Legal Doc: Lawsuit: Pollard vs State of Israel

Filed: August 4, 2008 / 3 Av 5768

Translated from Hebrew by J4JP See Original Hebrew Document at www.jonathanpollard.org

Tel Aviv District Court

The Plaintiff:

Jonathan Pollard

Represented by Nitsana Darshan-Leitner and/or Roy Kochavi 10 Hata'as Street, Ramat Gan, 52512 Tel. 03-7514175 Fax 03-7514174

VS

The Defendant:

The State of Israel

Represented by State Attorneys, Tel Aviv District 1 Henrietta Szold Street, Tel Aviv

Nature of the Claim: Declaratory Relief

Statement of Claim

The Honorable Court is requested to issue a Declaratory Judgment stating that the Plaintiff, Jonathan Pollard and his wife, Esther Pollard, have never received any monetary support from the State of Israel, from the time of the arrest of the Plaintiff by the American authorities up to this day.

The Plaintiff wishes to emphasize, from the outset, that *neither he nor his wife has any interest in receiving money from the Defendant*, and that his sole purpose in bringing this lawsuit is to put an end to the lies being disseminated by the Defendant regarding its treatment of the Plaintiff, lies which are undermining the advancement of a public struggle for his release from imprisonment in the United States – as this Statement of Claim shall demonstrate.

1) The Plaintiff, Jonathan Pollard, an Israeli agent, is serving a life sentence in an American prison.

Confirmation of the Plaintiff's status as an Israeli agent from the Prime Minister's office is attached as an integral part of this petition and labeled **Exhibit 1**. http://www.jonathanpollard.org/1998/051198d.htm

2) From the time of his arrest and throughout his incarceration, the Plaintiff has repeatedly been subjected to cruel and unusual punishment. Details have not been widely publicized, but if they were, the Israeli public would be horrified. Over the last 23 years, the Plaintiff has been subjected to severe afflictions –physical and mental –in numerous incidents, often for extended periods of time, which have taken place in the various American prisons where he has been held. These afflictions have had a damaging and irreparable effect on the health of the Plaintiff. Some of these incidents have been described in the framework of a petition to the Supreme Court of Israel, Bagatz 4380/05 **Jonathan Pollard vs. the Prisoner of Zion Authority of the Ministry of Absorption**. (Pages 10 to 14, Section numbers 50 through 67 of the petition.)

A copy of Supreme Court petition, Bagatz 4380/05 is attached as an integral part of this petition and labeled **Exhibit 2**. http://www.jonathanpollard.org/2005/050805.doc

- 3) In the course of the Plaintiff's service as an Israeli agent, for a period of approximately a year and a half, the Plaintiff supplied the State of Israel with documents critical to its security, invaluable in both quality and quantity. Inter alia, the Plaintiff provided hundreds of secret documents dealing with the procurement and development of weapons systems by countries hostile to Israel; and information on the nuclear, chemical, and biological weapons warfare capabilities of countries hostile to Israel. It included information on ballistic missile development by these countries and information on planned terrorist attacks against Israeli civilian targets. It also included satellite photos and maps of secret military bases of enemies of Israel. The information that the Plaintiff provided contributed, inter alia, to wide-ranging changes in the country's civil defense program, enabling the State to provide the citizens of Israel with a good defense program to deal with the threat of unconventional weapons of war by enemy states.
- 4) The Defendant, the State of Israel, which employed the Plaintiff and enjoyed the fruits of his labor, has never ceased to state and to claim that, since the time of the Plaintiff's arrest on 21 November 1985 and throughout all of the years of his incarceration to the present, it assists the Plaintiff and provides financial support to the Plaintiff and his wife, Esther Pollard, and supports them, providing whatever they need.
- 5) As will be detailed below and as the Plaintiff will demonstrate, the Defendant's statements and claims in this regard are absolutely false, and contain not a grain of truth. Since his arrest approximately 23 years ago and to this very day, the Plaintiff has never received any monetary assistance whatsoever from the Defendant, the State of Israel. As well, the wife of the Plaintiff, Esther Pollard, has never received any monetary assistance from the State, from the time she married the Plaintiff to the present day. All of the Defendant's statements about this issue are absolutely baseless, and severely damaging to the Plaintiff.
- 6) The statements and claims of the Defendant about the issue are intended to obscure from public scrutiny the fact that the Defendant has not made the most minimal effort to secure the release of the Plaintiff from prison; and are also intended to blacken the reputation of the Plaintiff and that of his wife, Esther Pollard, in the eyes of the public, by portraying them as people whose sole motivation is a desire to elicit monetary support from the Defendant –

- which is patently false. In this way, the Defendant effectively prevents the Plaintiff from galvanizing public support to help secure his release from prison.
- 7) The Defendant's statements about this issue have been made in every possible venue, whether as statements to the media in interviews by government officials; or as part of its responses to petitions filed by the Plaintiff in the Supreme Court; or in responses to private enquiries by concerned citizens; as well as in written responses to inquiries by the Plaintiff himself via his Attorney. It should be pointed out that in every statement the Defendant makes on the issue of monetary support, without exception, the Defendant avoids providing any details about the support it claims to be providing to the Plaintiff and his wife, stating only that it assists the Plaintiff and "his close associates"... "in every possible respect."
- 8) Such is the case, for example, in the response by the Prime Minister's Advisor for Public Affairs, Mrs. Ruthie Abramovitch, dated 16 August 2007, written in reply to a letter from a private citizen, Ilan Abuchatzeira, about this matter. In response to the citizen's question about whether the Defendant is supporting the Plaintiff's family, the Prime Minister's advisor replied, "The State of Israel supports and assists Jonathan Pollard and his close associates in every possible respect."

A copy of the letter by the Prime Minister's Advisor for Public Affairs, Mrs. Ruthie Abramovitch, of 16 August 2007 is attached as an integral part of this petition and labeled **Exhibit 3** http://www.jonathanpollard.org/2007/102907.jpg

- 9) Also, for example, in March of 2008, anonymous government officials disseminated to the media statements claiming that the Plaintiff and his wife, Esther Pollard, are receiving enormous sums of money in support from the Defendant.
- **10**) These officials exploited the weekly column in the Shabbat Supplement of "Yediot Achronot" by influential Israeli journalist, Nachum Barnea, to disseminate this false information. In his column which was published on 28 March 2008, Barnea wrote, inter alia, the following: (*Emphasis and clarification in square brackets added*):

"The Government of Israel tried to atone for their embarrassment with money: money to the lawyers, money to the first wife Anne, **money to the second wife, Esther.** According to government officials, Anne Pollard received up to 2004, a cumulative sum amounting to 2,750,000 dollars and that was back when the dollar was still hard currency. They refuse to reveal the amount which has been transferred to Jonathan Pollard and his current wife, but they stress that the sums are astronomically large."

Farther on in his column, Barnea states:

"Mrs. Pollard [i.e. the current wife of the Plaintiff] claims that the Government of Israel is not giving her **enough money**."

Still farther on, Barnea indicates:

"The former Cabinet Secretary, Yisrael Maimon, opened the accounting books for Orlev [i.e. MK Zevulun Orlev, Head of the Knesset State Control Committee] and

the sums of money [ie that were allegedly given to the Plaintiff and his wife] were extremely impressive."

A copy of Nachum Barnea's column 28 March 2008 is attached as an integral part of this petition and labeled **Exhibit 4.** http://www.jonathanpollard.org/2008/032808H.pdf

- 11) Following the publication of Nachum Barnea's column, the Plaintiff (via his Attorney) contacted MK Zevulun Orlev to check if what had been written regarding his having been shown the "accounting books" was true. In response, MK Orlev replied that he had never been shown any accounting books relating to the Plaintiff or to his wife.
- 12) Similarly, MK Orlev responded on 28 May 2008 to Rabbi Pesach Lerner, Executive Vice President of the National Council of Young Israel, who had written to him about this issue, that he had received only "general information" regarding the Plaintiff. Nothing else. In other words, the claim that the Knesset State Control Committee Head had been shown accounting books or any other documents pertaining to the Defendant's alleged monetary support of the Plaintiff and his wife, Esther Pollard, was simply a lie.

A copy of the letter 14 May 2008 by Rabbi Pesach Lerner and the response of MK Zevulun Orlev of 28 May 2008 are attached as an integral part of this petition and labeled Exhibit 5 http://www.jonathanpollard.org/2008/042808.doc and Exhibit 6 http://www.jonathanpollard.org/2008/042808.doc

- 13) As previously stated, the Defendant also has no compunction about lying to the Supreme Court about the Plaintiff's issue. Thus in its response to Bagatz 4380/05 Jonathan Pollard vs. the Prisoner of Zion Authority of the Ministry of Absorption filed by the Plaintiff (Published Ruling: Judgment of 16 January 2006) the Defendant claims that it assists the Plaintiff and his wife, in different ways, as well as with financial assistance. This claim is also referred to by the Court in regard to the same issue (Clause 18 of the Judgment).
- **14)** In response to the Plaintiff's Bagatz 4380/05, the Defendant wrote the following: (*Emphasis added*)

"The State of Israel has in the past given money to the former wife of the Plaintiff. Money has been given as well to the current wife of the Plaintiff as reimbursement for various expenses. The State has also paid for the legal representation of the Plaintiff. Additionally, the State has provided funds for the personal needs of the Plaintiff. It should be made clear that helping the Plaintiff, even financially, was deemed appropriate in the past and still stands."

Similar claims were made in the courtroom as well, and indeed, in Clause 18 of the Judgment (16 January 2006) the court points out: (Emphasis added)

"There is no disagreement about the fact that the Plaintiff worked in the service of the State of Israel. With this as background —so the Defendant informs us —the Plaintiff receives money from the State."

Copies of the Government's Response to Supreme Court petition, Bagatz 4380/05 and

the Court's ruling on the case are attached as an integral part of this petition and labeled Exhibit 7 http://www.jonathanpollard.org/2008/080408Hb.pdf and Exhibit 8 http://www.jonathanpollard.org/2008/080408Hc.doc.

- 15) This false statement by the Defendant, which was presented in the framework of a response to the Supreme Court, stands in stark opposition not only to the facts as they exist, but also to what was written about this issue by the Prime Minister and Defense Minister, Ehud Barak, in March of 2000.
- 16) Following the publication of an article on 31 January 2000 in the newspaper "Haaretz", in which the following quote appeared: "Pollard's bank account in Israel is enriched every month by a deposit of triple the amount of his last salary during the time he was active [as an agent], linked to the foreign currency rate of exchange of the dollar and the cost-of-living index.", MK Rechavam Ze'evi, z"l wrote to the then-Prime Minister and Minister of Defense, Ehud Barak, on 8 March 2000, to ask for the following clarifications: 1) Is the information in the article true? 2) Was this information ever brought to the attention of Jonathan Pollard? 3) What is the name of the Government official responsible for depositing money to the account and 4) Who is authorized to access this account?

A copy of MK Ze'evi's 8 March 2000 letter is attached as an integral part of this petition and labeled **Exhibit 9** http://www.jonathanpollard.org/2006/021506.htm [J4JP note: Hebrew originals at: http://www.jonathanpollard.org/2000/030800a.htm]

17) In his response of 17 March 2000 to MK Ze'evi's inquiry, the Prime Minister and Minister of Defense denied all of the statements which claimed that Plaintiff is receiving money from the Defendant. He wrote: (*Emphasis added*):

"The information which was published regarding a bank account in Israel for Pollard, **is not true.**

"Nevertheless, the State has informed the High Court of Justice, in response to a petition submitted by Mr. Pollard, that it will not evade its responsibilities to take care of Pollard, when he is released from prison."

A copy of PM and DM Barak's 17 March 2008 letter is attached as an integral part of this petition and labeled **Exhibit 10** http://www.jonathanpollard.org/2006/021506.htm [J4JP note: Hebrew originals at: http://www.jonathanpollard.org/2000/030800a.htm]

- 18) This response by Prime Minister and Minister of Defense, Ehud Barak, which was never widely publicized, itself completely negates the bulk of the claims, statements and misinformation invented by the Defendant regarding assistance in general, and financial assistance in particular, which the Defendant claims it provides to the Plaintiff and his wife, Esther Pollard.
- **19**) From the response of the Prime Minister and Minister of Defense to MK Ze'evi, z''l, it is apparent that the Defendant **is not supporting/assisting** the Plaintiff as it publicly claims. From his response it is also apparent that that the Defendant intends to assist the Plaintiff, if at all, only once he is freed from prison. It should be pointed out that, given the Defendant's

past record of lying about the Plaintiff, there is ample reason to suspect that even after the Plaintiff is released from prison, the Defendant will continue to dodge its responsibilities towards the Plaintiff as it has done consistently for the past 23 years, abandoning the Plaintiff to his fate.

- **20**) Worse still, from the response of the Prime Minister and Minister of Defense, it is obvious that the Defendant **lied to the court** in its response to Bagatz 4380/05 mentioned above, when it claimed that it has assisted and continues to assist the Plaintiff and his wife, Esther Pollard, through various means, including financial support.
- 21) As will be briefly explained below, the current life circumstances of the Plaintiff and his wife make it fairly obvious that they are not receiving any assistance, much less financial assistance, from the Defendant; and that the statements of Defendant to that effect are not only false, but patently ridiculous in light of the financial distress of the Plaintiff and his wife.
- 22) The Plaintiff's circumstances: Whatever basic supplies the Plaintiff requires for his own use must be purchased with his own funds from the prison cantina, in North Carolina. These things are not provided to him by the prison authorities and they include, inter alia, such items as: basic personal hygiene products (toothpaste, soap, shampoo, deodorant and the like), kosher food items, underwear, socks, shoes, OTC medications (such as pain-killers and anti-histamines for various conditions from which the Plaintiff suffers) batteries, etc The cost of these items in prison is 2 or 3 times the cost of similar items on the free market in North Carolina, and sometimes even more.

For example, the Defendant's principal and critical means of communication with the outside world is by telephone (and for the most part via his wife). The cost of his phone calls to his wife in Jerusalem runs \$1.50 per minute, while a similar phone call made outside of the prison from North Carolina to Jerusalem would cost 10 cents a minute or less. The Plaintiff's phone calls alone require a budget of about \$500 per month, and that is before any of the rest of his daily expenses for his basic needs in prison.

All of the Plaintiffs expenses in prison are financed with money that is sent to him by his wife and/or by Rabbi Pesach Lerner who assists the Plaintiff on a voluntary basis. The Defendant has never contributed to help defray the cost of any of these expenses – not even a single cent.

23) The financial circumstances of the wife of the Plaintiff: The wife of the Plaintiff, Esther Pollard, is hard-pressed financially and survives with the modest help of her friends. For example, were it not for the good-heartedness of a Jerusalem widow, who kindly allows the wife of the Plaintiff to live in a room of her modest apartment, the Plaintiff's wife would be without a roof over her head. It should be pointed out, that previous to this arrangement, the Plaintiff's wife lived in a tiny room of a cheap roadside motel near the prison where the Plaintiff is incarcerated. Even though this was a dismal and rundown place, it was very difficult for the wife of the Plaintiff to bear the expense or to sustain it over time.

Additionally, the wife of the Plaintiff is a cancer survivor, who requires medical follow-up and attention. She bears the cost of all medical expenses out of her own pocket. She also pays the cost of Bituach Leumi and Kupat Cholim out of her own pocket, as well as all other personal expenses including food, clothing, travel, telephone and the like. The wife of the

Plaintiff even transfers funds to her husband to help cover his expenses for his most basic needs in prison.

All of the Plaintiff's wife's expenses are financed out of her own pocket in addition to the modest assistance that is given to her by close friends. The Plaintiff's wife has never received any money from the Defendant as financial support for her or the Plaintiff – not even a single cent.

24) Because the false statements of the Defendant about the Plaintiff and his wife, Esther Pollard, are deeply damaging to the Plaintiff, as will be shown below; and since in the framework of various Bagatzim (petitions), which were filed by the Plaintiff in Supreme Court, the Defendant refused to detail the support it claims it is systematically providing to the Plaintiff and his wife; and because **the Defendant continued to repeat in writing and in oral statements that it is providing support to the Plaintiff and his wife, including monetary support** -- the attorney for the Plaintiff turned to the Prime Minister in a letter of 29 October 2007 requesting that the State give an accurate accounting –once and for all—of the kind and extent of support it is providing to the Plaintiff and his wife; since if indeed it is providing such support then it should be no problem to provide details about it, and since certainly there is nothing to prevent such an accounting.

A copy of the October 29 2007 letter by Attorney of the Plaintiff to the Prime Minister is included as an integral part of this petition and labeled **Exhibit 11.** http://www.jonathanpollard.org/2007/102907.doc

25) In its response to the Attorney of the Plaintiff of 21 January 2008 (via Attorney Shulamit Barnea-Fargo, Legal Advisor for the Prime Minister's Office) the Defendant refuses to provide any information whatsoever about the kind or extent of support it claims to be providing to the Defendant or his wife, yet it repeats once again its claim that the Government of Israel has worked and is working "in order to assist Jonathan Pollard and his close associates" and additionally it claims that "the Government of Israel worked very hard for Mr. Pollard in various ways" and that "the State provided funds for Mr. Pollard for his personal needs...and for the needs of his current wife, Mrs. Esther Pollard."

The Defendant justifies its refusal to provide details about the kind and extent of the assistance with excuses such as "the individual's right to privacy", as well as "for reasons of sensitivity and out of a desire not to harm the issue itself."

A copy of the 21 January 2007 from the Prime Minister's Legal Advisor to the attorney of the Plaintiff is included as an integral part of this petition and labeled **Exhibit 12.** http://www.jonathanpollard.org/2008/012108.jpg

26) On 13 February 2008, the Attorney for the Plaintiff responded to the evasive and deliberately obscure letter from the Prime Minister's Legal Advisor, Barnea-Fargo. In her letter, the Attorney for the Plaintiff indicated that the Defendant's statements claiming that it provides any kind of support for the Plaintiff and his wife are false, and she again demanded specific and detailed information about the kind and extent of support that Defendant claims it is providing.

This additional inquiry also received a negative reply. A response to this letter dated 9 March 2008, from the Prime Minster's Legal advisor stated, inter alia, "I do not see any place to

detail the information you requested, for fear that such a thing may be harmful to Mr. Pollard's welfare, and to the Government of Israel's efforts to assist him."

A copy of the 13 February 2008 letter by the Attorney of the Plaintiff to the Prime Minister's Legal Advisor; and a copy of the response from the Prime Minister's Legal Advisor is included as an integral part of this petition and labeled **Exhibit 13** http://www.jonathanpollard.org/2008/021308.doc and **Exhibit 14 respectively.**

- 27) The excuses the Defendant offers to justify its avoidance of answering the questions that were put to it regarding the monetary support it claims it is providing for the Plaintiff and his wife, are patently absurd and baseless; purposely shrouded in evasions. Not willing or able to provide an honest answer, the Defendant repels the question.
- **28**) It is not clear how providing the information **to the Plaintiff himself** which was requested **by the Plaintiff (via his Attorney)** would in any way be an invasion of the Plaintiff's own "right to privacy" (!) Nor is it clear what is meant by "reasons of sensitivity", or what is meant by "out of a desire not to harm the issue itself". Finally, it is not clear how providing this information to Mr. Pollard himself "may harm Mr. Pollard's welfare" or how it may harm "the efforts of the State of Israel to assist Mr. .Pollard." (These quotes are the words of the Prime Minister's Legal advisor.)
- 29) The Defendant, the State of Israel, is lying blatantly to the Plaintiff and his wife, to the Israeli Courts, to the Israeli media (and via the media to the Israeli public at large) when it claims that it is providing financial support to the Defendant and his wife.
- **30**) In the years that have gone by since his arrest, the Plaintiff has learned that the Defendant, in whose service he was employed and for whom he faithfully worked in spite of the grave danger to himself, has abandoned him and left him to his fate. For many years now, Pollard and his wife and his supporters have been crying out that the Defendant has abandoned the Petitioner, and is not doing anything to secure his release from prison in the U.S.
- **31**) Sorrowfully, he turned to the public and to the Israeli Courts in a difficult and desperate attempt to advance the struggle for his release.
- 32) The statements and claims of the Defendant, which give the impression it is doing something to help, particularly the impression that it gives money to the Plaintiff and his wife, are nothing more than blowing smoke in the eyes of the Israeli public and the Israeli Courts, while undermining the Plaintiff's struggle for his freedom. The Defendant plants the idea in the heart of the public and in the Courts that it is doing everything it can for the Plaintiff, when it is not. The public-at-large gets a distorted sense of the Plaintiff's desperate plight—namely that the Defendant, the State of Israel, is taking care of the Plaintiff, doing all it can for him and that beyond that, nothing more is possible.
- 33) Moreover, the statements and claims of the Defendant give the impression that the Plaintiff has a mercenary motive, as if all of the Plaintiff's expectations of the Defendant are motivated by the demand for money from the Defendant, when nothing could be further from the truth. For 23 years, the Plaintiff has pleaded not for money but for the Defendant to act to secure his release from prison. The Defendant's statements and claims tarnish the image of the Plaintiff and his wife in the eyes of the public and damage their ability to enlist broad public support to work intensively for the release of the Plaintiff from prison.

- 34) In spite of his unceasing efforts, the Plaintiff has been unable, up until now, to negate the lies of the Defendant. Petitions which the Plaintiff filed in Supreme Court were turned down on the claim that they were political issues and it is generally not the custom of the Supreme Court to involve itself in political issues. Written demands from the Petitioner to the Defendant, for a detailed accounting of its claims about the Petitioner and his wife, were met with a complete refusal to provide details or information (as mentioned above) based on the absurd claim that providing information to the Plaintiff about funds (which were never given to the Plaintiff or his wife) would somehow endanger the Plaintiff (!)
- 35) The Plaintiff even turned to the Israel State Comptroller with a request to investigate the statements and claims of the Defendant, according to which the Defendant claims to be giving money to the Plaintiff and his wife, Esther Pollard. However, the State Comptroller informed the Attorney for the Plaintiff that he has no authority to conduct such an investigation, since this is beyond the limited mandate which the State Comptroller has to express an advisory opinion, which is what he was recently asked to do by the Knesset Control Committee, in accordance with Clause 21 of the State Comptroller Law (copy attached) of 1958.
- 36) There is, therefore, no other option left to the Plaintiff but to turn to this Honorable Court in this Lawsuit, asking that he be granted Declaratory Relief.
- **37**) Consequently and in light of the above, the Honorable Court is asked to declare that the Plaintiff, Jonathan Pollard and his wife, Esther Pollard, have never received any monetary support whatsoever from the Defendant, the State of Israel, from the time of his arrest until the present day.

(signed) (signed)

Nitsana Darshan-Leitner Attorney for the Plaintiff Roey Kochavi Attorney for the Plaintiff