

The Netanyahu investigations: details, process and possibilities

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Key points

- Israeli police have formally submitted their recommendation to the Attorney General that Prime Minister Benjamin Netanyahu be charged with bribery, fraud and breach of trust in two cases.
- Netanyahu denies all charges and is determined to remain in office. He appears under no immediate pressure from his coalition partners to resign, at least until there is a decision by the Attorney General (AG) about whether to indict, which will take months.
- If the AG eventually issues an indictment – by no means a certainty – it could end Netanyahu's premiership, but the complex legal and political processes will take time to play out.

What are the police recommendations?

- *After a lengthy investigation Israeli police are recommending that Netanyahu be charged with bribery, fraud and breach of trust relating to two separate cases. Chief of Police Roni Alsheikh has given Attorney General Avichai Mandelblit the recommendations of the Lahav-443 fraud and corruption investigations unit.*

What cases are covered in the recommendations?

Case 1000: gifts affair

- *The Police have recommended that Netanyahu be charged with bribery, fraud and breach of trust.*
- *It has been established that Benjamin Netanyahu and his wife Sara routinely received expensive gifts ranging from cigars and champagne to expensive items of jewellery requested from wealthy businessmen. The bulk of accusations relate to Arnon Milchan, an Israeli billionaire Hollywood producer who is also known for his past service as an agent acquiring technologies for Israeli defence industries and nuclear programme. Milchan's business*

partner, Australian billionaire James Packer, has also given testimony, with media reports suggesting he shared costs for gifts. According to police, the illegal gifts that Netanyahu allegedly received amount to 1.25m shekels, or £300,000.

- *The police have been investigating whether the gifts constitute breach of trust (the receipt of gifts as a public official is against the law) and bribery.* It has been suggested that Netanyahu was acting in Milchan's interests in a deal to sell an Israeli TV Channel (Channel 10) as well as helping him get a US visa, after Milchan's was rescinded. Netanyahu is also alleged to have pursued a deal linked to Indian businessman Ratan Tata, who was Milchan's business partner, and supported a law to extend tax breaks given to Israelis returning to live in the country after ten years (such as Milchan). Then-finance minister, and current Yesh Atid party leader, Yair Lapid reportedly refused to support the law and has testified that the Prime Minister pressured him to do so. Netanyahu claims that the gifts received were from personal friends, with no relation to his role as prime minister. Netanyahu's former Chief of Staff and close aide Ari Harrow has become state witness in the case. The police also recommended that Milchan be charged with bribery.

Case 2000: Arnon "Noni" Mozes and Yediot Ahronot

- *The Police have recommended that Netanyahu be charged with bribery, fraud and breach of trust.*
- *Netanyahu is accused of bribing Yediot Ahronot owner Arnon "Noni" Mozes for better media coverage*, by offering to restrict circulation of 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 Harrow (and since made public) is the basis for the case, and Harrow has become a state witness. Netanyahu claims he was not serious about what was discussed in the recording and never intended to implement the deal. The police also recommended that Mozes be charged with bribery.

What other cases are connected to Netanyahu?

Case 3000: submarines/naval vessels case

- *Netanyahu's close aides, lawyers, and relatives, David Shimron and Yitzhak Molcho are accused of promoting the Israeli purchase of naval vessels* from German supplier ThyssenKrupp, in a deal from which they personally benefitted. Former senior naval officers and former National Security Council deputy director Avriel Bar Yosef are also suspects in the case, and former ThyssenKrupp agent in Israel Miki Ganor has become a state witness. Netanyahu is likely to be questioned, though it is unclear whether as a witness or a suspect.

Case 4000: Bezeq affair

- *Netanyahu's appointee as Communications Ministry director general, Shlomo Filber, is accused of advancing the interests of Bezeq*, a large telecoms company owned by Shaul Elovitch, who is a close associate of Netanyahu. Related to this case, the state comptroller has already reprimanded Netanyahu for failing to disclose his relationship with Elovitch whilst holding the portfolio as Minister of Communications.

Sara Netanyahu Case

- *The AG has already declared his intention to indict Sara Netanyahu for fraud and breach of trust.* She is accused of ordering expensive meals fraudulently at public expense worth hundreds of thousands of shekels. Pre-indictment hearings have been taking place. The Prime Minister is not a suspect.

What is the process following police recommendations?

Recommendations will create a storm, but not necessarily an ousting yet

- *The police recommendations are a major political and media moment in Israel.* There have already been opposition and media calls on Netanyahu's coalition partners to demand his resignation. However, there is no legal obligation on Netanyahu to resign, and

his coalition partners, who are in no hurry for elections, are expected to maintain support for the time being.

- *Finance Minister and Kulanu party leader Moshe Kahlon has said publicly he will not demand Netanyahu resign* because of police recommendations, but should resign if indicted. Jewish Home leader Naftali Bennett and Justice Minister Ayelet Shaked have adopted a wait and see approach. Shaked has said publicly that according to the law, Netanyahu does not have to resign even if indicted. The point at which Netanyahu may have to resign involves many complex legal and political factors.

If Netanyahu is forced aside, the Olmert precedent suggest a process of months

- *Ehud Olmert was forced aside by his coalition partner Ehud Barak and his Kadima party rival Tzipi Livni* amid revelations emerging from various police investigations in 2008, even before police recommended charges. The most prominent revelations at the time related to his receipt of large sums in cash from US businessman Moshe Talansky. Olmert agreed to call a Kadima party primary in which he did not stand in July 2008, and then submitted his resignation as prime minister once Livni won the primary in September 2008. Livni failed to form a new government and elections were held in February 2009, leaving Olmert as acting Prime Minister until a new government was formed in March 2009. (The AG announced his initial intent to indict Olmert in November 2008 – two months after police recommendations – after he had resigned but while still acting Prime Minister, and Olmert was ultimately tried after leaving office. After a lengthy court process Olmert was convicted of bribery and breach of trust and served 16 months in prison.)
- *No member of the current coalition has yet played the role of Barak and Livni in Netanyahu's case*, and a key political question is at what stage they will – if at all. Each coalition partner will make a calculation based on their assessment of the toxicity of association with Netanyahu, their expected fortunes in a general election, and the proximity to the end of the government's

maximum term (November 2019). Recent polling shows coalition parties losing ground, creating a disincentive to bring about early elections, at least until one of the parties calculates there is electoral advantage in taking a principled stance against Netanyahu.

- *If forced, Netanyahu could announce his intention to resign and call a party primary* as Olmert did, and then resign when a new party leader is elected in a Likud party primary. If Netanyahu resigns as prime minister, this is equivalent to the government resigning. At that point he could continue as acting prime minister, or he could conceivably be deemed “permanently incapacitated” and the government would designate another minister to act as prime minister. A Likud primary, for which nearly 100,000 registered supporters would be eligible to vote, would be hotly contested by serving ministers and figures currently outside of the Knesset like former minister Gideon Saar. Only a serving Knesset member however, can form a government.
- *If Netanyahu resigns, the President would consult with Knesset factions to see if any Knesset member can form a government.* This could conceivably be another Likud MK who assumes leadership of the party, or an MK from another party. If not the Knesset dissolves, and elections are held within three months. The closer we are to November 2019, the more likely a newly elected Likud leader would go to elections rather than form a new government. Two polls published by Statnet and Panels Research in August 2017, as well as a Maariv poll in December found that Gideon Saar – who is currently not a member of Knesset – could win more Knesset seats as leader of Likud than Netanyahu, with Saar potentially taking several seats away from centrist parties Yesh Atid and Kulanu.

If the AG recommends indictment, Netanyahu gets a hearing, taking months

- *It is likely to be several months between the police recommendations and the AG’s decision* whether to announce his intention to indict, though a representative of the AG has accompanied the police team during evidence collection. It is by no means

certain what Mandelblit will decide. He will consider not only the chances of conviction but whether the issues are serious and substantiated enough to justify the political ramifications, including the likely resignation of the Prime Minister.

- *If he announces his intention to indict, this will be another decision moment for coalition partners* as to whether to demand Netanyahu’s resignation. The pressure to force Netanyahu out is likely to be considerably higher at this stage.
- *Netanyahu himself has the legal option to request the Knesset vote to grant him immunity*, within 30 days of indictment.
- *If Mandelblit decides to indict, Netanyahu is entitled to hearings before the AG makes a final decision.* In the case of Avigdor Lieberman, pre-indictment hearings began nine months after the announcement of the AG’s intention to indict, and the final indictment came 11 months after that, though the AG could be pressured to speed up once a timetable for elections become clear.

A final indictment decision would likely be the end for Netanyahu

- *The final decision on indictment, if Netanyahu is still in office, would likely bring overwhelming pressure for him to go.* The Basic Law on the Government allows the prime minister to remain in office. However, if Netanyahu does not resign and is not forced to do so by his colleagues, the Supreme Court will surely be petitioned. It has ruled in the past that a government member indicted with a grave offence should be removed by the Prime Minister. Netanyahu could argue for various reasons that the Prime Minister is not covered by these provisions. But it seems unlikely that Netanyahu’s coalition partners or his party will allow him to continue whilst embroiled in a trial. Kahlon has said publicly that if Netanyahu is indicted he should resign.
- *In theory, the basic law allows the Prime Minister to remain in office until convicted of a serious crime up until a final appeal*, after which a legal process kicks in to remove him automatically.

How may Netanyahu fight to stay in power?

- *Minister Netanyahu has argued all along that the accusations against him are baseless* and appears determined to fight to remain in power using all means at his disposal.
- *The Prime Minister's supporters have already changed the law, apparently intending to protect Netanyahu* from the allegations he faces. According to *Jerusalem Post* legal affairs correspondent [Yonah Jeremy Bob](#), the new Recommendations Law, which prevents police from publicising recommendations in future cases, might apply to Netanyahu in the potentially serious Case 3000, since he is not yet officially a suspect. Though it seems unlikely that Netanyahu's supporters will pursue other legal changes to protect him, it remains possible, and could certainly trigger a coalition crisis. So too would any attempt to secure a Knesset majority to grant Netanyahu immunity.
- *The collapse of the coalition and new elections before the AG has indicted Netanyahu could put Mandelblit in a very difficult situation.* Netanyahu's supporters would argue that an indictment in the context of an election would be an unacceptable interference in the political process and that it is for the voters to decide if Netanyahu should stay in office. For this reason, many have speculated that Netanyahu may seek to bring about an election as a tactic to fend off an indictment. This becomes more likely as the statutory last date for the next election (November 2019) draws nearer. An early election is typically brought about by a decision of the Prime Minister to dissolve the Knesset and hold elections, and a Knesset law is passed for that purpose. In such a scenario there is no obligation for Likud to hold a leadership primary, since in 2016 Netanyahu ran unopposed to lead the party into the next election. It would therefore take a revolt within the Likud to replace Netanyahu as party leader before the election.
- *In theory another legal option exists, whereby a prime minister can be considered "temporarily unable to discharge his duties",* for up to 100 days. For that period an acting prime minister takes over, and if Netanyahu

does not return in 100 days the government is deemed to have resigned. There is no precedent for the use of this law by a prime minister under investigation.

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