

The Netanyahu investigations: What next after the Attorney General's announcement?

February 2019



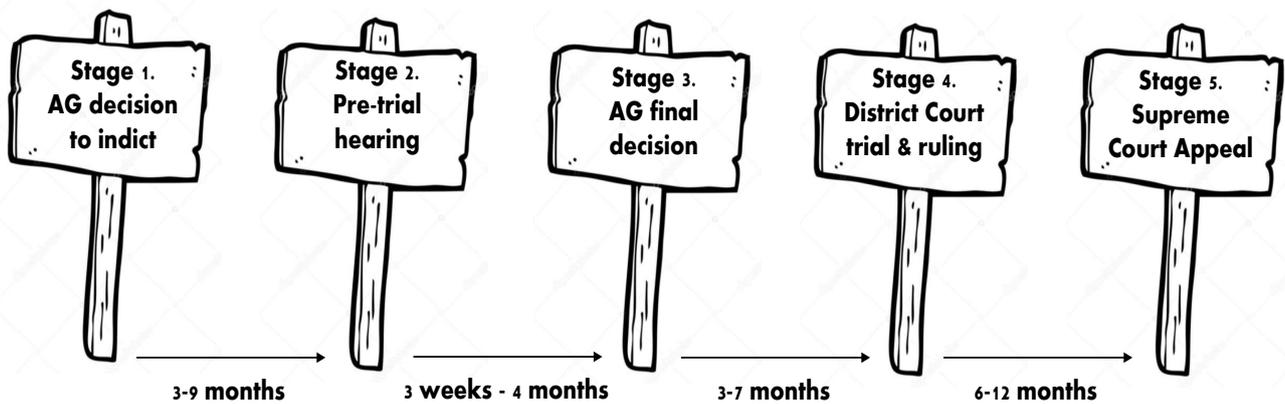
Introduction

Israel's Attorney General (AG) Avichai Mandelblit will soon announce his decision whether or not to indict Prime Minister Benjamin Netanyahu – pending a hearing – in three separate corruption cases. Netanyahu has said that he will not resign and he is not legally required to do so. But with elections on 9 April, the AG's decision has huge political significance. This briefing examines the corruption cases, maps out the different stages of the legal and political processes, and analyses potential future scenarios. It represents an update of a BICOM briefing [The Netanyahu investigations: details, process and possibilities](#) published in February 2018 when the Israeli police published their recommendation that the Prime Minister be indicted.

Netanyahu has also [said](#) that he will not resign during any indictment process.

Several stages exist following Mandelblit's initial announcement on whether he recommends indicting Netanyahu (Stage 1).

It is not known how the AG's initial decision, during an election campaign, will affect Netanyahu's Likud Party's standing in the polls. The party is currently predicted to win approximately 30 seats and all the polls suggest Netanyahu is best placed to form a coalition after the elections. Moreover, Netanyahu could even utilise the announcement to brand himself a victim of media and judicial elites which may even improve his popularity. At the same time, the announcement will almost certainly cause serious embarrassment to Netanyahu – especially once detailed evidence and testimony is inevitably leaked to the media.



Background

In February 2018, after a 16-month investigation, the Israeli Police recommended that Prime Minister Netanyahu be charged with bribery, fraud and breach of trust in two corruption cases known as “Case 1000” and “Case 2000”. In December 2018, the police further recommended indicting Netanyahu for bribery, fraud and breach of trust in “Case 4000.” Since those recommendations, the Attorney General has been reviewing the evidence to decide on his own recommendations. Netanyahu is considered innocent until proven guilty and he has maintained his innocence throughout, consistently stating that “there will be nothing because there was nothing” while arguing that the left wing and media has been putting undue pressure on the AG to charge him. “They’re trying to force the Attorney General to brazenly intervene in the elections by ordering me to a hearing, despite knowing that it won’t be possible to conclude the hearing process by election day”.

The party-political context to the AG's decision

The AG's announcement will cause all the major political parties, including Netanyahu's potential coalition partners, to clarify their position on whether they would serve in a future Netanyahu government. Although some party leaders have been explicit that they would not serve with him if he is indicted, others have been deliberately ambiguous as to whether this relates to an announcement by the AG of indictment proceedings *pending a hearing* (Stage 1), after a *final decision* to indict (Stage 3), or after a verdict from the Court (end of Stage 4 & Stage 5). This ambiguity is particularly significant because the April elections and subsequent coalition building will take place between stages 1 and 3.

The Labour Party led by Avi Gabbay have said they will not join a Netanyahu led coalition under any circumstances. But Netanyahu's current coalition partners have been more cir-

cumspect. In December 2018, Justice Minister Ayelet Shaked, one of the leaders of the New Right party, which is considered a natural coalition ally for Netanyahu, [said](#): “My opinion remains that, certainly until a final decision by the Attorney General *after* a hearing, we don’t have to do anything ... by law, the Prime Minister can remain until he is convicted with a final verdict. Rationality dictates that the decision of one person, the Attorney General, cannot bring down a government.”

In October 2018, Moshe Kahlon, leader of the centrist Kulanu Party and part of the current coalition, [said](#) that Netanyahu could not continue to lead the country if he were to be indicted in the corruption investigations. Kahlon’s support for Netanyahu is key because the polls consistently predict that it would be impossible for Netanyahu to build a 61-member coalition without Kulanu’s support. However, Kahlon recently [back-tracked](#) and said he would be willing to serve in a Netanyahu government, even if he were to be indicted by the Attorney General.

The newly merged Blue and White party is also yet to fully clarify its position. In January, Yesh Atid leader Yair Lapid [told *Hadashot News*](#) that he would not join a Netanyahu-led government if the AG announces an intention to indict the Prime Minister, even before the hearing process has been completed, and it is believed this position will ultimately be adopted by the Blue and White Party. On 26 February, Lapid took to [Twitter](#) to say the Blue and White Party would only form a National Unity Government with Labour and Likud, if Netanyahu had left the party.

The Netanyahu investigations: What happens next?

Netanyahu’s future will be determined by two separate but parallel tracks: the legal process focused on the AG decision over an indictment and subsequent trials; and the political process which relates both to the election results and how politicians will respond to the various legal stages and subsequent developments.

Stage 1: The AG announces his decision to indict the Prime Minister, pending a hearing

What happens: The Attorney General will announce a decision whether to indict Prime Minister Netanyahu pending a hearing. The

State Prosecution then arranges a time for a hearing with the PM’s defence team. The prosecution will likely push for an earlier date, with the defence arguing a longer period is needed to allow the latter to properly prepare.

The legal ramifications: There is no legal impediment to Netanyahu running in the elections as Likud leader and attempting to form the next government.

The political ramifications: Then-Prime Minister Ehud Olmert was forced to resign by his coalition partners months before this stage (even before police recommendations were completed). Political pressure – primarily from opposition parties – will be exerted on Netanyahu to resign, especially if some of the charges include bribery, but Netanyahu’s coalition allies will be supportive and Likud’s support base will likely rally around their leader. The AG’s decision will force all the major parties to clarify their position on whether they would serve in a coalition with Netanyahu after the elections.

The political ramifications part 2: Israeli Elections: Elections will be held on 9 April, in a period between the AG’s initial announcement and a hearing taking place. According to Israeli law, the President is tasked with asking the *MK most likely* to be able to form a coalition of 61 seats or more to form a government. Usually this is the leader of the largest political party, but in theory it can be any MK from any party. The law also allows for 61 Knesset members to sign a letter to the President asking him to confer the job of forming a government on a specific Knesset member. Each MK has four to six weeks from the time requested by the President to try and form a government. In light of this, one of two scenarios could occur:

Scenario 1: Netanyahu is asked to form the next government and succeeds in convincing enough party leaders to join his coalition, despite the AG’s announcement, and continues to serve as Prime Minister. The rest of this briefing is based on this scenario, which is considered the most likely one.

Scenario 2: Netanyahu either fails – or is not asked – to form the next government due to a lack of support from other party leaders. In this scenario, the President would likely evaluate whether the leader with the next best chances – at this stage Benny Gantz – would succeed in forming a governing coalition. In the event that

neither Netanyahu nor Gantz can form a 61-seat majority government, the President could theoretically ask a different Likud MK to try and form a government. However, for this to happen, the Likud party via its Central Committee would have to force Netanyahu to resign as leader after which there would be a leadership contest within the Likud (a ballot of all their members), which would take several weeks.

Stage 2: The hearing

What happens? The State Prosecution meet with Netanyahu's defence team privately to review the case. The private hearing – which can include several meetings – is based on Israel's Criminal Procedure Law which states that 'the suspect will be entitled to apply in writing to the prosecution authority... and to make a reasoned petition to abstain from the filing of an indictment.' A directive from the Attorney General in 1991 clarifies that the process must grant the suspect 'a fair opportunity to present his position'. Experts evaluate that while the hearing may lead to lesser charges, the charges are highly unlikely to be completely dropped. During the hearing, Netanyahu has the option of entering into a plea bargain, although that is also thought to be unlikely.

The potential date for the hearing is unclear but it is likely to take place between May/June 2019 - December 2019, 3-9 months after the AG's decision. In the case of former Prime Minister Ehud Olmert, pre-indictment hearings began three months after the announcement of the AG's intention; with Likud Minister Haim Katz, it was five months; and in the case of then Foreign Minister Avigdor Lieberman, the period was nine months.

Stage 3: AG announces final decision over whether to indict the Prime Minister

What happens? Following the hearing, the AG will make a final decision whether to indict Netanyahu and on which charges in the three cases. While this could take just a few weeks, it could also take place several months after the hearing. In the Lieberman case, a final indictment came 11 months after the hearings. However, due to the national importance of the case, it is unlikely to take that long, and could be decided and announced any time between July 2019 – April 2020.

Legal ramifications: Netanyahu will not be

legally obliged to resign. NGOs may petition the Supreme Court arguing that Netanyahu should be forced to resign. There is legal uncertainty over whether the so called 'Deri-Pinhasi Precedent' – a ruling which forces a Minister against whom the AG has filed an indictment to be removed from office if he does not resign – applies to the Prime Minister, and the Supreme Court is unlikely to intervene at this stage.

Within 30 days of the AG handing down a final indictment verdict, Netanyahu has the legal option to ask the Knesset to vote to grant him immunity. Under the 'Knesset Members Immunity, Rights and Duties Law' of 1951, Netanyahu would need the support of the Knesset 'House Committee' (on which the governing coalition has a majority) and the majority of Knesset members. Netanyahu may struggle to convince these bodies that one of the clauses necessary for the passage of the Immunity Law has been fulfilled, namely that the indictment was 'not issued in good faith or as a consequence of discrimination.' However, Netanyahu could focus on other clauses of the law: that pursuing the case would cause great damage to the will of the voters who just elected him; and that dropping the charges would not substantially damage the 'public interest'.

The political ramifications: The final decision of the AG will likely shake up the governing coalition and leaders of Kulanu and the New Right, as well as individuals within Likud, may suggest or demand that Netanyahu step down. However, if Netanyahu were able to maintain the support of coalition members, he would be able to continue to serve as Prime Minister.

Stage 4: The case is heard by the Jerusalem District Court

What happens? The Jerusalem District Court hears the case. Depending on court procedures, it could start anytime up to 6-7 months after the AG's decision, taking place between September 2019 - November 2020. Due to the breadth of evidence, the trial itself may take more than a year falling between January 2020 - November 2021. The court's verdict will consist of a decision over guilt followed by a decision on the sentence soon afterwards. Section 284 of Israel's 1977 Penal Law, states that "[a] public servant who, in the performance of his duties, commits an act of fraud or a breach of trust that harms the public...is liable to imprisonment for three years". Sections 290 to 291 stipulate that a public official

who agrees to or accepts any bribe in his or her official capacity may be imprisoned for up to 10 years or face a fine.

The Legal ramifications: Should Netanyahu be found guilty his political future may depend on whether the judges deem his offence to fall under 'moral turpitude'. This concept has no legal definition and is considered to be a moral term rather than a legal term with former head of the Supreme Court Aharon Barak arguing that 'the determining point is not the formal definition of the crime but the circumstances in which it was carried out'. While it is subjective, the decision over whether to brand a specific crime as involving moral turpitude is associated with crimes of a relatively high degree of severity, and generally include bribery.

If the judges rule that the offences include moral turpitude, the Knesset's 'House Committee' can decide to recommend he be removed from office, although this would require a majority of 61 MKs. If the offences are not deemed to fall under this definition, Netanyahu cannot be forced to resign.

The political ramifications: The Knesset has the option to remove a PM who is convicted of offences involving moral turpitude. But theoretically if coalition partners (and Likud) continue to support Netanyahu (considered an unlikely but not impossible scenario at this stage), he could continue to serve as Prime Minister.

Stage 5: Potential appeal to the Supreme Court

What happens? Netanyahu could appeal against the District Court's decision to the Supreme Court. Rather than review the evidence, the three justices who sit on the appeal will examine whether the decision-making process of the District Court was correct. The time period between the District Court ruling and the Supreme Court hearing depends on the case load of the Supreme Court, but the assumption is it will prioritise the Netanyahu case. Once it begins, it will also be significantly shorter than the trial in the District Court.

The legal ramifications: The Supreme Court may partially accept or reject the appeal, change the District Court's verdict, annul it or give a new one. It can also return the case to the District Court with instructions.

The political ramifications: If Netanyahu's appeal is denied, his term as Prime Minister and the term of his government automatically ends. Experts believe the process is highly unlikely to reach this stage. But if it were to, the President would be tasked with asking the MK with the best chance of forming a governing coalition to do so, or failing that elections would be called.

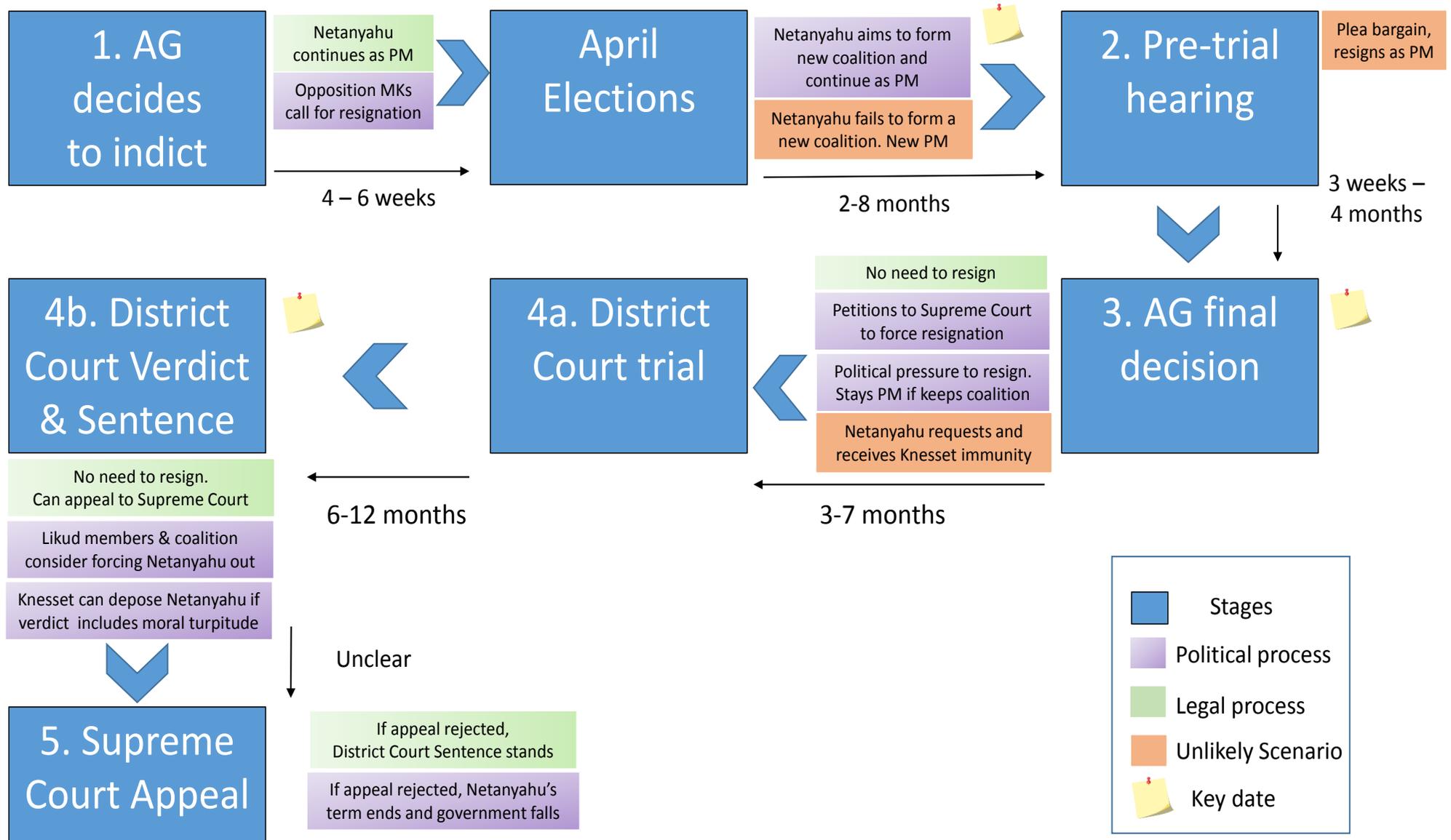
Conclusion

Netanyahu's future will ultimately be determined by two separate but parallel processes, the legal and political. However, with the legal process potentially taking years, Netanyahu's premiership will ultimately be decided by the political process and the extent to which his fellow Likud members and coalition partners stand by him throughout the legal process.

While the AG's initial decision in February/ March 2019 will be significant, it will not determine Netanyahu's fate. Rather, there are three key moments for Netanyahu's political future:

- **Immediately following the elections:** (Stage 1: April/May 2019): If the AG recommends indicting him – pending a hearing – will Netanyahu successfully be able to form a coalition?
- **The AG's final decision after a hearing:** (Stage 3: July 2019-April 2020): Will his partners continue to support him after a final decision by the AG?
- **The District Court's ruling** (End of Stage 4, January 2020 - November 2021): If he is found guilty on corruption charges including moral turpitude will his Likud party and coalition parties still support him?

Appendix 1: Netanyahu's criminal process



Appendix 2: The Corruption Cases

Case 1000: The Gifts Affair

The Israeli Police recommended that Netanyahu be charged with bribery, fraud and breach of trust for accepting gifts from two billionaire acquaintances: Arnon Milchan, a Hollywood producer, and James Packer, an Australian businessman. The gifts range from cigars and champagne to expensive items of jewellery. It has been suggested that Netanyahu was acting in Milchan's interests in a deal to sell **Channel 10** and other matters, as well as helping him get a US visa, after Milchan's was rescinded. According to police, the gifts that Netanyahu allegedly received cost 1.25m shekels, or £300,000. Netanyahu claims these were gifts from personal friends, with no relation to his role as Prime Minister. Former Netanyahu Chief of Staff Ari Harrow is a state's witness in the case.

Case 2000: Arnon 'Noni' Mozes and *Yediot Ahronoth*

The Israeli Police recommended that Netanyahu be charged with bribery for discussing a deal in which Netanyahu would receive more favourable media coverage in **Yediot Ahronoth**, owned by Arnon (Noni) Mozes, in return for restricting circulation of free rival newspaper **Israel Hayom**, which is financed by US-based Netanyahu supporter Sheldon Adelson. A recording of a conversation between Netanyahu and Mozes found by police on the computer of Ari Harrow (and since made public) is the basis for the case, and Harrow is a state's witness. Netanyahu claims he was not serious about what was discussed in the recording and never intended to implement the deal.

Case 4000: Bezeq Affair

The Israeli Police recommended that Netanyahu be charged with bribery after approving regulations to benefit Shaul Elovitch, the controlling shareholder in telecoms company Bezeq, in exchange for positive media coverage from Elovitch's **Walla** news website. In 2015, Bezeq's merger with Yes, a satellite operator, was approved by the Communications Ministry, at the time under the control of Prime Minister Netanyahu. Elovitch reportedly earned hundreds of millions of shekels in the deal. The police statement said: "The Prime Minister and his associates intervened in a blatant and ongoing manner, and sometimes even daily, in the content published by the **Walla** news website, and also sought to influence the appointment of senior officials (editors and reporters) via their contacts with Shaul and Iris Elovitch." Former Netanyahu advisor, Nir Hefetz and former Communications Ministry director-general Shlomo Filber, are state witnesses in the case.

Case 3000: The Submarines Affairs

Netanyahu is not a suspect in this case. In November 2018, after an investigation into the \$2bn deal to purchase submarines and boats from the German shipbuilder ThyssenKrupp, the Israeli Police asked the state prosecutor to indict Prime Minister Netanyahu's attorney, advisor and second cousin David Shimron, as well as Netanyahu's Chief of Staff David Sharan, former Navy commander Vice Admiral (Res.) Eli Marom, former deputy head of the National Security Council Brig. Gen. (Res.) Avriel Bar Yosef, businessman Brig. Gen. (Res.) Shay Brosh, and former Minister Mody Zandberg. They are accused of bribery, fraud and breach of trust, and money laundering. The Police said there was insufficient evidence to recommend indicting Netanyahu's attorney and former adviser Yitzhak Molcho, who had also been linked to the case.

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