
Challenging decision



GUIDANCE ON CHALLENGING DECISIONS AND ORDERS OF CRIMINAL COURTS

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1. Methods by which courts orders or decisions can be challenged

There are three procedures by which orders and decisions of courts can be challenged by the Prosecution namely:

- a. Appeals
- b. Criminal Revisions
- c. Writ Petitions

The legal basis of these processes is as follows:

Appeals	Under Constitution of Pakistan	Article 185 of the Constitution of Pakistan 1973.
	Under General Law	Section 411A (2), 417 Criminal Procedure Code 1898.
	Under special laws	Section 25, ATA, 1997.
		Section 48, CNSA, 1997.
	Section 31, Drug Act, 1976.	
Criminal Revisions	Under General Law	Section 435, 439, 439-A of Criminal Procedure Code 1898.
Writs	Under Constitution of Pakistan	Article 199 of the Constitution of Pakistan 1973.

2. Appeals

2.1 Orders against which appeals can be filed by the Prosecution

The Provincial Government can direct the filing of an appeal in the following cases:

- i. From a decision of acquittal passed by a court of Magistrate or Court of Sessions to the High Court.
- ii. From a decision of acquittal passed by the High Court in exercise of its original jurisdiction to a division bench of the High Court.
- iii. From an order of acquittal passed by the High Court in its appellate jurisdiction subject to leave granted by the Supreme Court.
- iv. From an order passed by the High Court in provisional jurisdiction

2.2 Grounds of Appeal

An appeal lies

- i. On questions of fact
- ii. On questions of law
- iii. On mixed questions of fact and law

2.3 Time Limits for Instituting Appeals against Acquittals

Time limits for filing appeals against orders of acquittal are as follows:

Type of Case	Time Limit	Relevant Provision
Regular cases	6 months	Article 157 Limitation Act, 1908
Juvenile cases	30 days	Section 13 JJSO, 2000
Terrorism cases	30 days	Section 25, ATA, 1997
Leave to Appeal from the Order of the High Court	02 months	Article 185, Constitution of Pakistan, 1973. Rule 22 and 23 Supreme Court Rules 1985

2.4 Procedure for filing an Appeal

Every appeal has to be accompanied by the sanction of the Government. Therefore, no appeal must be filed without the requisite sanction.

An appeal shall only be filed to the extent authorized. Where the appeal seeks conviction in the alternate the same shall be stated unequivocally. Where a direction of additional evidence has been received an application for recording of additional evidence shall also be filed with the memorandum of appeal.

3. Revisions

3.1 Orders against which Revisions can be filed by the Prosecution

A revision is filed in the following cases:

- i. For the enhancement of sentence passed by a Court of Magistrate to the Court of Sessions
- ii. For the enhancement of sentence passed by Court of Sessions to the High Court
- iii. On refusal of court to summon a witness
- iv. Where the court disagrees with the assessment of the prosecutor without giving the assessment due consideration
- v. Where the court passes an inappropriate order on the basis of the assessment of the Prosecutor i.e. acquits an accused when the prosecutor has asked for a discharge or consigns the case when the prosecutor has not recommended charging
- vi. Where the court disagrees with a request for withdrawal fully or partially
- vii. Where the court declines to allow the request of prosecutor to summon, examine, re-examine or declare a witness as hostile.
- viii. Where the court declines the request of prosecutor to exhibit documentary or real evidence
- ix. Where the court allows an accused to produce inadmissible evidence
- x. Where the court declines a remand request.
- xi. Where the court declines the request for recording the statement of witness under section 164 Cr.P.C.
- xii. Where the court transfers a case to the special court contrary to the views of the Prosecution
- xiii. If court consigns the case due to non-appearance of witnesses without adopting coercive measures.
- xiv. If court closes the prosecution evidence contrary to the views of the Prosecution
- xv. Where the court determines that an accused is juvenile contrary to the submission of prosecutor

3.2 Permission required for filing revisions

Prior permission for filing a Revision for enhancement of sentence before the High Court must be obtained from the Government

3.3 Time Limits for filing Revisions

Time limit for filing Revisions is as follows:

Type of Case	Time Limit	Relevant provision
Enhancement of Sentence passed by a Court of Magistrate	90 days	The law requires the revision to be filed within reasonable time. This guidance requires that this decision must be made within 90 days of the date of the order
Enhancement of Sentence passed by a Court of Sessions	90 days	The law requires the revision to be filed within reasonable time. This guidance requires that this decision must be made within 90 days of the date of the order
For other revision applications	90 days	The law requires the revision to be filed within reasonable time. This guidance requires that this decision must be made within 90 days of the date of the order

4. Writs and Miscellaneous Applications

4.1 Orders against which writs or misc. applications can be filed by the Prosecution

- a) The situations in which a prosecutor may file a writ or criminal miscellaneous applications in Anti-Terrorism cases include¹:
- i. Where the court disagrees with the assessment of prosecutor.
 - ii. Where the court declines to allow the request of prosecutor to summon, examine, re-examine or declare a witness as hostile.
 - iii. Where the court declines the request of prosecutor to exhibit documentary or real evidence.
 - iv. Where the court allows an accused to produce inadmissible evidence.
 - v. Where the court declines a remand request.
 - vi. Where the court consigns the case due to non-appearance of witnesses without adopting coercive measures.
 - vii. Where the court declines the request for recording the statement of witness under section 164 Cr.P.C.
 - viii. Where the court transfer a case to the court of ordinary jurisdiction.
 - ix. Where ATC consign the case due to non-appearance of witnesses without adopting coercive measures.
 - x. Where the court closes the prosecution evidence contrary to the request of prosecutor.
 - xi. Where the court determines that an accused is juvenile contrary to the submission of prosecutor.
- b) The situations in which a prosecutor may file a writ in ordinary cases include:
- i. If court discharges an accused contrary to the request of prosecutor

¹ The law is not yet settled by SC on whether a writ or petition under section 561-A will lie

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- ii. Where the prosecutor is dissatisfied with the order passed in revision by Sessions Court.²

4.2 Time Limits for filing Writs

Writ Petitions must be filed as soon as practicable.

5. Identifying cases fit for challenge

5.1 Reporting about adverse decisions

Relevant Court Prosecutors shall apply for the certified copy of the relevant judgment/order on the same day when it is passed and shall report all adverse decisions as follows:

Type of Case	Time Limit	Authority to whom report should be made
Refusal to agree with the recommendations of the Prosecution regarding charging	Within 2 days of receiving the certified copy of the Order	<p>a) District Public Prosecutor or a prosecutor nominated by him in all sessions and magistrate court cases</p> <p>b) Incharge of the concerned special courts</p>
Adverse outcome in a judgment	Within 3 days of receiving the certified copy of the Order	<p>a) District Public Prosecutor or a prosecutor nominated by him in all sessions and magistrate court cases</p> <p>b) Incharge of the concerned special courts</p> <p>c) Incharge LHC bench at Multan, Rawalpindi and Bahawalpur where order has been passed at these</p>

² A CPLA will lie where the order is passed by the High Court in revisional jurisdiction

		benches and Incharge Appeals Section where the order has been passed by the principal bench
All other cases	Within 7 days receiving the certified copy of the Order	<p>a) District Public Prosecutor or a prosecutor nominated by him in all sessions and magistrate court cases</p> <p>b) Incharge of the concerned special courts</p> <p>c) Incharge LHC bench at Multan, Rawalpindi and Bahawalpur where order has been passed at these benches and Incharge Appeals Section where the order has been passed by the principal bench</p>

5.2 Form of reporting

- i. A prosecutor must use Form AOC for reporting purposes in case of orders of the court amounting to a judgment
- ii. A prosecutor must write a letter in all other cases. The letter must include a gist of the judgment and why he wants to challenge the order

6. Decision making Forums

6.1 District Appeal Committee (DAC)

There shall be a District Appeal Committee in every district comprising of the following:

- a. DPP (in his temporary absence, his nominee) - chairman
- b. One DDPP - member

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- C. One ADPP- member

No member of the committee shall have less than 3 years' experience as a Trial Court Prosecutor

6.2 Special Courts Appeal Committee (SAC)

There shall be an Appeal Committee for each type of special courts. A Special Court Appeal Committee shall comprise of the following:

- a. Incharge Special Court - chairman
- b. One DPG who has performed prosecutorial work in the relevant special court for not less than one year - member
- c. One DDPP/DPG - member

At least one member of the committee shall have not less than 5 years' experience as a Trial Court Prosecutor

6.3 High Court Appeal Committee

There shall be one or more Appeal Committees for every bench of the High Court comprising of the following

- a. In charge bench (in case of Multan, Rawalpindi, Bahawalpur benches) and an Additional Prosecutor General nominated by the Prosecutor General for the principal seat- chairman
- b. Two DPGs - members

At least one member of the committee shall have not less than 5 years' experience as a Trial Court Prosecutor

6.4 Supreme Court Appeal Committee

There shall be an Appeal Committee for the Supreme Court comprising of the following

- a. In charge SC- chairman
- b. Two DPG/APG - members

One of the members of the Committee shall have the experience of a trial court prosecutor for not less than 5 years. Where such a prosecutor is not available a DPG posted at Rawalpindi who has the relevant experience shall be nominated by the Prosecutor General as a member of the Committee

6.5 Provincial Appeal Committee (PAC)

There shall be a Provincial Appeal Committee comprising of the following

- a. In charge Appeal Section Criminal Prosecution Service- chairman
- b. Two DPGs/DDPP - members

At least one member of the committee shall have 5 years' experience as a Trial Court Prosecutor

6.6 Decision making powers of Appeal Committees

Appeals committee shall have the following responsibilities and powers

Committee	Responsibilities and Duties	Decision Making Powers	Timelines for decision making
District Appeal Committee	Consideration of all cases arising out of the District	<ul style="list-style-type: none"> • Recommending Appeals to the Prosecutor General • Recommending revisions for purposes of enhancement of sentences arising out of sessions court judgment to the Prosecutor General • Recommending all other revisions to the Prosecutor General • Considering and Deciding all revisions to be filed before the 	Within 3 days or on the same day where time limit is going to expire in 10 days

		<p>Sessions Court</p> <ul style="list-style-type: none"> • Recommending all writs/criminal miscellaneous applications to the relevant High Court Appeals Committee • Send to the PAC record of all cases involving life imprisonment or death in which the DAC is of the view that appeal may not be filed 	
Special Courts Appeal Committee	Consideration of all cases sent to it and submitting recommendations to the PAC	<ul style="list-style-type: none"> • Recommending Appeals to the Prosecutor General • Recommending Appeals/Revisions for purposes of enhancement of sentences arising out of special court judgment to the Prosecutor General • Recommending all other revisions to the Prosecutor General • Recommending writs against the decision of an ATC transferring a case to the ordinary courts for trial to the PAC • Recommending all other writs to the relevant High Court Appeals Committee • Send to the PAC record of all cases involving life imprisonment or death in which the Special Courts 	Within 3 days or on the same day where time limit is going to expire in 10 days

		Appeal Committee is of the view that appeal may not be filed	
High Court Appeal Committee	Consideration of all cases sent to it and submitting recommendations to the Prosecutor General	<ul style="list-style-type: none"> Deciding all cases recommended to it and taking further appropriate action on them Recommending all cases of appeals arising out of judgments and orders of the High Court to the Prosecutor General Recommending all cases of CPLA for enhancement of sentence arising out of orders of the High Court to the Prosecutor General Send to the PAC record of all cases involving life imprisonment or death in which the High Court AC is of the view that appeal may not be filed 	Within 3 days or on the same day where time limit is going to expire in 10 days
Supreme Court Appeal Committee	Consideration of all cases in which a review may be filed	<ul style="list-style-type: none"> Recommending cases for filing of review to the PAC 	Within 3 days or on the same day where time limit is going to expire in 10 days
PAC	Consideration of all cases	<ul style="list-style-type: none"> Giving opinion in all cases referred to it by the Prosecutor 	Within 2 days of the

	received by it	General or the Government <ul style="list-style-type: none"> • Reviewing all cases involving the death sentence or life imprisonment in which the relevant committee is of the view that appeal may not be filed and taking appropriate action on the same. • Deciding all other cases referred to it and taking further appropriate action on them 	referral
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6.7 Decisions by the Prosecutor General

The Prosecutor General shall forward all cases of appeals to the Government where in his opinion an appeal should be preferred. The Prosecutor General may also allow the concerned Appeal Committee to forwardsuch cases in which recommendations for filing of appeals are made directly to the Government.

7. Criteria for Challenging Decisions

7.1 Criteria of Filing Appeals

The criteria for making a decision to file an appeal is provided in paragraph 12 of the Code of Conduct. An exposition of this criteria is as follows:

a) Merits of the case

The merits of the judgment refer to the fact whether the judgment suffers from an error of fact or law. In appeals, mere pointing out of errors of fact or law is not sufficient. The prosecutor must show that the i) conclusions drawn by the court were unreasonable (2016 SCMR 1241), or ii) the order of acquittal is perverse, shocking, artificial or ridiculous (2016 PLD SC 276). A perverse order may result from non-reading or misreading of evidence

b) Likelihood of success

The second criterion is to assess whether the proposed appeal is likely to succeed. Likelihood of Appeal is directly related to the merits of the case. However, in certain cases while merit is present the appeal may not succeed on technical grounds.

c) Public Interest

The third criterion is whether it is in the public interest to institute the appeal. Cases which are not merits cannot be challenged merely because of public interest

7.2 Criteria of Filing Revisions and appeal in ATC for Enhancement of Sentence

The criteria of filing a revision is similar. However, revision against sentence must be filed where the sentence does not reflect the gravity of the offence or where the court has not taken into account the relevant aggravating and mitigating factors. The rules in this regard are as follows:

- Where the trial court has used its discretion in a perverse manner (1995 SCMR 1316)
- Where the convict seeks reduction of death sentence to life imprisonment on the ground of expectancy of life, the principle of expectancy of life may be considered along with other factors/grounds (PLD 2015 SC 50).
- Where failure to enhance the sentence will result in miscarriage of justice (2011 SCMR 513)