

ANALYSIS 'A RARE MISUNDERSTANDING'?

Deri v. High Court: What did he actually pledge in his 2022 plea bargain?

Jeremy Sharon January 24, 2023

The Shas leader was banned from holding ministerial office, partly for giving a judge the 'false impression' he was retiring from politics. He contends he said no such thing



Shas leader MK Aryeh Deri at a Shas faction meeting in Knesset, January 23, 2023. (Yonatan Sindel/Flash90)

The explosive High Court of Justice ruling last week barring Shas leader Aryeh Deri, a key coalition partner of Prime Minister Benjamin Netanyahu, from serving as a cabinet minister has created a massive political headache for the new government.

Although Prime Minister Benjamin Netanyahu removed Deri from his ministerial positions four days after the court ruling, both he and the Shas leader have vowed that he will return to the cabinet in short order.

During Sunday's cabinet meeting, Deri again insisted that one of the key factors in the High Court's decision — that he had pledged to permanently quit political life in the framework of a 2022 plea bargain — was wrong and that he had never made any such commitment.

The High Court justices had laid out in full in the ruling their contention that Deri had given the impression to the Jerusalem Magistrate's Court in the plea bargain that he was permanently stepping down from public life, and that as a result he was committed to that position and therefore unable to serve as a cabinet minister.

But according to Deri, "it was clear to the prosecutor and it was clear to the previous attorney general, Dr. Avichai Mandelblit, that I have no intention and never had any intention, and did not commit, to retire from political life.

"These matters were clearly on the table from the beginning of the contacts [with the attorney general] until their end," he added.



Shas leader MK Aryeh Deri (right) and Prime Minister Benjamin Netanyahu at a Shas faction meeting in Knesset, January 23, 2023. (Yonatan Sindel/Flash90)

Deri's intentions in that 2022 plea bargain, in which he was convicted of two counts of tax fraud, constitute a critical component of the High Court's ruling. In their decision, five of the justices ruled that Deri's appointment to two ministerial portfolios was invalid because he had given the magistrate's court the impression that he was permanently retiring from political life.

That "false impression," as Justice Uzi Vogelman, Yitzhak Amit, David Mintz, and Anat Baron labeled it, secured the plea bargain, ended his criminal trial, and ensured the court would not rule on the issue of whether or not his conviction carried with it a determination of moral turpitude. Such a designation would have barred him from office for seven years.

Deri's decision to accept the ministerial appointments in the new government offered to him by Netanyahu was therefore invalid, the justices ruled, invoking the [estoppel](#) doctrine, which prevents an individual from

benefitting from a claim they make in one legal proceeding if it contradicts a claim they made in a different legal proceeding.

So what did Deri actually agree to in the framework of his plea bargain over the tax charges?

Who said what

In the deal with then-attorney general Mandelblit, signed in December 2021, Deri admitted to the tax offenses and pledged to resign from the Knesset. He did not, however, stipulate that he was permanently resigning from political life or from leading the Shas party.



Head of the Shas party Aryeh Deri arrives for a court hearing at the Jerusalem Magistrate's Court, January 25, 2022. (Yonatan Sindel/Flash90)

And in a statement to the press after the attorney general filed the indictment against him based on the plea bargain, Deri said, “I will continue to focus on my public service and lead the Shas movement with all my strength and belief.”

But at a sentencing hearing on January 25, 2022, Deri made comments that, while they were not explicit, sounded very much like he was permanently stepping away from frontline politics.

“There is a big public that I represent, which gave me its trust in the four elections. Despite all the suspicions, they nevertheless believed in me, and I took advice from the rabbis if it was permissible for me according to the law to do what I am doing and resign from the Knesset and say to the community that elected me, ‘I am choosing the easy life and am leaving the Knesset.’

“I had very serious doubts... I decided that I don’t want to return to what happened 20 and 30 years ago, and I want to continue with the time that remains for me to invest in the needs of the public without stirring up these wars and to continue to represent the segments [of society] and the public that I represent in a different manner, even if not from the Knesset,” said Deri in the Jerusalem Magistrate’s Court.

In that same hearing, the state prosecutor explained to the judge the reasoning behind the plea bargain, including reasons the sentence should be lighter than might otherwise be expected.

“I request to present considerations for leniency that justifies a punishment that does not include a prison component, first and foremost the accused’s confession and that he has taken responsibility for his actions. In this regard the accused’s public statement and his retirement from his political life reflect his sincerity,” said the prosecutor.



Shas party leader Aryeh Deri (left) attends a hearing in the Jerusalem Magistrate's Court, January 25, 2022. (Yonatan Sindel/Flash90)

Also during the January 25, 2022, hearing, Deri's attorney Navot Tel-Zur described the plea bargain as "balanced" in his reasoning for why the court should accept it, and noted that Deri was giving up a large salary by resigning from the Knesset, ostensibly for the long term, while additionally referring in the same context to his ministerial role and salary.

"The man resigned from the Knesset and that was his daily bread. After nine years as an MK and a minister, his concession could reach into the millions of shekels and he now needs to find a new income," said Tel-Zur.

A government minister currently earns NIS 50,000 a month, and an MK earns NIS 45,000. Earning two million shekels from such work would therefore take over three years.

Finally, Judge Shmuel Herbst, the president of the Jerusalem Magistrate's Court, who presided over Deri's case, said very clearly in the final sentencing hearing on February 1, 2022, that Deri was quitting political life.

“The accused, a public figure for many years, is removing himself from now from the desire to be involved in the needs of the public. I am not privy to his considerations, but it appears to me that his life's story shows that he saw in his being an elected official a vocation and a way of life, and now in light of this case and the charges in it — he is giving it up, of his own volition,” said Herbst.

“This is no easy sacrifice for someone who has molded himself as a public servant over the last decades, and it appears to me that the prosecution itself hinted that it sees this as part of the punishment that the accused has imposed upon himself.”



Jerusalem Magistrate's Court President Shmuel Herbst at a court hearing for the sentencing of Shas party leader Aryeh Deri at the Jerusalem Magistrate's Court, January 25, 2022. (Yonatan Sindel/Flash90)

He added that the general public could rest assured that Deri, convicted of bribery and fraud in 1999 and then again of tax fraud in 2022, could no longer “harm the public purse” and that the accused “will no longer be involved in the needs of the public that involve financial dealings, due to his distancing himself from the public arena.”

In short, both the prosecution and the presiding judge were of the opinion that Deri was permanently quitting political life and public office.

A permanent retirement?

In the High Court ruling last week, Supreme Court President Esther Hayut noted all of those statements in her written opinion, and strongly questioned the contention of Deri’s attorney in the hearing earlier in January that Deri had never intended to quit politics permanently and that the Jerusalem Magistrate’s Court had misunderstood his comments.

Tel-Zur had claimed in the January 5, 2023, High Court hearing that Deri’s commitment to resign from the Knesset had been “a rare incident of misunderstanding,” in that he had only ever intended to leave the Knesset on a temporary basis.

“These comments,” wrote Hayut, “were made in the presence of Deri and his attorney and they did not see fit to clarify ‘in real time’ that this was not a permanent retirement from political life but rather a time-limited retirement from the 24th Knesset alone.”



Supreme Court Chief of Justice Ester Hayut at a court hearing in the Supreme Court for petitions against the Citizenship Law, December 1, 2022. (Yonatan Sindel/Flash90)

Hayut went on to say that Deri's own statement and that of the Jerusalem Magistrate's Court judge demonstrated that "the court understood Deri's commitment as a commitment to permanently retire from political life, and this should come as no surprise given the way these matters were presented."

She added, "The Magistrate's Court even explicitly emphasized that Deri's retirement from political life was a relevant consideration among a number of considerations it weighed in Deri's favor in his sentencing."

Several other Supreme Court justices made the same points in their own written opinions.

Because Deri committed to resigning from the Knesset in the plea bargain agreement he signed, the attorney general said he would not request that the court deliberate over whether the crimes Deri was being convicted of bore a

designation of moral turpitude, which carries with it an automatic ban from political office for seven years.

And, as Justice Alex Stein pointed out, Deri was no longer an MK during the sentencing hearings, so the court could in fact not deliberate on the moral turpitude issue at all, even though the crimes to which he was admitting do bear a moral turpitude designation.



Supreme Court justices arrive for a hearing over the legality of Shas leader Aryeh Deri's appointment as a minister, at the Supreme Court in Jerusalem on January 5, 2023. (Yonatan Sindel/Flash90)

Having avoided such a determination, Deri was still faced with the problem that Basic Law: The Knesset stipulated that someone with a recent conviction and still serving a prison sentence was required to seek a ruling from the head of the Central Elections Committee, a Supreme Court justice, as to whether the crimes that individual was convicted of include a moral turpitude designation. The law at the time did not stipulate any distinction between a suspended prison sentence, such as the one Deri received, or a custodial term.

To avoid this problem, the right-wing, religious parties of the new Knesset following the November 2022 election passed an amendment to the Basic Law, even before the government was formed, stipulating that only those with custodial — not suspended — sentences must approach the Central Elections Committee for a ruling on moral turpitude.

This amendment paved the way for Deri to take up the ministerial roles he was given by Netanyahu to form the new government, and ultimately to the petitions filed against these appointments and last week's ruling barring him from such office.