



**Global Forum on Fighting Corruption and  
Safeguarding Integrity Among Justice and  
Security Officials**  
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## **Prosecuting Public Figures / Edna Arbel<sup>1</sup>**

Thank you Mr. Chairman, Distinguished members of the conference, Members of the panel, Ladies and Gentlemen.

I would like to thank the vice president, Al Gore for inviting me to participate in this important and interesting conference. I would like to speak on the subject of “prosecuting public figures” in Israel.

As you know, this year Israel is celebrating its 50<sup>th</sup> anniversary and we are proud of the developments of our legal system during this time.

We believe that Israel has achieved a well earned place in the family of modern and democratic states.

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In 1992 the Kneset enacted two basic laws: first: the law of: “human dignity and liberty”, Second: the law of: “freedom of occupation”. By the enactment of these two basic laws our legal system has gone through an important change. These basic laws are founded on the fundamental collective principles and beliefs of the nation, as reflected in our declaration of independence. They have exercised an effect on all branches of law. They also have a direct effect on the subject at-issue here - the investigation and prosecution of public figures.

In the last few years, the subject of criminal proceedings against public figures, came to the center of public discussion within and without the legal community. In this brief presentation, I’ll examine the trends in the administrative and criminal law on this issue. I’ll discuss it in four stages:

The 1<sup>st</sup> stage - a brief historical review of the subject.

The 2<sup>nd</sup> - the decisions of the Supreme Court.

The 3<sup>rd</sup> - the policy of the Attorney General.

The 4<sup>th</sup> - the debate over the prosecution’s policy.



## 1. I'll begin with a brief historical review

In the early years of the state, the executive had disproportional power, in comparison to the parliament and the judiciary.

The law enforcement authorities - headed by the Attorney General - faced from the very beginning, difficulties in enforcing the law against prominent public figures.

In the 70's, the prosecution authorities headed by two Attorneys General - the current Chief Justice of the supreme court, Aharon Barak, and his predecessor Justice Meir Shamger - demonstrated a notable level of persistence and consistency in enforcing the law on Public officials under difficult conditions and in the face of strong criticism.

In the mid 70's, several scandals relating to major political and economic figures resulted in criminal prosecution.

For example, the Ben Zion case in which the executive director of "Israel Britannia" bank, was arrested, and later prosecuted, convicted and sentenced to 14 years imprisonment for theft and fraud.



In another example, Michael Zur, the executive director of a huge concern - “Hachevra Le’Israel” - and former executive director of the ministry of industry was sentenced to 15 years for similar offenses.

This growing trend of investigating and prosecuting public figures, signaled to the nation that the political elite was equally subject to the “rule of law”.

## **2 What are the standards set by the Supreme Court?**

The prosecution kept acting professionally and independently of the political establishment. It has always been obliged only to the law, and the precedents of the Supreme Court.

In the early 90’s, the Supreme Court made a substantial breakthrough, when it dealt with the mandatory suspension of high public officials following an indictment.

In these cases the court held that a minister (Mr. Der’i) and deputy minister (Mr. Pinhasi) charged with offenses of fraud or bribery must be removed from office.

These decisions emphasize the importance of a clean-handed public administration, which is necessary to assure the people’s trust in the public authorities.



These decisions and others, established the high normative standard for the leadership of the state.

**Moreover, the Supreme Court has held, explicitly, that the norms imposed on public figures are stricter than those generally applied. On that basis the court justified harsher sentences for public figures.** The court stated that high ranking officials must serve as an example to other civil servants and to the public at large.

The court has not only condemned personal-corruption. It has also condemned public corruption from which a political party gains. The interest of a political party cannot be put above the law.



Now I would like to move to the 3<sup>rd</sup> stage:

### **3. What is the policy of the prosecution regarding public figure?**

As you know, according to our legal system, there are two criteria for issuing an indictment. The first is the existence of “prima facie evidence”. The second is the existence of “public interest” in the indictment.

There is a growing amount of cases in which the Supreme Court, sitting as high court of justice, is asked to review decisions of the Attorney General. Only very rarely does the Supreme Court intervene in a decision of the Attorney General and the prosecution not to prosecute due to lack of sufficient evidence.

On the other hand, on the issue of public interest, the court is somewhat more inclined to review the Attorney’s General discretion.

In the case of a minister for religious affairs, Mr. Shaki, the high court held that there is always a public interest in prosecuting public figures for offenses that were committed during the course of their duty.



Therefore the court, instructed the prosecution to issue an indictment, whenever there is sufficient evidence of administrative corruption. The enforcement of the criminal law in such cases is necessary to defend the public interest effectively.

For example, when a long time passes from the time of the offense, this is a relevant consideration against prosecuting a suspect. However when the suspect is a public figure, this consideration has a much smaller weight. Therefore, in the case of the heads of the banking system, the court overruled the Attorney's General decision not to prosecute the bankers, who were suspected in stock market manipulation felonies.

**The Supreme Court emphasized the importance of the role of the prosecution in shaping appropriate standards of conduct.**



What is the question the prosecution must ask itself while deciding to issue an indictment? The question with regard to the evidence is whether there is a “reasonable possibility for conviction”.

This principle was established in many cases, and reconfirmed in the Bar On Case. As you know, in this case senior members of the government and other public figures were suspected of breach of trust relating to the appointment of the Attorney General. We decided that there are not enough evidence to indict most of the suspects in this affair. This decision was challenged in the high court. The decision not to indict was “upheld” in this instance.

In approving the decision on the base of the principle of reasonable “probability for conviction” the court held that this same principle should be applied to public figures, as well as to common people, since all are equal under the law.



#### **4. And now I would like to discuss the debate over the prosecution's policy.**

In the public debate, and especially within the legal community, criticism was raised against the prosecution, claiming that we are too harsh on public officials. This criticism followed several acquittals.

These critics claim that not every misbehavior justifies an indictment. They argue that there should be a special “forum” to deal with such behavior, for example a disciplinary court.

And above all, they say that we should adopt a stricter examination of the evidence, and have even more severe criteria in accusing public officials. One of their main arguments is that the damage caused to the public officials is irreversible, even if the official has been acquitted.

To that we respond, **first**, that we believe the criteria for accusing officials and any other suspect should be equal. Any person is damaged, when being indicted in a criminal court “hearing”, whatever the results might be.

**Second**, in comparison to other offenses in the penal law, the offense of “breach of trust”, which often base the indictment of public figures, is rather problematic.



The borderline between ethical misconduct and a criminal offense is, in many cases vague. The Bar On case can serve as an example for that.

This lack of clarity is caused by the vagueness of the elements of the felony “breach of trust”

**Third**, these difficulties in such cases are intensified since the defendants have in most cases, a very long and positive record of public service and activities. Because of that and due to the nature of the offenses, the existence of the *mens rea* is sometimes doubted.

**Forth**, It can be seen that in most of the recent cases in which public figures have been acquitted, the prosecution succeeded in proving the factual elements of the offense. In these cases the defendants were acquitted since the judges had doubts as to the existence of *mens rea*. Even so, in most cases the courts criticized the behavior of the defendants.

Furthermore, it is important to emphasize that the prosecution is very careful and cautious before charging anyone, including public officials.



Complicated cases are examined by the district attorney's office, and by the state attorney's office. There is also a special rule that any indictment against a public official must be confirmed by the Attorney General. In addition, public officials have the right to a hearing before the Attorney General, before the final decision is made.

Moreover, the Attorney General's and the prosecution's decision can be reviewed by the high court of justice.

## **In conclusion**

No legal system can be expected to cure all ills of society. The tradition of honest government, the culture and the education, should also play a role in the struggle against corruption. However the legal system has a major role in this struggle.

The administrative case law emphasizes the need for incorruptibility and good faith in public administration, in order to assure the public trust in the administrative authorities. The prosecution has a major role in enforcing the appropriate standards through the criminal law as applied to public figures.



Therefore the prosecution has to steer its way using its professional compass and conscience, maintaining it's independence.

The struggle against political crime and for a honest and corruption-free civil-service, is a major public goal.

We have to set our course with honesty, integrity and good faith.

Our principal aim, as always, is to assure appropriate norms and standards of public administration. When we see corruption, and have sufficient evidence, we will prosecute the suspects - no matter who they are. This was our way throughout the years and this will be our way for days to come.

We have to be guided by our professionalism and independence. Only in this way we gain the public's trust and safeguard the "rule of law".

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