendment of this chapter by Pub. L. 111-84.

AMENDMENTS

2011—Subsec. (a). Pub. L. 112-81 substituted “judges on the Court” for “appellate military judges” in second sentence.

§ 950g. Review by United States Court of Appeals for the District of Columbia Circuit; writ of certiorari to Supreme Court

(a) **EXCLUSIVE APPELLATE JURISDICTION.**—Except as provided in subsection (b), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of a final judgment rendered by a military commission (as approved by the convening authority and, where applicable, as affirmed or set aside as incorrect in law

by the United States Court of Military Commission Review) under this chapter.

(b) EXHAUSTION OF OTHER APPEALS.—The United States Court of Appeals for the District of Columbia Circuit may not review a final judgment described in subsection (a) until all other appeals under this chapter have been waived or exhausted.

(c) TIME FOR SEEKING REVIEW.—A petition for review by the United States Court of Appeals for the District of Columbia Circuit must be filed in the Court of Appeals—

(1) not later than 20 days after the date on which written notice of the final decision of the United States Court of Military Commission Review is served on the parties; or

(2) if the accused submits, in the form prescribed by section 950c of this title, a written notice waiving the right of the accused to review by the United States Court of Military Commission Review, not later than 20 days after the date on which such notice is submitted.

(d) SCOPE AND NATURE OF REVIEW.—The United States Court of Appeals for the District of Columbia Circuit may act under this section only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the United States Court of Military Commission Review, and shall take action only with respect to matters of law, including the sufficiency of the evidence to support the verdict.

(e) REVIEW BY SUPREME COURT.—The Supreme Court may review by writ of certiorari pursuant to section 1254 of title 28 the final judgment of the United States Court of Appeals for the District of Columbia Circuit under this section.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2603; amended Pub. L. 112–81, div. A, title X, §1034(d), Dec. 31, 2011, 125 Stat. 1573.)

PRIOR PROVISIONS

A prior section 950g, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2622, related to review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court, prior to the general amendment of this chapter by Pub. L. 111–84.

AMENDMENTS

2011—Subsec. (a). Pub. L. 112–81, §1034(d)(1), inserted “as affirmed or set aside as incorrect in law by” after “where applicable.”

Subsec. (c). Pub. L. 112–81, §1034(d)(2)(A), substituted “in the Court of Appeals—” for “by the accused in the Court of Appeals not later than 20 days after the date on which—” in introductory provisions.

Subsec. (c)(1). Pub. L. 112–81, §1034(d)(2)(B), inserted “not later than 20 days after the date on which” before “written notice” and substituted “on the parties” for “on the accused or on defense counsel”.

Subsec. (c)(2). Pub. L. 112–81, §1034(d)(2)(C), inserted “if” before “the accused submits” and inserted before period at end “, not later than 20 days after the date on which such notice is submitted”.

§ 950h. Appellate counsel

(a) APPOINTMENT.—The Secretary of Defense shall, by regulation, establish procedures for the appointment of appellate counsel for the United States and for the accused in military commis-

sions under this chapter. Appellate counsel shall meet the qualifications of counsel for appearing before military commissions under this chapter.

(b) REPRESENTATION OF UNITED STATES.—Appellate counsel appointed under subsection (a)—

(1) shall represent the United States in any appeal or review proceeding under this chapter before the United States Court of Military Commission Review; and

(2) may, when requested to do so by the Attorney General in a case arising under this chapter, represent the United States before the United States Court of Appeals for the District of Columbia Circuit or the Supreme Court.

(c) REPRESENTATION OF ACCUSED.—The accused shall be represented by appellate counsel appointed under subsection (a) before the United States Court of Military Commission Review, the United States Court of Appeals for the District of Columbia Circuit, and the Supreme Court, and by civilian counsel if retained by the accused. Any such civilian counsel shall meet the qualifications under paragraph (3) of section 949c(b) of this title for civilian counsel appearing before military commissions under this chapter and shall be subject to the requirements of paragraph (7) of that section.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2604.)

PRIOR PROVISIONS

A prior section 950h, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2622, related to appellate counsel, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950i. Execution of sentence; suspension of sentence

(a) IN GENERAL.—The Secretary of Defense is authorized to carry out a sentence imposed by a military commission under this chapter in accordance with such procedures as the Secretary may prescribe.

(b) EXECUTION OF SENTENCE OF DEATH ONLY UPON APPROVAL BY THE PRESIDENT.—If the sentence of a military commission under this chapter extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit.

(c) EXECUTION OF SENTENCE OF DEATH ONLY UPON FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—(1) If the sentence of a military commission under this chapter extends to death, the sentence may not be executed until there is a final judgment as to the legality of the proceedings (and with respect to death, approval under subsection (b)).

(2) A judgment as to legality of proceedings is final for purposes of paragraph (1) when review is completed in accordance with the judgment of the United States Court of Military Commission Review and—

(A) the time for the accused to file a petition for review by the United States Court of Appeals for the District of Columbia Circuit has expired, the accused has not filed a timely petition for such review, and the case is not