

The Netanyahu trial: details, process and possibilities

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Introduction

- **This Sunday, 24 May 2020, Benjamin Netanyahu will become the first Prime Minister in Israel's history to stand trial for a criminal investigation.** How did Israel get to this point?
- 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.”
- Subsequently, the case materials were transferred to the State Prosecutor's Office and Attorney General (AG) for review ahead of their own recommendations. In February 2019 the AG recommended that the Prime Minister be indicted for fraud and breach of trust in all three cases and an additional count of bribery in “Case 4000” – all pending a hearing. According to the charge sheet made public, the AG softened some of the recommendations that were urged by the State Prosecutors.
- The pre-trial hearing, where a suspect's lawyers can challenge evidence in their client's case, in the hope of reducing or dropping the charges, took place in October 2019. The hearing took four days. Since the end of the hearing, prosecutors reviewed all the case evidence and counterarguments, and the Attorney General decided to proceed with the indictment charges against the Prime Minister on 21 November 2019.
- Following the AG's announcement, Netanyahu repeated his mantra that he was the victim of an attempted coup and refused to resign, instead saying he would continue to lead Israel “in accordance with the law”. Netanyahu is innocent until proven guilty and he has consistently maintained his innocence, repeatedly stating that “there will be nothing because there was nothing” while arguing (either directly or through proxies) that the left wing, media, police investigators and State Prosecutors are politically biased and aim to topple him. The argument is further extended to the Attorney General who, some Netanyahu supporters argue, is being unduly pressured by the above forces.
- **Netanyahu has also said throughout the process that he will not resign, even if formally indicted,** preferring instead to fight his battles in the political arena and, if need be, at trial. **By law a sitting Prime Minister does not have to resign until a final conviction and all appeals (up to the Supreme Court) are exhausted.**
- Complicating the legal process has been Israel's political impasses and the three elections, the last one held on 2 March. Despite pledging not to seek immunity, Netanyahu announced shortly after the AG's final decision to indict that he would ask the Knesset to grant him immunity, describing it as a “cornerstone of democracy”. However, Netanyahu lacked a right-wing majority in the Knesset, and with Blue and White in charge of procedural timings in the legislative, he was unable to delay the Knesset vote for immunity for after the 2 March election.
- On the same day (28 January 2020) US President Donald Trump released his long-awaited Israeli-Palestinian peace plan, Netanyahu withdrew his request for parliamentary immunity from prosecution. The timing of the withdrawal coincided with Gantz returning from the US to Israel to join the Knesset hearing to hold a vote on the immunity request. This officially set the wheels in motion for the trial to begin in the Jerusalem District Court on 15 March – less than two weeks after the third election.
- Leading up to the 2 March 2020 election, it was speculated that Netanyahu's decision to withdraw his immunity request was an attempt to mitigate damage to Likud's election campaign, since deliberations would have provided hours of footage of Netanyahu's lawyers debating the nature of the evidence collected against him with prosecutors. Netanyahu led his Likud party in the election for the first time officially under indictment. With his trial set just two weeks later, the election was viewed in Israel as a final referendum on Netanyahu's continued rule. Without victory and a majority for his right-wing ultra-Orthodox bloc, Netanyahu would be unable to avoid trial. The election results showed that whilst the Likud won the most seats, the right-wing bloc failed to secure a 61-seat majority.
- On 10 March Netanyahu's defence attorneys requested to delay the trial by 45 days, on

the grounds that they did not receive the full investigation materials. Although the Court rejected the request, five days later the then-Justice Minister Amir Ohana announced that emergency measures would be put in place to counter the spread of the coronavirus, freezing all non-urgent court business. Ohana's decision was met with scepticism since the Health Ministry had not recommended that the courts stop their activities, calling them "essential institutions".

- On 20 April, under the cloud of the coronavirus and facing a severe economic crises, Netanyahu and Gantz agreed to form a national unity government. One of the reasons why Netanyahu agreed to join with Gantz was because the new government allows him to remain as Prime Minister during his trial. Also, according to the agreement, the Justice Ministry is now placed under the purview of Blue and White, all but ensuring no more delays to the trial.

What cases are covered in the Attorney General investigations?

Case 1000: gifts affair

- The AG has recommended that Netanyahu be charged with 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 investigated 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 a state witness in the case. The police also recommended that Milchan be charged with bribery.

Case 2000: Arnon "Noni" Mozes and Yediot Ahronot

- The AG has recommended that Netanyahu be charged with 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.

Case 4000: Bezeq affair

- The AG has recommended that Netanyahu be charged with bribery, fraud and breach of trust.
- 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.

The party-political context to the AG's decision

- Netanyahu's supporters have generally dismissed the allegations entirely and argued that they don't reach the criminal threshold to remove a prime minister.

- In the lead-up to the March election a central component of the Blue and White campaign was not to serve with a prime minister under indictment. During the campaign, Benny Gantz said: “No-one can run a state and at the same time manage three serious criminal cases for bribery, fraud and breach of trust.” However, after three elections and realising that he was unable to build a coalition of the centre-Left, Gantz broke up the Blue and White party and took his faction’s 15 MKs with him to join Netanyahu’s right-wing bloc and formed a national unity government.
- Nevertheless, Gantz’s former partner Yair Lapid, now the leader of Yesh Atid-Telem, said at the government’s swearing-in ceremony: “In this building two Chiefs of Staff of the IDF surrendered today to a man with three serious criminal indictments. You’re swearing loyalty today to a man who in a week will start a criminal trial for breach of trust, for bribery and for fraud. In the real world you don’t let your children play with a man like that, in this building he’s the Prime Minister.”

The public battle against a formal indictment

- Netanyahu’s corruption investigations have unfolded on two separate but parallel tracks: the legal and political. Aiming to influence both tracks, the Prime Minister has from the start publicly framed the allegations against him as politically motivated. Over the last two years he has described the corruption investigations as a “witch hunt,” “attempted coup,” and an effort by left-wing elements to “topple a right-wing government.” At every stage in the legal process he has publicly maintained that the “entire house of cards will collapse” and that the charges against him are overblown.
- In recent months he and his supporters have directed their ire at alleged misconduct by police investigators and blamed State Prosecutors for leaking transcripts from the investigations to the press. Netanyahu in October 2019 went further and described the investigations as a “terror attack against Israeli democracy.”
- In November 2019, leaked transcripts from the police investigation of Nir Hefetz, a former Netanyahu aide turned state’s witness in Case 4000, appeared to show the police deploying aggressive interrogation tactics. In October

2019, Justice Minister Amir Ohana (Likud) held a press conference and effectively alleged that there was a deep state conspiracy against the Prime Minister, saying: “there is...a prosecution within the prosecution. There are those who, alongside a small cult of court reporters, have managed to establish a perception that a war of light against darkness [is being waged].”

- Such efforts to cast doubt on both the motives and professionalism of the legal authorities likely have a two-fold objective. First, to apply pressure on the AG to soften his final indictment decision, and second, to maintain public (right-wing) support for the Prime Minister after a decision to indict. Responding to the allegations made by Justice Minister Ohana, AG Mandelblit and State Prosecutor Shai Nitzan said: “The law enforcement system will not be dragged into the political sphere. No person will deter or dissuade us from the correct path.”

The Netanyahu trial: What happens next?

The case is heard by the Jerusalem District Court

- Netanyahu’s request to exempt himself from the first day of the court hearing has been denied by the Court. Therefore, on Sunday 24 May, at 3pm, Netanyahu along with the other defendants of the case will present themselves to the Court to hear and confirm they understand the charges against them. It is likely that Netanyahu will not be forced to attend every hearing of the trial, but he will be required to be present during his own testimony and during the cross-examination.
- Before Netanyahu (and the other defendants) announces his intention to plead “not guilty,” his team will be able to present preliminary arguments to counter the criminal charges and bring other claims to the attention of the Court, such as issues of immunity and flaws in the indictment. After examination of the preliminary claims, Netanyahu will then submit a response of “not guilty” and a time will be set to hear the evidence. This process can take place over several court sessions. **Netanyahu will be able to ask for a plea bargain at any stage in the trial before a verdict is handed down. However, the AG will have the ability to decide whether to grant one or not.**
- **The court has the complete discretion to determine the procedure of the trial.** The judges are likely to allow the defence attorneys

six to eight months to study all the evidence – and, accordingly, set deadlines for proof for the next court year. Due to the breadth of evidence and the 333 prosecution witnesses listed in the indictment, the trial itself will likely take more than a year.

- The court panel will be headed by Rivka Friedman-Feldman, Oded Shaham and Moshe Bar-Am. Friedman-Feldman was one of the judges who sent former Prime Minister Ehud Olmert to prison on corruption charges. Shaham, who presided over the trial of Likud's Tzahi Hanegbi, held the minority opinion that the charges should not be dropped. Hanegbi's primary argument was similar to Netanyahu's current line of defence, the abuse of process.
- The court will deliver a verdict and then, if Netanyahu is found guilty, hand down a 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, still serving as Prime Minister, be found guilty his political future may depend on whether the judges deem his offence to fall under 'moral turpitude'. This concept has no exact legal definition and former head of the Supreme Court Aharon Barak argued 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 until all his appeals, up to the Supreme Court, are exhausted.

Potential appeal to the Supreme Court

- 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. Theoretically the President could ask another MK to form a government, but under the coalition agreement this would trigger new elections.

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