

A highly political decision:

Top court in Malaysia rejects Anwar's appeal

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A three-judge panel of Malaysia's highest judicial body, the Federal Court, has rejected an appeal by former Deputy Prime Minister Anwar Ibrahim over his 1999 conviction on charges of abuse of power. In their ruling on July 10, the judges claimed that the errors pointed out in the appeal had not contributed to "a substantial miscarriage of justice". They also refused to reduce the six-year jail sentence.

Short of a royal pardon, which is unlikely, the ruling has exhausted Anwar's legal options in fighting his conviction on this charge. A second appeal has begun against his conviction in 2000 on charges of sodomy, which is illegal in Malaysia, and the nine-year jail sentence. The charges are being served consecutively, meaning that Anwar faces 15 years in jail.

Both convictions were the result of a politically-motivated frame-up orchestrated by Prime Minister Mahathir Mohamad and his United Malays National Organisation (UMNO). Mahathir fell out with his deputy in 1998, in the midst of the Asian financial crisis, over direction of economic policy. Anwar was dismissed from his post as deputy prime minister and finance minister and expelled from UMNO, along with his supporters.

When Anwar began to organise anti-government demonstrations, he was arrested under the country's draconian Internal Security Act (ISA) and physically beaten by the country's police chief, resulting in injuries to his neck and back. Mahathir finally had him charged with corruption and sexual misconduct in a crude attempt to discredit Anwar and to destroy the growing political support for the opposition.

Anwar, who appeared in court in a neckbrace and wheelchair, reacted angrily to the decision. He yelled at Chief Justice Mohammed Dzaiddin: "Your predecessor at least made no pretence of being spineless under Dr Mahathir's complete control. You, on the other hand, put up a charade of impartiality, professing an ardent desire to restore confidence in the judiciary." He accused all three judges of "cowardice". Several hundred of Anwar's supporters outside the courthouse protested against the

decision.

The lengthy ruling considered a number of objections raised by Anwar's lawyers to his original conviction by High Court judge Augustine Paul in 1999. But on all the key points, the three judges unerringly lined up to support Paul's highly political conduct of the case and his final decision.

The prosecution alleged that Anwar had used his position as deputy prime minister to pressure the Special Branch, the country's political police, to force two witnesses—his former driver Azizan Abu Bahar and Ummi Hafilda Ali—to withdraw accusations of sexual misconduct against him. Stories about Anwar's sexual activities, which emerged in 1997 as sharp differences over economic policy developed inside UMNO, were politically motivated and circulated anonymously at an UMNO Congress early in 1998. Mahathir and the police only acted on the accusations after Anwar's expulsion later that year.

The only evidence that Anwar had pressured Special Branch into forcing a retraction from Azizan and Ummi came from the police themselves. Special Branch is notorious as a political tool of the government. In the course of the trial, its officers described in graphic detail the methods used to compel detainees to make statements. Special Branch chief Mohamad Said Awang brazenly admitted under cross examination that he would lie under oath if ordered to do so by someone "higher than the deputy prime minister"—that is, by Mahathir. But the Federal Court judges upheld Paul's finding that Awang and other Special Branch officers were credible witnesses.

The three judges endorsed Paul's refusal to entertain evidence that Anwar was the victim of a political conspiracy—a decision that prevented Anwar's lawyers from arguing an effective defence. The ruling blocked Anwar from putting Mahathir and other UMNO leaders in the witness box to question them on their involvement with Special Branch as well as their connections to Ummi and Azizan. Ummi, in particular, had been in contact with Daim Zainuddin, a close political and business associate of Mahathir. Zainuddin, who was identified with the business

empires built up with UMNO assistance, had a great deal to lose from Anwar's promotion of free market reforms.

The Federal Court upheld the other crucial element of Paul's handling of the Anwar trial—his decision to allow the prosecution to amend its charges in the course of the proceedings. The way in which the charges had been framed—to imply that Anwar was guilty of sexual misconduct—was quite deliberate. It enabled the government lawyers to introduce lurid sexual accusations into court, which were then circulated in the government-controlled press to attack Anwar's reputation. At one point, the prosecution even produced a stained mattress in court to “prove” that Anwar had engaged in illicit sexual relations.

But toward the end of its case, the prosecution abruptly shifted its stance and applied to amend the charges so that proof of sexual misconduct was no longer required. Paul rubberstamped the application and expunged the evidence from the record. As a result, Anwar's lawyers had no opportunity to challenge the material that had been splashed throughout the media.

There was no jury in either of Anwar's trials. Moreover, the Malaysian judiciary has been subjected to close political control since independence in 1957. Following a major split in UMNO in 1988, Mahathir tightened his grip over the court system. The president of the Supreme Court and two other judges were sacked after rulings unfavourable to Mahathir's faction of UMNO—an action that was designed to send a clear message to the rest of the judiciary. It was not surprising, therefore, in a case which was crucial for Mahathir and his government, that Paul brought down a guilty verdict against Anwar.

Last year, in the midst of growing support for opposition parties, sections of the judiciary did exhibit a few small signs of independence from the government. In May, a high court judge in a politically sensitive case ordered the release of two oppositionists rounded up by police under the ISA. In an unusual move, judge Hishamudin Mohd Yunus criticised the police for placing the ISA above the constitution and described their treatment as “cruel, inhuman and oppressive”.

This timid step expressed a wider dissatisfaction in ruling circles with the Mahathir regime. In the 1999 national elections, the Anwar affair had been partly responsible for UMNO losing ground among ethnic Malays to the Islamic fundamentalist Parti Islam se-Malaysia (PAS) and Parti Keadilan Nasional formed by Anwar's wife. For the first time, UMNO had to rely on its two main coalition partners, the Malaysian Chinese Association and the Malaysian Indian Congress, to maintain its two-thirds parliamentary majority necessary for constitutional changes.

The capital and currency controls implemented by

Mahathir in 1998 in opposition to Anwar were proving to be ineffective in maintaining the economy. The surge of exports, which depended on the strength of the US economy, was beginning to wane. Doubts about the economy led to renewed criticisms, including inside UMNO, of the nepotistic relations between the government, the party and sections of Malay-controlled business. Support for the opposition parties appeared to be growing and Mahathir was on the defensive.

The terrorist attacks on the US on September 11 were a boon to Mahathir. He moved quickly to brand the opposition party PAS as Islamic extremists and at the same time to establish closer relations with Washington by supporting Bush's “war on terrorism”. More than 60 people, including a number of leading PAS members, were detained under the ISA and accused of involvement in terrorist activities.

In May, Mahathir visited the US and was lauded by Bush as a moderate Muslim leader who supported the fight against terrorism. Previous US criticisms of Mahathir's anti-democratic methods and the jailing of Anwar were all but dropped. UMNO has improved its fortunes in the polls. In two recent by-elections in seats held by PAS, the party won one and cut the PAS majority in the other from 1,804 to 508.

Mahathir dramatically announced last month that he intended to step down from his political posts after more than two decades in power. His likely successors, all of whom were complicit in the jailing of Anwar, do not want the former deputy prime minister released any more than Mahathir. They are well aware that the political situation remains highly volatile and that Anwar could once again become a focus for opposition.

The Federal Court appears to have sensed the shifting political winds. In a climate in which UMNO seems to be in control, the three judges were not prepared to put their positions in doubt by placing any question marks over the conviction of Anwar.



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