

FURTHER AMENDING THE APPELLATE REVIEW PROCEDURE IN MILITARY TRIBUNAL AND GENERAL COURT-MARTIAL CASES AS PROVIDED IN PRESIDENTIAL DECREE NO. 978.

PRESIDENTIAL DECREE NO. 1165, June 24, 1977

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WHEREAS the appellate review of case heard and tried by military tribunals, created pursuant to General Order No. 8, dated September 27, 1972, and Presidential Decree No. 39, and general court-martial, as provided in Presidential Decree No. 978, as amended by Presidential Decree No. 1042, may still be expedited and made more adequate;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree as part of the law of the land the following amendments to Presidential Decree No. 978:

SECTION 1. Initial Action on Record.-(a) Review by staff Judge Advocate/Legal Officer on AFP Board of Review.-Every record of trial of military commissions or provost courts shall be forwarded to the staff judge advocate/legal officer of the convening authority for review before the latter acts thereon except in those case where the penalty imposed is-

- (i) death
- (ii) confinement of more than six (6) years; or
- (iii) fine or more than P6,000.00

which shall be directly reviewed by the Court of Military Appeals. The staff judge advocate/legal officer shall submit his opinion in writing to ne convening authority regarding the legal sufficiency of the record of trial in which there has been a finding of guilty, the appropriateness of the sentence, and any errors of law which may have been committed injuriously affecting the substantial rights of the accused. If the trial resulted in a finding of not guilty or acquittal of all the charge or charges and specifications, the review shall be limited to questions of jurisdiction.

For purposes of this initial review, the Judge Advocate General, AFP, shall, as may be directed by the Chief of Staff, AFP, create in his office as may ADP Boards of Review as he may deem proper to conduct the review of a record of trial for the Chief of Staff, AFP, in lieu of the review of his staff judge advocate. The Judge Advocate General, AFP, shall prescribe uniform rules of procedure for the AFP Boards of Review.

(c) Rehearing.-Where the covening authority disapproves the findings of guilty of the military commission of provost court, he may order a rehearing, except where the disapproval is based on lack of legally sufficient evidence to support the findings and sentence. If he does not order a rehearing, he may order the dismissal of the case. Where the military commission or provost court had no jurisdiction over the offense or person of the accused, the covening authority shall take the appropriate action.

(d) Execution of Sentence.-All sentences of military commissions and provost courts shall be executory fifteen

(15) days after approval thereof by the convening authority, unless a petition for review is filed pursuant to the provisions of Section 2, paragraph, (a), of this decree.

SEC. 2. Review by Court of Military Appeals.-(a) Where discretionary.-The action or discretion of the convening authority in military commission and provost court cases may be reviewed by the Court of Military Appeals upon a petition for review filed by the accused with said court within fifteen (15) days from receipt of a copy of said action or decision. Only questions of law which must be distinctly set forth may be raised. The decision of the Court of Military Appeals shall be final.

(b) Where Required.-The Judge Advocate General, AFP shall refer directly to the Court of Military Appeals every record of trial of a military commission or provost court in which the penalty imposed is-

- (i) death
- (ii) confinement of more than six (6) years; or
- (iii) fine of more than P6,000.00.

(c) The Court of Military Appeals shall determine the appropriateness of the sentence imposed by the military commission or provost court. In considering the records it may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact and any errors of law which may have been committed injuriously affecting the substantial rights of the accused.

(d) The Court of Military Appeals may disapprove the findings of guilty by the military commission or provost court, and order rehearing, except where the disapproval is based on lack of legally sufficient evidence to support the findings. If it does not order a rehearing, it may dismiss the case.

(e) Except in death sentences, all sentences of military commissions and provost courts based solely upon findings of guilty of a charge or charges and a specification or specifications to which the accused pleaded guilty shall not be subject to further review by the Court of Military Appeals and/or the Supreme Court as herein provided.

(f) Action in Accordance with decision of Court.-After the Court of Military Appeals has acted on a case, the Judge Advocate General, AFP, shall advise the convening authority to take action in accordance with the decision of the Court, unless there is further action by the Supreme Court as herein provided.

SEC. 3. Section 3 of said Presidential Decree No. 978 is hereby repealed.

SEC. 4. Section 4 of said Presidential Decree No. 978 is hereby re-numbered as Section 3 and amended to read as follows:

SEC. 3. Review of Records of Trial by General Courts Martial.-The Court Military Appeals herein created shall review every record of trial by general courts martial where the sentence, as approved by the convening authority and an AFP Board of Review, requires confirmation by the President of the Philippines as provided in Article of War 47. With respect to such cases, they shall become final and immediately executory when the findings of guilty and the sentence are approved, or disapproved, without rehearing being ordered, by the Court of Military Appeals; Provided, that where the sentence of a general court-martial imposes the penalty of death or affects a general flag officer, the sentence shall not be executed unless approved or confirmed by the President of the Philippines; Provided, further, that in such cases, the President may reverse, confirm increase the penalty imposed, or otherwise modify, the decision of the court-martial.

SEC. 5. The following provision shall be incorporated as Section 4 of Presidential Decree No. 978:

SEC. 4. Review by the Supreme Court.-The accused may file with the Supreme Court a petition for review on certiorari of a decision of the Court of Military Appeals referred to in Section 2, paragraph (b) hereof. Such

review shall be limited to questions of law which shall be distinctly set forth in the petition and shall be governed by Rule 45 of the Revised Rules of Court prescribing the procedure for appeal from the Court of Appeals to the Supreme Court; Provided, that where the original offense charged no punishable with death or life imprisonment, the review may be on questions of law and fact; Provided, further, that where the sentence imposed is death, the records of the case shall be forwarded to the Supreme Court for review and judgment, whether the accused shall have appealed or not, and find affirmance must be on ten (10 affirmatives votes.

SEC. 6. Transitory Provision.-Presidential Decree No. 978 as further amended by this Decree shall apply to all records of trial of military tribunals and general courts-martial which are pending appellate review on the date of organization of the Court of Military Appeals.

SEC. 8. Effectivity.- This Decree shall take effect upon its promulgation.

Done in the City of Manila, this 24th day of June, in the year of Our Lord, nineteen hundred and seventy-seven.

(Sgd.) FERDINAND E. MARCOS
President of the Philippines

By the President:

(Sgd.) JUAN C. TUVERA
Presidential Assistant

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