

Lesson 6: Executive II–Prime Minister & Cabinet

Appointment of PM – Article 43(2)

- ▶ After every general election, the YDPA is required to appoint a member of the House of Representatives whom, in the YDPA's judgment, is likely to command the confidence of the majority of the members of that House to be the Prime Minister.

- ▶ Criteria of becoming a PM:
 1. Member of the House of Representative.
 2. Likely to command the confidence of the majority of the House of Representatives.

Q: Must the PM be of any particular race, religion or gender?

A: No!

Confidence of the House of Representative

Under the Constitution, the member of the House of Representatives (commonly called Member of Parliament) who “commands the confidence of the majority” of the House of Representatives shall be appointed as the PM.

No Other Requirements

There are no other requirements in the Constitution for a Member of Parliament to become a PM. This would mean that a Member of Parliament of any race can become the PM so long as the person has the confidence of the House.

But a citizen by naturalization under Art. 19 cannot be a PM.

Q: What if the PM lost confidence of the majority of the House of Representatives?

1. PM To Tender Resignation of The Whole Cabinet

If the PM lost the confidence of the majority of the members of the House of Representatives, he may tender resignation of the whole cabinet. **OR**

2. Dissolution of Parliament

Alternatively , the PM may request the YDPA to dissolve parliament. Here the YDPA acts in his sole discretion. He is not bound to accept the PM's request.

- ▶ If the YDPA accepts the advice of the PM, the House of Representatives will be dissolved and a general election will be held.
- ▶ If the YDPA rejects the advice of the PM, the YDPA may invite another member of the House, who in his judgment, is likely to command the confidence of the majority of the House, to form a government.

- ▶ If the latter succeeds in getting enough support to form a government, the YDPA appoints him PM and his colleagues Ministers.
- ▶ If he does not so succeed, then the YDPA will be obliged to dissolve Parliament and then a general election will be held.

The 2009 Perak Constitutional Crises

In 2008 general election, out of 59 state seats in Perak, Pakatan Rakyat won 31 while Barisan Nasional won 28 seats. Nizar from Pakatan was appointed as the Chief Minister of Perak.

In 2009, 3 State Assemblyman left Pakatan and declared their support for Barisan Nasional, resulting in BN commanding the majority. Nizar made a request to the Sultan of Perak for the dissolution of the State Assembly. The Sultan subsequently met the 28 BN members and the 3 defecting PR members and was convinced that

Nizar had ceased to command the confidence of the majority of the State Assembly. Exercising his Royal prerogative under the Perak State Constitution, the Sultan refused to dissolve the State Assembly but instead ordered Nizar to resign together with the other members of the state executive council with immediate effect. A press statement issued by the Sultan's office stated that "if Nizar does not resign from his post as Perak Chief Minister together with the state executive council members, then the posts of Chief Minister and

state executive councillors are regarded as vacant. Nizar refused to resign and the Sultan subsequently sworn in Zambry from Barisan Nasional as the new Chief Minister.

The High Court held Nizar's dismissal unlawful but the decision was reversed on appeal by the Court of Appeal and the Federal Court.

Held:

- 1. If a Chief Minister loses the confidence of the State Assembly, he must resign if the Sultan does not dissolve the State Assembly.**
- 2. If the Chief Minister refuses to resign, he is deemed to have resigned.**

Cabinet

Formation of Cabinet

- ▶ After the PM is appointed, the PM then advise the YDPA to appoint Ministers from among the members of either House to form the Cabinet.
- ▶ The PM has power to select his Cabinet colleagues without the need for approval from Parliament (as in the US) or from his party.

- ▶ The PM has the power to choose, switch, promote and demote the Ministers.
- ▶ The PM has the power to advise the YDPA to dismiss the Minister [See: Art. 43(5) & **Dato' Seri Anwar Ibrahim v PM (1999)**]. YDPA cannot dismiss the Minister at will.

Dato' Seri Anwar Ibrahim v PM (1999)

Anwar Ibrahim was appointed as the Deputy Prime Minister and Finance Minister in 1995. On 2 September 1998 he received a letter signed by the PM, Mahathir revoking his appointment as DPM and Finance Minister with immediate effect. Prior to the notice, Mahathir had advised the YDPA to revoke the appointment and such advice was accepted by the YDPA.

Held:

- 1. The YDPA's decision to remove a Cabinet member must be based on the PM's advice.**
- 2. The YDPA need not personally notify the Cabinet member of his decision.**

- ▶ Before a Minister exercises the functions of his office, he must in the presence of the YDPA take oath of office, allegiance and secrecy.
- ▶ The Cabinet is the supreme policy-making body in the country. It meets for about 4 hours once a week, on Wednesdays.
- ▶ Although cabinet ministers are appointed by the YDPA, they are collectively responsible to parliament. (This would mean that Malaysia has a system of responsible government, i.e. Executive is accountable to the Legislature).

Collective Responsibility

- ▶ **Cabinet Collective Responsibility is a constitutional convention in governments using the Westminster system that ministers must publicly support all governmental decisions made in Cabinet even if they do not privately agree with them.**
- ▶ **The ministers must speak with one voice.**

Collective Responsibility

- ▶ If a Minister disagrees with a Cabinet decision, he is nevertheless obliged to defend it in public. If he feels unable to do so, he should resign. He cannot criticize it in public and yet remain in the Cabinet.
- ▶ But having resign from the Cabinet, he is not obliged to resign from Parliament or from his party.

Deputy Prime Minister

- ▶ **The post of the DPM is nowhere mentioned in the Constitution and can be regarded as a matter of constitutional convention. Therefore, a Prime Minister may choose not to appoint a DPM or to appoint more than one DPM.**
- ▶ **There is no legal requirement that after the death or resignation of a PM, the DPM must automatically ascend to his post. His elevation rests largely on his party to convince the YDPA that he now commands the confidence of the House of Representatives.**

Deputy Ministers

- ▶ Deputy Ministers are appointed by the YDPA on the advice of the PM and they also must be members of either House.
- ▶ Deputy Ministers assist Ministers in the discharge of their duties and functions.

Parliamentary Secretaries

- ▶ Appointed by the PM from among members of either House.
- ▶ They assist Ministers and Deputy Ministers in the discharge of their duties and functions.
- ▶ Their appointment may be determined at any time by the PM.

Political Secretaries

- ▶ The PM may appoint such number of persons as he may think fit to be Political Secretaries.
- ▶ They need not be a member of either House.
- ▶ Their appointment may be determined at any time by the PM.