Haifa District Court **Date: 07/12/2009**
Civil Appeal 10329-06-09

Before:	1. The Honorable Judge Yitzhak Amit
The Appellants	1. Anonymous [female][1] 2. Anonymous [male] (minor)
	v.
The Respondents	1. The State of Israel 2. The Northern District Psychiatric Committee 3. Sieff Hospital, Zfat 4. Regional Council...-Child Welfare Officers 5. The Legal Guardian for the Minor – Adv. Grunfeld 6. The Northern District District Psychiatrist
Attorney for the Appellants	1. Adv. Shmuel Barazany
Attorney for the Respondents	1. Haifa Attorney General

VERDICT

"Psakdin" [Trans.'s Note: the posting website] Heading:

The court ordered the release of the minor, who was hospitalized due to engaging in intensive meditation, from forced hospitalization.

An appeal of the Qirayot Juvenile court ruling (Hon. Judge Hyam Karawani) of 5.10.2009 in which the court ordered extension of the order for forced hospitalization of the Appellant (hereinafter: "**the Minor**") in "Sieff" Hospital, Zfat, for 3 additional months. The appeal also concerned the Child and Adolescent District Psychiatric Committee decision that had recommended extension of the forced hospitalization.

The Facts Regarding the Matter

1. The Minor, …, born 1995, a youth of about 14 years old, was born at home in Texas to an Israeli mother and to an American father. When he was about a year old, his parents were separated and he remained in his mother's custody but his father continued to be involved in his upbringing. When he was three years old, the Minor came to Israel; his father continued residing in the United States of America, maintained phone contact with him, and came to Israel once a year for about a month. The mother of the Minor has a PhD in..., and works in alternative medicine, Eastern culture and Buddhist teachings, and has lectured on these subjects at … University. The Minor nursed until age five, went to a regular school in first grade, and in second grade, transferred to an open school … that was established and administrated by a non-profit organization of parents (the mother was on the non-profit organization board for about three years).

In September, 2007, when the Minor turned 12, the mother took him to Lhasa Tibet, where she engaged in human rights for the Tibetan people. The minor refused to study in a regular school in which children his age study, started learning Tibetan at the university with adults, and began engaging intensively in meditation. In the afternoons

1 The original for the purpose of this translation: http://www.psakdin.co.il/fileprint.asp?FileName=/mishpaha/public/ver_dyrl.htm

he learned English, math and other subjects with his mother.

2. In July 2008, when the Minor and his mother were in Tibet, there was a significant decline in his mental condition. The Minor refused to eat, stopped speaking, began to injure his face and to urinate everywhere.[2] At the same time, and on the background of the riots in Tibet during the Olympics in China, the two were forced to leave the area and began traveling in China, Hong Kong and Brazil, until they reached Israel in March 2009; during this period there was a further decline in the Minor's condition and severe outbursts of angerappeared. Since arriving in Israel the Minor and his mother have been living in the town of … .

3. On 3.8.2009, when the Minor's condition declined further, the Social Services of the... Regional Council... involved Ms. Michal Arad, Youth Law Child Welfare Officer (hereinafter: "**the Child Welfare Officer**"). The mother then went to a pediatrician to obtain treatment complementary to what the Minor was receiving from her and from the Tibetan doctor. The pediatrician referred the Minor to a child neurologist, and she referred them to the emergency room. On 3.15.2009 the Minor and his mother arrived at "Haemek" Hospital, Afula. On that same day, the Minor was transferred to "Sieff" Hospital, Zfat, where he was hospitalized in the Psychiatric Department and was treated for about two weeks.

Upon his admission for treatment by the hospital, the Minor was diagnosed as being in a catatonic psychotic state, unable to orient himself in time and space, answering questions only partially, lying in bed for many hours without moving and sometimes getting up and walking around, sometimes eating independently and sometimes needing to be fed, often urinating and defecating on himself, and it is not possible to accurately ascertain his thought process or thought contents. The Minor started receiving psychiatric treatment and when his blood pressure increased, he was transferred to the Pediatric Department, received medication and his condition stabilized.

The treatment the Minor received during the two weeks from the time of hospitalization was with the mother's consent and agreement, with involvement of the Child Welfare Officer who visited the Minor and his mother in the hospital several times.

4. On 3.30.2009, when the Minor's condition did not improve, the mother began expressing objection to the hospitalization and to the drug treatment and even claimed that his conditon worsened as a result of the treatment. According to the mother, the Minor was in a meditative state due to intensive meditation, a phenomenon that is known and normative in Tibet, that the treament for it is known there, and that it is not a psychotic state.

At the same time, the Minor's father,... arrived for a visit in Israel, and on 4.2.2009 gave his consent to the Minor's continued hospitalization.

5. Due to the mother's resistance to the Minor's continued hospitalization, he was force hospitalized beginning from 3.30.2009 in accordance with a hospitalization order issued by Dr. Jerassi, Deputy District Psychiatrist (hereinafter: "**the Deputy District Psychiatrist**"). The hospitalization order was extended by the Deputy District Psychiatrist for a period of seven days, by force of the provisions of Article 9-10 of the Treatment of the Mentally Ill Law, 5751 – 1991. I note that the hospitalization order was sent to the hospital but was not presented to the court.

6. Dr. Yitzhak Vorgraft, Child and Adolescent Psychiatrist and in charge of the Youth Hospitalization Department at the hospital in Zfat (hereinafter: "**Dr. Vorgraft**"), was appointed by the District Psychiatrist to examine the Minor and to give an opinion regarding the need for force hospitalizing him. On 4.5.2009, an opinion was written by Dr. Vorgraft, upon which Dr. Noa Navot is signed as the attending physician.

The opinion stated that the Minor grew up in a chaotic and unusual environment for many years, that he has been in a catatonic-psychotic state at least since July 2008, that he received drug therapy that did not lead to significant improvement in his condition, that during the examination he sat in a chair with his head bent, did not cooperate, sometimes mumbled things to himself and sometimes seemed to stare and to be hallucinatory. During the hospitalization, he developed high blood pressure values and was transferred to the Pediatric Department. It was further determined that due to the Minor's serious condition, it was not possible to bring him before an Adolescent Psychiatric Committee that was held that week at the Nes Ziona Hospital, that if he is not treated or would be released, his life would actually be endangered, and that the mother objects to his hospitalization and his father agreed to the continued hospitalization. Dr. Vorgraft recommended that the Court issue a hospitalization order

2 Mother's comment: The child spoke little during and following a period of intense meditation. Srok-rlung is characterized by forced control of mentation (thought), speech, posture, urination, etc. He never injured his face. Frequent urination, severe emaciation and outbursts of anger began during hospitalization.

for treatment in accordance with Article 3E of the Youth Law (Treatment and Supervision).

That same day the Child Welfare Officer spoke to the Deputy District Psychiatrist and asked him to give his opinion regarding the Minor's condition. The Deputy District Psychiatrist refused the request and said he would write such an opinion only if the court ordered him to do so.

7. On 4.6.2009 the Child and Adolescent District Psychiatric Committee **of Nes Ziona** convened in the absence of the Minor. The Committee's decision stated that the District Psychiatrist refused to convene an emergency committee, but extended the Minor's hospitalization order, and that due to the Minor's medical condition, it was not possible to bring him before the committee. The committee decided to recommend to the Court to extend the forced hospitalization at its discretion.

Lower Court Proceedings

8. On 4.6.2009, in light of the urgency of the case, the Child Welfare Officer requested the Juvenile Court to grant an interim order according to Article 12 of the Youth Law (Treatment and Supervision) 5720 – 1960 (hereinafter: "**the Youth Law**"), to order the continued hospitalization of the Minor for one month and to order the District Psychiatrist to write an opinion regarding his condition. This petition is Hospitalization Order 3372-04-09, the case that is the subject of this Appeal (hereinafter: "**the Petition for Forced Hospitalization**").

Concurrently, the … Regional Council and the Juvenile Court Child Welfare Officer requested to declare the Minor a ward of the state in accordance with Article 2(6) of the Youth Law.

9. The Juvenile Court acted swiftly and efficiently, and already the following day, on 4.7.2009, the first hearing was held. At that time, Dr. Vorgraft's opinion and the Child and Adolescent Psychiatric Committee of Nes Ziona were before the Court, that, as stated, did not meet the Minor. The mother opposed the continued forced hospitalization of the Minor in the Psychiatric Department and requested that he be transferred to the Pediatric Department and be examined by a psychiatrist on her behalf. Dr. Vorgraft, the attending physician, reviewed the Minor's condition and requested the Court's approval to treat him immediately with electroconvulsive therapy. At the hearing it became clear that the District Psychiatrist and his deputy refused to give an opinion regarding the forced hospitalization without an appropriate court order, and the forced hospitalization was extended until 4.12.2009.

In the court ruling that was given on site, it was determined that the District Psychiatrist does not need a court order in order to prepare an opinion regarding the need for forced hospitalization of a minor, and that in accordance with Article 3E of the Youth Law, a District Psychiatrist can rely on the opinion of a child and adolescent psychiatric specialist, and to the regret of the court, that was not done. The court ordered the immediate convening of a psychiatric committee no later than 4.12.2009, and ruled that to the extent that the Minor is medically prohibited from attending the committee, the committee shall convene near his bedside, and that the committee shall give its opinion also with regard to electroshock therapy. Until then, the Minor will be force hospitalized and will receive drug therapy. It also ordered to send the ruling to Legal Aid in order to appoint a legal guardian for the Minor. In accordance with this ruling, and already on 4.7.2009, Adv. Dr. Gershon Grunfeld was appointed as the legal guardian for the Minor (hereinafter: "**the Legal Guardian**").

Following the hearing, the mother's legal representative went to the hospital to meet the Minor, and reported to the Lower Court that she has asked the Minor regarding his wish to remain in hospitalization or to be released and that "**the Minor expressed his unequivocal wish to be released**," which was stated in the presence of people whose names she listed (Notice of Adv. Sigalit Yishayahu of 4.8.09).

10. When the mother began to express resistance to the forced hospitalization, controversies and frictions began to arise between her and the attending medical team, creating a tense atmosphere in the department and surrounding the Minor. According to the medical team, the mother treated the Minor with strange rituals, acupuncture and flowers, and her presence increased the Minor's stress and caused him outbursts of anger. The mother shouted and raged in the department and one day the treatment team called[3]

3 Mother's comment: When the mother and child were sleeping in Pediatrics at around 11:30 p.m., Dr. Vorgraft awakened them to force the child to receive psychiatric medication that the mother had refused for 30 hours, Ativan 8 mg/day, that resulted in marked improvement in the child's behavioral and verbal functioning. The mother requested that discussion be postponed to the following day, in a meeting with the head of Pediatrics, however, Dr. Vorgraft summoned the police. She presented a letter she had submitted to the head of the hospital one day prior, to the police, again requesting that discussion be postponed to the next day, which Dr. Vorgraft described in his opinion as "shouting and raging."

the police and distanced her from the Minor's bed and a distancing warrant was even issued for about one week. The mother, in turn, claimed that diagnosis of the Minor was mistaken, the drug treatment he received did not benefit him and even worsened his condition, both from a health aspect and from an emotional aspect, and caused him severe side effects. At the hearing, the mother requested that the Minor be released from forced hospitalization, be treated in the Pediatrics Department by a doctors she trusts, and be in her supervision.

11. On 4.8.2009, the Deputy District Psychiatrist sent a letter to the court file, in which he notified the Honorable Judge that the responsibility and authority for operating the psychiatric committee is with the heads of the mental health services in accordance with Articles 24(D) and 24A(D) to the Treatment of the Mentally Ill Law, and requested that the Court change its ruling accordingly and order the mental health services to convene the committee.

It was further stated in that letter that it is possible to resolve the problem of the forced hospitalization of the Minor by means of an Article 3E(A)1 of the Youth Law order (in other words, the Minor has a mental illness and the conditions of this forced hospitalization have been met according to Article 9 of the Treatment of the Mentally Ill Law – Y.A.) and **"in the event that the opinion of the child and adolescent psychiatric specialist shall be submitted to me for my approval, I will handle it urgently in accordance with requirement of the law as stated above, in order to prevent the actual life danger to the Minor as evidenced from the medical documents at Sieff Hospital, Zfat."**

In view of that stated in the letter, on 4.8.2009, the Lower Court ordered submisson of Dr. Vorgraft's opinion to the District Psychiatrist, for him to give his opinion regarding the hospitalization of the Minor, in accordance with Article 3E(A)1 of the Youth Law.

12. On 4.10.2009, the Deputy District Psychiatrist wrote on Dr. Vorgraft's opinion "**I approve the court ruling of 4.8.09 that was delivered to me by fax today. I approve the opinion...** (illegible word – Y.A.) **for administering treatment by hospitalization in accordance with Article 3E(A)1 of the Youth Law."**

13. On 4.10.2009, the Minor was examined by Dr. Rodika Goichman, a child and adolescent psychiatrist, on the mother's behalf. Dr. Goichman was of the impression that the Minor is suffering from catatonic psychosis, that his mental condition is life threatening, and that he needs continued psychiatric hospitalization, but that it is important to restore the presence of the mother near the child.

The minor was also examined by the psychiatrist Prof. Tiano, who was summoned as an advisor by the hospital. Prof. Tiano wrote briefly that "**my impression is that the boy is in a psychotic state with disturbances of thought and perception, of judgement of reality, with stereotypic psychomotor [sic] and behavior. There is a clear indication for hospitalization in the adolescent psychiatric department and for treatment with antipsychotic medication (Risperdal).**" Additional documents state that Prof. Tiano recommended postponing electroconvulsive therapy.

14. On 4.12.2009, the Child and Adolescent District Psychiatric Committee convened at the hospital in Zfat beside the Minor's bedside. The committee convened with a missing composition of 4 members and discussed the matter of the Minor according to Article 3E(B) of the Youth Law. Present at the discussion were the mother, Dr. Goichman on behalf of the mother, and the mother's legal counsel. The mother presented her claims to the committee and claimed that the Minor's condition derives from intensive meditation, that it is familiar and well-known in Tibet and that it has a Tibetan treatment. The mother further claimed that she is not opposed to the Minor's hospitalization, but to his hospitalization in Zfat due to the crisis of confidence that had occurred with the treatment team. The committee determined that there is no doubt that the Minor is in an acute psychotic state with catatonic characteristics, that he cannot be treated without close supervision in a hospital setting, that he cannot take care of his basic needs and therefore is a danger to himself. The committee recommended extending the hospitalization for three additional months.

15. On 4.12.2009, the Child Welfare Officer petitioned the court to extend the forced hospitalization order according to Articles 12, 13 and 14 of the Youth Law and in accordance with the recommendation of the psychiatric committee (hereinafter: "**the Petition to Extend the Hospitalization Order**").

16. On 4.13.2009, another hearing was held in the Juvenile Court. As shown by the protocol, also in this hearing

the mother expressed her consent to hospitalization, but claimed that he should be transferred to another hospital due to the crisis of confidence with the treatment team. Also, controversy erupted regarding the flaws that occurred in the proceedings of the psychiatric committee, regarding the hospitalization period, and regarding the mother's visits with her son.

In the ruling that day, the court ordered the hospitalization of the Minor in accordance with Article 3E(C) of the Youth Law for a period of 30 days. It was also ruled that the mother would visit the Minor every day for an hour and a half. The court made clear that it is not sitting as an appellate court regarding the psychiatric committee's decision and its composition, that it does not have the authority to order the transfer of the Minor to another hospital, and that in this matter it is necessary to act according to the Treatment of the Mentally Ill Law. Finally, it ruled that in the absence of a Child Welfare Officer report regarding the facts and the means of treatment, the conditions for a hearing regarding ward of the state had not yet been met.

17. On 5.5.2009, the Child and Adolescent Psychiatric Committee met in Tirat Hacarmel in the presence of the Minor. In its conclusions, the committee wrote that the Minor is still in a catatonic state, does not make eye contact, has mild improvement in cooperation over the previous examination, but that thought contents can still not be examined. It was decided that, without a doubt, he needs supervision and medication with hospitalization, and that if not, there woud be real and tangible danger to his health and development. The committee recommended extending the hospitalization for an additional 3 months.

18. On 5.6.2009, Dr. Vorgraft presented another opinion. The opinion stated that the Minor's physical condition had improved, but that he was without change in his mental condition and that he spends most of his time in stereotypical rituals rocking in a fixed posture and mumbling to himself. He eats and drinks very little and sometimes excretes on himself. The opinion also stated that it is noticeable that the mother's presence increases the Minor's stress, who frequently responds with outbursts of crying or shouting and throwing objects. Dr. Vorgraft's conclusion was that the if the Minor is not treated, there is a danger to his development and even to his life, and requested the court to extend the period of the hospitalization order 3 more months according to Article 3E(C). It was also stated that the department will cooperate with transfer of the Minor to another department that agrees to accept him. Dr. Vorgraft requested that the number of the mother's visits be reduced, because they do not contribute to the Minor's recovery.

19. On 5.7.2009, the Child Welfare Officer petitioned the court to extend the hospitalization order for three additional months (hereinafter: "**the Additional Petition to Extend the Hospitalization Order**") in accordance with Article 3E(C) of the Youth Law, and this based on the decision of the psychiatric committee and Dr. Vorgraft's opinion. On that date, the child welfare office requested Dr. Greener, the District Psychiatrist (hereinafter: "**the District Psychiatrist**") and his deputy to write an opinion regarding the Minor for a court petition to extend the hospitalization order. To that end, the Child Welfare Officer even submitted Dr. Vorgraft's opinion, but an opinion on their behalf was never submitted.

20. On 5.10.2009, the Juvenile Court ruled, without summoning the parties, to extend the hospitalization order for another 3 months, based on the recommendation of the psychiatric committee. In the ruling, it was determined that in order to extend the hospitalization order, there is no need for the District Psychiatrist's authorization. The Court accepted the petition to limit the mother's visiting time and left it to Dr. Vorgraft's discretion. In the continuation of this ruling, Dr. Vorgraft decided to limit the mother's visting hours to only one hour per day.

The Appeal before me today concerns this last ruling.

On 5.14.2009, the Appellants submitted an urgent petition to the Lower Court to reconsider its ruling, and petitioned to add psychologist Dr. Naomi Cohn's opinion. The petition claimed that the flaws in the ruling concerned extension of the forced hospitalization, as well as the absence of the District Psychiatrist's opinion. The Child Welfare Officer consented to the petition, but objected to its content. The Lower Court set a hearing for the petition for 6.29.2009, and ordered the Child Welfare Officer to submit a current opinion from the hospital, including a social work report.

Since the Appeal before me was submitted and is being heard by me, the other hearing that was set by the Juvenile Court

was not held.

21. Following the court ruling of 5.10.09, a series of correspondences between the pertinent entities ensued, and we will present the chronology of events in full.

On 5.11.2009, the District Psychiatrist and his deputy wrote to the Honorable Judge of the Lower Court. The two complained that their position with regard to forced hospitalization had not been requested, had not come before the psychiatric committee and before the judge at the time of the ruling, and that the Minor's forced hospitalization had been extended without him being declared a "ward of the state." It was claimed that in such a situation, the Court's ruling was against the law. The District Psychiatrist supported the right of the family to receive a second opinion, and to obtain treatment in another location of its choosing, especially since there was no significant improvement in the Minor's condition during the hospitalization. According to the District Psychiatrist, it was in his authority to determine the location of the hospitalization and the treatment, therefore **"We hereby express our impassioned plea to the Honorable Court to correct that which demands correction, and to approve our determination that the Minor Mr.... be transferred for continued hospitalization and treatment at the Child and Adolescent Department at Shalvata Hospital – immediately!"** A copy of the letter was sent to the Director of the Court Moshe Gal, to the President of the Shalom [Lower] Court, Haifa, Hon. Judge Ehud Rakam, and to Dr. Oscar Ambon, Director of "Sieff" Hospital, Zfat.

The Child Welfare Officer of … Regional Council and the national child welfare officer of the Youth Law, responded to the letter, by court order.

22. The Director of Shalvata Hospital, Dr. Shmuel Krone, in his letter of 5.17.2009 to the District Psychiatrist, clarified that Shalvata Hospital cannot accept the Minor for hospitalization and in any case, the District Psychiatrist of the Northern District does not have the authority to transfer him there or to write to the Court with a request to transfer him there. At the same time, Dr. Krone wrote to the court with a request to disregard the District Psychiatrist's letter, with reference to Article 32 of the Treatment of the Mentally Ill Law that deals with transfer of a patient from one hospital to another.

On 5.18.2009, the District Psychiatrist replied to the Director of Shalvata Hospital that his letter to the Court regarded a purely legal issue. The letter, sent by mass mail to various entities, included legal wrestling and wrangling that I do not view necessary to consider for this appeal.

23. On 5.26.2009, the President of the Shalom [Lower] and Juvenile Court Hon. Judge Galit Vigotzky-Mor replied to the District Psychiatrist and his deputy's letter. The letter stated that the District Psychiatrist's legal interpretation was mistaken, that the request to the court that gave the ruling was not done in accordance with the law nor with the legal procedures set by the law, and that since the District Psychiatrist is not a party to the ruliing, he is not permitted to write to the judge requesting a change in the ruling. To the extent that one of the parties deems that there has been a mistake in the ruling, it has the right to appeal it. The District Psychiatrist was also referred to the provisions for confidentiality that apply to procedures according to the Youth Law, and to the fact that submitting his letter to entities outside the judicial system constitutes a violation of those provisions and injures the Minor.

The District Psychiatrist and his deputy responded in a letter of 6.1.2009. They claimed that in their letter they had not requested the Court to change its ruling; their goal was to make an impassioned plea out of concern for the well-being of the Minor, and for his rights with regard to the question of the location of his hospitalization. The two repeated their legal claims regarding the matter of the proceeding.

The proceedings of the Appeal

24. And it came to pass, after these things, that on 6.14.2009, the Minor and his mother filed an appeal on the ruling of the Lower Court to extend the hospitalization order, the Appeal that is the subject of this verdict. The Appellants have various claims that concern flaws in the proceedings that led to the forced hospitalization of the Minor and extension of the forced hospitalization order, and reservations regarding the substance of the ruling to extend the forced hospitalization.

The Appellants attached clinical psychologist Dr. Naomi Cahn's opinion of

5.15.2009, according to which the Minor is trapped in a chaotic agonizing psychotic state, his ability to be rallied to the treatment depends on establishing a dependable, calm and balanced environment, and in the tense atmosphere that has been created around his bedside, he is unable to cooperate with the treatment. Therefore, Dr. Cahn recommended removing the Minor from the forced hospitalization setting and to find a different setting for him, open and containing, in which the mother, who is a supportive factor to whom he is very attached, would be included. In reply to the questions for clarification the legal guardian sent her, Dr. Cahn explained that in her view, it is possible to allow the mother to take the Minor back to Tibet to receive treatment.

25. On 6.22.2009, a hearing on the Appeal was held. Dr. Vorgraft updated that three days prior, drug therapy for the Minor had been stopped, in order to examine if the symptoms he suffers from were due to side effects of the medication or were ongoing 'rituals.'

At the hearing, the mother claimed that the Minor's condition was a result of meditation that cannot cause serious mental illness. In her view, this is a well-known and common phenomenon among meditators in Tibet called "sok-lung," for which the treatment is behavioral by means of play and ongoing personal care. The mother showed the court photographs of the Minor prior to hospitalization and during it, from which one can ascertain the deterioration in his condition.

She also submitted an opinion by Dr. Orni Sachs, who practices Tibetan medicine. According to the opinion, the Minor entered a "sok-lung" state, a well-known phenomenon resulting from meditation, in which a person becomes withdrawn, reacts minimally to the surroundings, suffers from lack of sleep, and from repetitive symptoms, and involuntary urination is common. The required treatment for this condition is strengthening medicinal herbs, constant stay in the company of close people, ongoing physical contact , and mainly games and songs.

26. At the end of the hearing, I brought the parties to agreement, without either party admitting to the claims of the other, to request the District Psychiatrist to submit an opinion in accordance with the Youth Law, regarding the actual need for forced hospitalization. The parties also agreed to jointly request the Director of Mental Health Services, in accordance with Article 32(B) of the Treatment of the Mentally Ill Law, to examine the possibility of ordering the transfer of the Minor to another hospital, Shalvata or Abarbanel. This agreement was given the power of a ruling. It was further determined in my ruling that "**although the court is convinced that the District Psychiatrist does not require an order or request of the court in order to express his opinion, so that the opinion not be delayed, I order the District Psychiatrist to submit his opinion by 6.29.09. I order the attending physician to submit an updated opinion within 48 hours. The District Psychiatrist is entitled to any additional material he deems relevant, including any opinion that he deems relevant.**" Moreover, I ordered the Director of Mental Health Services to exercise his authority in accordance with Article 32(B) of the Treatment of the Mentally Ill Law.

Another hearing, to the extent needed, was set for 7.9.2009.

27. On 6.28.2009, the District Psychiatrist and his deputy filed a notice with the court. The notice stated that the Deputy District Psychiatrist had requested the state legal counsel [for him to] attend the hearing that was held, and to voice his professional opinion, but she had denied his request. Thus, a situation was created in which Dr. Vorgraft was given the opportunity to voice his professional opinion, without the opinion of the District Psychiatrist being voiced. Therefore, the two requested to exercise their right and their professional duty to be present at the coming hearing and to voice their opinion regarding the hospitalization of the Minor and his transfer to another hospital.

The District Psychiatrist and his deputy claimed that there were substantial flaws in Dr. Vorgraft's three opinions (of 4.5.09; 5.6.09; 6.23.2009 [sic]), and therefore they could not approve them. They also claimed that there had been procedural flaws in the proceedings that led to the forced hospitalization, and that the proper route for forced hospitalization is provisional on declaring a minor a ward of the state, and not through Articles 11-12 of the Youth Law. However, it was stated in the notice that "**there is no dispute regarding the Minor's mental health condition, regarding the need for treating it, the need for treatment with hospitalization and the need for forced hospitalization with a court order for treatment.**" Therefore, the two aforementioned recommended hospitalization of the Minor

in a child and adolescent psychiatric unit in another hospital, in light of the crisis of confidence between the mother and the treatment team.

28. In my decision of 6.30.2009, I clarified that the court would welcome the presence of the District Psychiatrist and his deputy at the coming hearing, however, they were represented at the previous hearing by the Attorney General. In any case, that which was stated in the letter was like bursting into an open door, since in any case it was agreed to transfer the Minor to another hospital. It was also determined that "**it is incumbent upon the District Psychiatrist to present his opinion as requested in the above ruling, which explicitly stated that he is entitled to 'to any additional material he deems relevant, including any opinion that he deems relevant.'**"

We will jump ahead and state that until the hearing of 7.9.09 and altogether, the District Psychiatrist did not find it necessary to submit his opinion as ordered. At the hearing, he repeated and explained that according to him, the entire proceeding had been conducted inappropriately, and he therefore abstained from submitting his opinion.

29. On 6.30.2009, the Appellants notified that despite the agreement to transfer the Minor to another hospital, they insist on holding another hearing on the date set, since it is their intention to deny the very need for hospitalization. On 7.6.2009, the Appellants filed an urgent petition to order postponement of transfer of the Minor to Abarbanel Hospital, and in my ruling on that day, I postponed the execution of the transfer, despite the fact that the petition was filed at the very last possible minute.

On that same day, the Appellants submitted an opinion on their behalf, by child and adolescent psychiatrst Dr. Aaron [Alan] Flashman, the bottom line of it being that the Minor's best interest is not continuation of hospitalization, but rather his immediate release to his mother. Later on, we will discuss that which was stated in his opinion.

Due to the importance of the matter, we have provided a lengthy detailing of the facts, and a description of the "internecine wars" between different entities in the health system, hence, apologies to the reader. Thus, the District Psychiatrist claimed that there were flaws in the proceeding that led to the forced hospitalization of the Minor, as well as in the proceeding for its extension, mainly that the Minor had not yet been declared a ward of the state, and therefore the Juvenile Court could not employ the provision of Article 3E of the Youth Law. The Appellants joined this claim.

The District Psychiatrist's approach was **NOT** supported by the Attorney General's legal representative, who was supposed to have represented his position and the position of the Ministry of Health. It may be that, and I will say these things cautiously, that this interpretation may not be supported by other district psychiatrists in other areas of the country, such that the problem that arises is mainly in the Northern District. Since the parties involved in the matter are legally invested with the authority, and since the national child welfare officer informed me of the legal controversy, regarding the Youth Law and its application, imposing hardship on the child welfare officers' work, I shall address the difficulties stemming from the legal controversies between the parties.

Forced hospitalization of a minor – the relationship between the Youth Law and the Treatment for the Mentally Ill Law

30. The normal context for forced hospitalization of minors is based on the Youth Law and the Treatment of the Mentally Ill Law 5751 – 1991 (hereinafter: "**Treatment of the Mentally Ill Law**") and is under the provision of the Patient Rights Law 5756 - 1996.

In 1995, the Youth Law and the Treatment of the Mentally Ill Law were amended with all that regards psychiatric hospitalization of minors. The purpose of the amendment was to determine the authority of the Juvenile Court with all that regards forced hospitalization of children and adolescents, to reduce and to define the reasons for hospitalization, to adjust them for juveniles and their special needs, and to allow the court to consider the entirety of interests, medical problems, the family and social context, and the best interest of the Minor – see explanatory remarks to Bill 2247 of 5754 [1994], p. 224.

So, for example, reasons allowing for treatment were added - examination and forced hospitalization also in the event of a mental disturbance, to be distinguished from a mental illness, as required by the Treatment of the Mentally Ill Law - and the authority to enforce treatment was transferred to the Juvenile Court. It seems that the amendment created a problem of duplication and lack of "synchronization" between the laws – Razik Hawald, Dr. Alexander Grinspoon, "The Treatment of the Mentally Ill Law in Israel: its development to date

and recommendations for the future," **Medicine and Law** 35 (2006) 100, pp. 106-108.

We will begin our proceeding with the relevant provisions of the Youth Law.

The Youth Law – The Regular Route and the Emergency Route

31. The Youth Law deals with means of treatment and supervision that the social services may employ, with a court order and based on a petition by a child welfare office, with regard to minors in need. The law violates family autonomy, the natural responsibility of the parents for their children and their right to make decisions regarding their children, and its purpose is to allow intervention for the welfare of the child and to protect his physical and mental well-being. This shall only be done in extreme and difficult cases, and the public authority must adapt the type of means employed, its character and measure, to the extent of the neediness of the child.

32. There are two routes in the Youth Law:

The "**regular route**" is the high road, in accordance with which the hearing in the matter of the minor is done in two steps (similar to the two stages in the Adoption Law 5741 – 1981). The first step is declaration of ward of the state in accordance with Article 2, and the second step is the decision regarding means of treatment and supervision detailed in Article 3 of the law, including Articles 3B-3G that were added in Amendment 5755 [1995] – Family Appeal (District Court Tel-Aviv) 1161/00 **Anonymous [female] v. Child Welfare Officer of the Youth Law** (issued on 1.9.01).

In Civil Juvenile Hearing 6041/02 **Anonymous [female] v. Anonymous [male]** Verdict 58(6) 246 (2004) (hereinafter: "**Anonymous Affair**"), the Court addressed the options that define "a minor ward of the state" in Article 2 of the Youth Law, "**the minor being abandoned, neglected, involved in a crimi**nal offense or given to bad influence or criminal influence, wandering or begging, or in a location in which his physical or mental well-being is in danger. Classifying a minor as a ward of the state is directed, therefore, mainly, to children who are found in severe states of distress, when such is accompanied by harm to their natural and healthy development. This refers to acute need that requires intervention of the social service authorities for the purpose of granting assistance.**"

The ward of the state route is provisional to Article 8 of the Youth Law, by which: "**the Court shall not issue a ruling according to this law unless the child welfare officer has submitted a report and after it has given the minor, the person responsible for him, and the child welfare officer, the opportunity to claim their claims and to offer their suggestions...**"

The second route, the "**emergency route**," shall be implemented by the child welfare officer and/or the Court in extreme situations where there cannot be delay, for the purpose of preventing danger to the minor, in accordance with Articles 11-14 of the Youth Law – the aforementioned **Anonymous** Affair. Article 12 of the law, in which context the Juvenile Court ruled that "**the Court is entitled, in an interim ruling, even before hearing the minor or the person responsible for him, and before receipt of a report, to order the implementation of temporary means regarding the minor, and to authorize emergency means that were taken with regard to him by the child welfare officer...**"

33. The claims of the District Psychiatrist and the correspondence between the parties, indicate that there is an interpretive controversy regarding the relationship of the provisions of the Youth Law and the provisions of the Treatment of the Mentally Ill Law. According to the District Psychiatrist, as long as the Minor has not been declared a ward of the state according to the Youth Law, his treatment must be done in the Treatment of the Mentally Ill Law route, and therefore, the entire proceeding of the Lower Court was unlawful.

The District Psychiatrist's interpretation is not outlandish, and ostensibly, has order and logic that are attractive at first glance. According to him, each law is unto itself, and one jurisdiction does not overlap with the other: the provisions regarding forced hospitalization of a minor in the Youth Law route shall apply where the minor has been declared a ward of the state. The provisions regarding forced hospitalization of a minor in the Treatment of the Mentally Ill Law route shall apply, as long as the minor has not been declared a ward of the state.

The Treatment of the Mentally Ill Law specifically addresses the forced hospitalization of minors in Articles 5(C)-(D) of the law. Articles 9-10 of the law authorize the District Psychiatrist to issue a hospitalization order for 7 days, that can be

extended another 7 days, as was done in this case, and then the decision is transferred to the psychiatric committee.

Let us lay before us the relevant provisions of the Treatment of the Mentally Ill Law (emphasis mine – Y.A.):

"**5. Emergent hospitalization by the director** (medical director of the hospital – Y.A.)

(A)...

(B)...

(C) If the minor was brought to the hospital by a child welfare officer, the director is entitled to accept him for hospitalization, against his will, after he was examined as stated in Article 3, even if the conditions for hospitalization have not been met according to the provision of Article 9(A), if it was found in the examination, that there is the real possibility that the minor is ill with a mental illness, or that he has a severe mental disturbance, that are likely to pose an immediate physical danger to him or to someone else.

(D) The period of the emergent hospitalization, according to Subarticle (C), shall not exceed forty-eight hours; at the end of the said period the minor shall be released unless a hospitalization order was issued within that period or the person responsible for him agreed to the hospitalization according to Article 4A, and if the minor is 15 years old and has also agreed to the hospitalization, or the Court ordered his hospitalization according the provisions of the Youth Law."

"9. Forced hospitalization order and its validity

(A) The District Psychiatrist is convinced, based on a psychiatric evaluation, that the person fulfills the conditions that are in Article 6(1) and (2) (should be Article 6(A)(1) and (2) including two conditions: the illness of the mentally ill person, and his being a danger to himself or someone else – Y.A.) **and a causal connection exists between the two stated conditions, he is entitled to order in writing that he be brought to the hospital and shall be emergently force hospitalized.**

(B)...

(C) A hospitalization order according to Subarticle (A) or (B) (in this law – hospitalization order), shall be valid for ten days from the day of its issuance."

10. Period of forced hospitalization and its extension

(A) The period of forced hospitalization, according to the hospitalization order, shall not exceed seven days from the day of hospitalization, except according to the provisions of this law.

(B) The District Psychiatrist shall be entitled, in accordance with a request justified in writing from the director - to extend the period of hospitalization by a hospitalization order for seven additional days.

C) The psychiatric committee is entitled, in accordance with a written request justified in writing from the director

(1) to extend the period of hospitalization beyond the stated fourteen days, for an additional period not to exceed three months;

(2) from time to time, to extend the hospitalization period for additional periods, in which each one of them shall not exceed six months; if the psychiatric committee extended the hospitalization period for a period that exceeds three months, the patient, his relation or legal guardian, is entitled, at the end of the three months,

to request another hearing regarding the hospitalization from the committee.

(D)...

(E)...

Henceforth is the District Psychiatrist's claim: as long as the Minor has not been declared a ward of the state according to the Youth Law, the authority to issue a hospitalization order and to extend it, is granted to the District Psychiatrist, and afterwards to the Adolescent District Psychiatric Committee, and this is the method the Court should have followed. Article 12 of the Youth Law does not authorize the Court to issue a hospitalization order in the case of ostensible ward of the state, except as a temporary aid for examination and observation.

34. Despite the ostensible logic of the District Psychiatrist's interpretation, my view is not as his view, and I shall justify my conclusion below.

The question relevant to our issue is, if the Juvenile Court is entitled, in the context of its authority according to Article 12, to give 'interim aid' of forced hospitalization according to Article 3E of the Youth Law. In the **Anonymous [female]** Affair, the authority of the Court to order temporary removal of a child from his parents' custody in the context of Article 12 of the Youth Law was addressed. It was determined that Article 12 complements and is related to Article 11 of the Youth Law, and that an action in accordance with it demands indication of neediness of the minor, of the necessity of the means, and the need to implement them immediately. Thus was stated by President Barak:

"**...this demands the conclusion that imposing means of treatment and supervision by force of Article 12 of the law, necessitates indication of the neediness of the minor, and in addition to that, the necessity of the means, and of the need to implement them immediately. Only in these circumstances is there justification for forgoing the procedural rules of a normal procedure for determining means of treatment and supervision of a minor ward of the state (by force of Articles 2 and 3 of the Youth Law). The purpose of the aid given, in the context of an interim decision, is forever the protection of the minor's well-being...**"

Moreover, it was clarifed in the **Anonymous [female]** Affair, that a proceeding according to Article 12 of the Youth Law, implemented in the context of a regular proceeding of the Youth Law, can switch to such a proceeding, along with the proceedings in other judiciary instances, provided that the prerequisite terms mentioned are fulfilled.

35. From the **Anonymous [female] Affair**, 3 prerequisite conditions, that need to exist in order to enforce Article 12 in the emergency route, can be deduced, and these are: the necessity of the means for the protection of the well-being and welfare of the minor (the Court must be convinced that there is no other less severe means); the immediacy of the means; proof of ostensible neediness.

When all the above three conditions exist, the Court is entitled to require following the emergency route. Since in the emergency route, the ostensible neediness step and the treatment means step are done "in one stroke," I believe that the Court is entitled to require all the options of means of treatment and supervision detailed in Article 3 of the law (including Articles 3B-3G), from the light to the heavy: beginning with matters of study and education through to extreme forcible means of removal of custody and hospitalization, while matching the level of neediness with the means employed. And as was stated in the **Anonymous [female]** Affair "...**one must remember that by the force of Article 12 of the law, the Court is entitled to order various and diverse temporary means. It is entitled, for example, to order examination and observation, change of educational setting or restriction of exit from the country.**" This is how the Lower Court acted, when it followed the provision of Article 3E of the law, which will discuss further.

Examine: the interpretive difficulty, stemming from Article 12 of the law, that limits the period of the ruling to thirty days, unless it was extended by Article 14 of the law, is not hidden from my view, while Article 3E allows the Court to extend the period of hospitalization by three months, as was done in the case here. To that I will reply that the high road reaches Article 3E, after declaring the minor a ward of the state according to Article 2 of the law. But when the conditions

for the emergency route exist according to Article 12, we reach Article 3E by way of it, and from here on, the provisions of this article shall apply, with its conditions, restrictions and limitations.

36. The need for psychiatric hospitalization or psychiatric examination is likely to arise in cases of immediate danger to the physical and mental well-being of the minor. I do not believe the lawmaker wished to deny the Court the authority to order forced hospitalization as an emergency means by way of Article 12 of the Youth Law. The District Psychiatrist's interpretation means that for the purpose of forced hospitalization, would require acting by the "regular route" and first declaring the minor a ward of the state, a proceeding that is likely to take many months until receipt of a report, and this case will demonstrate this.

If we follow the method of the District Psychiatrist, then after 14 days of forced hospitalization with the District Psychiatrist's hospitalization order, a child and adolescent psychiatric committee is likely to order extension of the forced hospitalization of the minor for a period of three months and afterwards for periods of six months – Articles 10(C)(1) and (2) of the Treatment of the Mentally Ill Law, all without the involvement of the Youth Court. It is difficult to square this as being the necessary outcome, as long as the minor has not been declared a ward of the state. This was not the intention of the lawmaker, when he added Article 3E to the Youth Law in Amendment 5755 [1995], that determines that the first extension of forced hospitalization shall be for 30 days only. The intention was that the supervision of the forced hospitalization of a minor would be done from the start with rapid intervention, to the extent possible, by the Youth Court, with a shortening of the determined periods set in Article 10 of the Treatment of the Mentally Ill Law.

And from a different angle: sometimes, following immediate and focal intervention of the Youth Court by way of the emergency route set in Article 12 of the Youth Law, there is no further need for court intervention, for example, when the parents of the minor consent to hospitalization or examination. Thereby, the need for putting the minor and his family through a ward of the state proceeding is unneccesary, with all that such entails.

37. Substantiation for such can be gained from the language of the law. Article 11(B) of the Youth Law specifically instructs that the child welfare officer is **NOT** authorized to order, in the context of emergency means, the psychiatric examination of a minor or his hospitalization without his parents' consent. For this, the child welfare officer is entitled to petition the District Psychiatrist, in order for him to examine whether to exercise his authority according to Article 6 of the Treatment of the Mentally Ill Law, and subject the minor to a psychiatric examination, and the child welfare officer is entitled to bring the minor to the hospital for an examination for the purpose of a decision, in accordance with Article 5 of the Treatment of the Mentally Ill Law.

Aside from that, Article 12 of the Youth Law grants the Court broad authority to approve emergency means which the Child Welfare Officer employed in accordance with Article 11, and also to order the employment of temporary means with regard to the minor. Article 12 does not qualify the authority of the Court regarding psychiatric examination or medical hospitalization of a minor, and neither in Article 11 regarding the child welfare officer, from which it can also be learned regarding Article 12 with regard to the Court. It is also indicated from the words of Judge Prokachiya in the **Anonymous [female]** Affair:

"**As to the means of removal of custody from the person responsible and for executing psychiatric examinations or hospitalization, various restrictions were established regarding the use of emergency powers by the child welfare officer. According to Article 12 of the law, the Court is entitled to issue an interim ruling regarding implementation of temporary means and for approval of emergency means that were implemented regarding the minor by the child welfare officer. The ruling is limited in time and may be extended under certain conditions (Article 14 of the law).**

Despite the affinity between Article 12 and Article 11 of the Youth Law, Article 12 stands alone, as is stated in High Court of Justice 558/81 **Anonymous [male] v. The State of Israel**, Israeli Verdicts 36(2) 551 (1982):

"As regards this matter, the Juvenile Court is not dependent upon the child welfare officer's decision; an interim ruling of the Court in accordance with Article 12 has independent existence by the power of the law, without regard to the question, if the child welfare officer was justified at the time of implementation of emergency measures or if she was entitled to do so. The Court's ruling

in accordance with Article 12, which is extended by Article 14, stands on its own, and constitutes an authoritative judicial interim ruling, reflecting the opinion of the stated judicial instance with regard to what the minor needs at a specific period, to which the interim ruling relates."

38. To this should be added two additional aspects for which the lawmaker sought to transfer, as quickly as possible, the matter of the minor to the Juvenile Court route.

First, the lawmaker sought to prevent the minor's stigmatization as "mentally ill," a condition required by Article 6 of the Treatment of the Mentally Ill Law, for the purpose of issuing a forced hospitalization order, in accordance with Article 9 of the law, while the Youth Law suffices with the minor being diagnosed with a severe mental disturbance.

Secondly, a mental illness is likely to congeal over many years. It seems to me that few child and adolescent psychiatrists would dare to diagnose a minor, already, at a young age, as mentally ill.

39. The District Psychiatrist's and the Appellants' claim, that also for the purpose of **extending** the order, the Court requires a District Psychiatrist's opinion, is not based in the letter of the Youth Law and I do not accept it. We find support for this conclusion in the provision of Article 3D, regarding treatment of the mentally ill in a clinic. Even in this provision there is an extension mechanism for the treatment order, based on the attending physician's opinion alone, without the opinion of the District Psychiatrist, that is required solely for the purpose of issuing the first order – and see Permission for Civil Appeal 1943/06 **Anonymous [plural] v. Anonymous [female]** (issued on 4.16.2006) in which the matter of psychological treatment of a minor girl was addressed.

40. There is no dispute that ordinarily it is preferable to employ the "high road," and to declare a minor a ward of the state, and to reach the provisions of Article 3E regarding forced hospitalization by that route. However, given the conditions for implementing the emergency route in accordance with Article 12, and where the Court is under the impression that declaration of a minor as a ward of the state is likely to be long, and there is urgent need to order forced hospitalization of a minor, it is possible to reach the provisions of Article 3E also by way of Article 12 of the law. To the best of my knowledge, this is also the customary practice in the Juvenile Courts in Israel, and as is known, customary practice also has weight when we interpret the law – see, for example, High Court of Justice 6395/98 **Alkoshi v. Ministry of Defense Compensation Officer** Verdict 54(1) 454, 462 (2000); Permission for Civil Appeal 3527/96 **Chachkes Axelbard v. Director of Property Tax Hadera Area**, Verdict 52(5) 385, 407-408 (1998) and the references therein. For an opposing view, in accordance with which the weight of the practice for solving a problem of interpretation has the weight of a feather, see the view of Judge Hashin in High Court of Justice 3648/97 **Stemka v. The Minister of the Interior**, Verdict 53(2) 728, 742-743 (1999).

We shall therefore try to do the best we can to "synchronize" the provisions of the two laws:

In an acute situation in which a minor reaches the hospital, and needs to be force hospitalized immediately, the provisions of Article 5 of the law, for hospitalization for 48 hours by order of the hospital director, shall apply. Concurrently, the District Psychiatrist is entitled to issue a hospitalization order for a period of up to seven days, and to extend it for seven additional days, by his authority in accordance with Article 10(A) and (B) of the law. Such was done in this case.

The child welfare officer needs to ensure to bring the Juvenile Court into the picture as soon as possible. When the Juvenile Court is in the picture and orders forced hospitalization by power of Article 12, the minor passes from the Treatment of the Mentally Ill Law route to the Youth Law route. (Parenthetically: in the first two weeks of forced hospitalization, there may be parallel authority of both the District Psychiatrist and of the Court – this by the power of his authority to give a hospitalization order in accordance with Article 9 of the law and the other by power of Article 3E of the law, and see Article 20(B) of the Youth Law, that was also amended in 5755 [1995] that determines that " **the powers of the Court in accordance with Articles 3B to 3G, are in addition to the powers granted to the District Psychiatrist or others in the Treatment of the Mentally Ill Law**").

41. At this point I will dwell on the provision of Article 3E of the Youth Law, in accordance with which the Juvenile Court ruling

was issued. We will put before us the provision of the article:

3E. <u>Hospitalization for the purpose of psychiatric treatment</u>

"(A) A Court dealing with the matter of a minor is entitled to order the minor's hospitalization in a hospital, for the purpose of receipt of psychiatric treatment, if it saw, based on the opinion of a District Psychiatrist, that was based on the opinion of a children and adolescent psychiatric specialist that examined the minor, that one of the following is fulfilled:

(1) The minor suffers from a mental illness, and the reasons for forced hospitalization in accordance with Article 9 of the Treatment of the Mentally Ill Law have been fulfilled;

(2) The minor suffers from a mental illness, or has been diagnosed with a severe mental disturbance, that is likely to immediately physically endanger him or someone else, or cause severe mental damage to his development, if he is not treated by hospitalization as stated, provided that the Court does not order the hospitalization of the minor, unless it is proven, based on the opinion of a child and adolescent district psychiatric committee that examined the minor, that it is not possible to treat the minor except by hospitalization.

(B) A Court dealing in the matter of hospitalization of a minor in accordance with Subarticle (A)(2), is entitled to order the minor or the person responsible for him, to require the minor to appear before a child and adolescent district psychiatric committee for the purpose of his examination.

(C) An order in accordance with Subarticle (A)(2), shall be for a period determined by the Court, and shall not exceed 30 days; the Court is entitled, based on the recommendation of the child and adolescent district psychiatric committee, in accordance with which the minor continues to fulfill the conditions for hospitalization according to Subarticle (A)(2), and accompanied by a treatment plan, to extend the period of the order for additional periods, where any one of them shall not exceed three months."

The Article lays out two routes:

<u>The First Route</u>: The minor suffers from a mental illness <u>and</u> the reasons for forced hospitalization have been fulfilled in accordance with Article 9 of the Treatment of the Mentally Ill Law.

<u>The Second Route:</u> The minor suffers from a mental illness or serious mental disturbance, that is likely to pose immediate physical danger to himself or someone else, or cause serious harm to his development. The conditions for hospitalization by this route are the presentation of the opinion of a child and adolescent district psychiatric committee that examined the minor, that found that it is not possible to treat him except by hospitalization.

For both of these routes, two opinions need to stand before the Court: **the first**, by the child and adolescent psychiatric specialist that examined the minor; **the second**, by the District Psychiatrist that is based on the opinion of the psychiatric specialist. We are speaking, ostensibly, of two alternate routes, where Articles (B) and (C) shall apply only to the second route, in accordance with Article (A)(2). It seems to me, that the route of Article 3E(A)(2) is the preferred route, so that the Court can consider the opinion of the child and adolescent psychiatric committee. I myself wondered why there is any need for 3E (A)(1), also since, ostensibly, an order issued in accordance with this article, is not limited in time, but also cannot be extended. Hence, the Deputy District Psychiatrist mentioned in the hearing, that in all his 15 years of appointment, he has never used this article, except in this case, since the psychiatric committee could not convene due to the Passover holiday. Hence, the article is perceived by the people in the profession as intended for emergency situations, solely as a temporary means, as long as the committee has not convened. It seems to me that it would be good if the lawmaker were indeed to combine Article (A)(1) for emergency situations, until the convening of a child and adolescent district psychiatric committee.

In this case, it is not clear why Article 3E(A)(1) was used from the outset. On 4.8.09, the District Psychiatrist approved the opinion of a psychiatric specialist in accordance with 3E(A)(1), but this was after the child and adolescent psychiatric committee convened on 4.6.09 in Nes Ziona, so it was possible to approve the opinion

in accordance with Article 3E(A)(2). In any event, after the child and adolescent psychiatric committee convened a second time, the Juvenile Court continued its work "in the route" of Article 3E(A)(2), and ordered the extension of the hospitalization by 30 days, in accordance with Article 3E(B), and afterwards for an additional three months, in accordance with Article 3E(C).

The District Psychiatrist's conduct and his relationship with the attending physician

42. Before we continue, I will address the picture that appears to the Court in this case.

The ordering of forced hospitalization of the Minor, was done by a hospitalization order issued by the District Psychiatrist on 3.30.2009, in accordance with Article 9 of the Treatment of the Mentally Ill Law, and by its extension by 7 additional days. In this period, the social service entities worked to prepare a petition to the court and to gather the relevant documents. Dr. Vorgraft, the attending physician at Sieff Hospital, Zfat, wrote an opinion, the child and adolescent psychiatric committee convened in the absence of the Minor, due to his medical condition, and a request was made to the Deputy District Psychiatrist so that he could issue his opinion based on Dr. Vorgraft's opinion.

Due to their position, in accordance with which the Youth Law is not required, as long as the Minor has not been declared a ward of the state, the District Psychiatrist and his deputy refused to grant their opinion in reply to the Child Welfare Officer's request, except by Court order. But even when the Juvenile Court ordered the District Psychiatrist to prepare an opinion, he ignored this order and maintained his position. Even when this Court ordered the District Psychiatrist to prepare an opinion, in its ruling of 6.28.09, and again ordered such in its ruling of 6.30.09, the District Psychiatrist continued to insist on his position, and ignored the Court orders. I will note that since I have been aware of the controversies between the Sieff Hospital Department and the District Psychiatrist, I determined in my above ruling that for the purpose of his opinion "**...the District Psychiatrist is entitled to any additional material he deems relevant, including any opinion that he deems relevant.**" However, this order was also fruitless, and the District Psychiatrist did not send an examiner on his behalf for the purpose of preparing an opinion. Instead of an opinion, the District Psychiatrist sent letters and launched missives regarding Dr. Vorgraft's "sparse" opinions.

I am willing to assume that the District Psychiatrist firmly believes in his interpretation of the provisions of the law. However, with all due respect to his way of interpreting, he is not appointed to interpret the law, however, the Court is. If the District Psychiatrist thought that the Court was mistaken in its ruling, the correct way would be to appeal the Court ruling, and not to blatantly ignore urgent requests by the Child Welfare Officer (of 4.7.09 and 5.7.09), the Juvenile Court order, and the District Court order to submit an opinion. We were privileged to correspondence and to unneccesary wrangling between the District Psychiatrist and his deputy, the Court and additional entities (such as the director of Shalvata Hospital), when their job is professional and not legal, and for legal matters they are represented in Court by the State legal representative – Amnon Carmi, **Health and Law** (Volume A) 2003, p. 842 and references therein.

In the end, and after almost four months of hospitalization of the Minor, there is no opinion by the District Psychiatrist before the Court. The District Psychiatrist has not been helpful by such, to say the least, to the Child Welfare Officer or to the Court in their work, and this is regrettable. As a rule, all the entities involved should cooperate with the Child Welfare Officer, to be enlisted and to do everything possible in order to provide the opinion as soon as possible, so that it will be possible for the Court to make an informed decision in the context of the required conditions for the purpose of forced hospitalization under Article 3E of the Youth Law. I cannot but adopt that stated in the final section of the Child Welfare Officers' letter of 5.13.09: "**...We wish to express our surprise at the manner in which the District Psychiatrist brought the matter before the Court. To our regret, as to issues that concern the District Psychiatrist, we did not receive his willingness to help, nor his opinion... the matter of the Minor... requires the enlistment of the therapeutic entities in order take care of his well-being and to act for his welfare. Conflict between professionals shifts the discussion from the essential to**

the extraneous. It would be good if everyone restored the Minor to the center of the discussion."

43. The Court was exposed, not to his benefit, to the murky relationship that exists between the District Psychiatrist and the Psychiatric Department in Zfat. Things have reached such an extent, that Dr. Vorgraft and Dr. Elana Farbstein came to the hearing accompanied by the hospital attorney. The District Psychiatrist sent the Court a letter in which he he heaped "compliments" on Dr. Vorgraft's opinion, to which Dr. Farbstein replied, in a letter in which the bottom line was "**Dr. Griner's and his deputy's conduct create difficulties, harm the treatment given by the hospital to the adolescents, and are inconsistent with criteria for professionality and responsibility.**" In the course of the hearing on 7.9.09, the District Psychiatrist even claimed that the hospital in Zfat notified him that they are discontinuing contact with him, and he, from his side, notified Dr. Vorgraft that he is removing his recognition of him as an examiner on his behalf.

I further learned from the District Psychiatrist that there is a problem convening the adolescent district psychiatric committee for the northern district, due to lack of experts in the northern region, as arises from the case herein, as the committee convened first in Nes Ziona, and then in Tirat Hacarmel.

The picture revealed to me is not appealing, to say the least, and it would be good if the Ministry of Health would put order in its kingdom in the northern region.

At this point we will return and examine the matter of the Minor, and will first remove several claims from our path, that were raised by the Appellants.

Was ostensible ward of the state proven for the purpose of this proceeding?

44. In the **Anonymous [female]** Affair it was determined that implementing emergency measures of the public authority proves, among other things, that the minor is an ostensible ward of the state.

As stated, on 4.6.2009, the Child Welfare Officer petitioned the Court with two petitions at the same time – a petition to declare the Minor a "ward of the state" in accordance with the regular route (Ward of the State Case 3380-04-09) and an interim petition for forced hospitalization of the Minor, in accordance with Article 12 of the Youth Law (Hospitalization Order 3372-04-09). As was also clarified by the Lower Court in its ruling of 6.21.2009, all the proceedings for forced hospitalization of the Minor were done in the context of the interim petition and in accordance with Article 12 of the Youth Law.

To date, the Minor has not yet been declared a ward of the state by the Lower Court. At the hearing held before me on 6.22.2009, the Child Welfare Officer explained that the family was not known to the social services entities prior to 03/09, and for the purpose of declaring a minor as a ward of the state, it is necessary to have a report and to gather material and facts regarding the family, and at this very time, the report is being prepared as ordered in Article 8 of the Youth Law.

The Appellants claimed that the conditions for declaring the Minor a "ward of the state" did not and do not exist, and therefore there was no place to violate the Appellant as the person responsible for the Minor by her being his mother, and it is her right to be involved in his medical treatment.

Although it was not explicitly written in the Lower Court's ruling, it seems that there was no controversy between the professional entities, including the District Psychiatrist, the attending psychiatrist, the child and adolescent psychiatric committee, the legal guardian and even in the view of the Appellant herself, up until a certain stage, that the Minor was in need of hospitalization, for if not, his life would be in danger. However, in order to declare the Minor a ward of the state, it is insufficient that "**the physical and mental well-being was harmed or is likely to be harmed for any reason**" as stated in Article 2(6) of the Youth Law. Unfortunately, the many children in our country experience danger to their health, due to one disease or another, and this does not turn them into wards of the state. But, when the mother refused continued hospitalization, ostensible ward of the state was created, and so the required conditions for the necessity and immediacy of undertaking emergency measures of forced hospitalization were fulfilled.

In sum, when ostensible neediness of the Minor has been proven, for the purposes of undertaking the emergency route in accordance with Article 12, as stated above, we reach the conclusion that it is possible to reach the provisions of Article 3E also by way of the emergency route.

Flaws that occurred in the proceedings

45. In the absence of an opinion by the District Psychiatrist, the Appellants claimed that there was a procedural flaw in the proceeding in accordance with Article 3E, that requires reliance on the District Psychiatrist's opinion. Additionally, there was a flaw in the first opinion of the adolescent district psychiatric committee, that convened with an incomplete panel of four.

For this proceeding, and with great duress, it is possible to consider as an opinion, the authorization of 4.8.09, in which the Deputy District Psychiatrist authorized Dr. Vorgraft's opinion with one handwritten line, for the purpose of Article 3E(A)(1), and based upon this, the Court issued the forced hospitalization order of 4.13.2009. At the very least, the opinion of the second District Psychiatric Committee that convened at the bedside of the Minor, can serve to mollify the sting of the flaws. On the professional level, this committee has an advantage over the District Psychiatrist, who is not necessarily an expert in child and adolescent psychiatry, as in this case.

The authority to hear the Appeal on the decisions of the Child and Adolescent District Psychiatric Committee

46. In accordance with Article 24A of the Treatment of the Mentally Ill Law, as it was amended in 5755 [1995], along with the amendment to the Youth Law, child and adolescent district psychiatric committees were established. Article 24A(E) determines that "**the provisions of this law, to the extent that they concern the psychiatric committee, shall apply, with the required changes, also to the child and adolescent district psychiatric committee, except if it has explicitly been determined otherwise.**" Article 29 of the Treatment of the Mentally Ill Law, determines that an appeal of the psychiatric committee decision shall be heard before a District Court. Hence, the Appellants' claim that the Juvenile Court was not authorized to approve the Psychiatric Committee's decision to extend the hospitalization by three months, and, at the very least, they are entitled to appeal the committee decision independently in the District Court.

We reached the conclusion that the Juvenile Court has the authority to extend the period of hospitalization. When dealing with a minor ward of the state or an ostensible ward, then according to the provision of Article 3E(B) and (C), the Juvenile Court ruling is based on the opinion of the Child and Adolescent District Psychiatric Committee. Hence, the involvement of the supervision of the Court to oversee the committee recommendation is done in practice in the Juvenile Court on a daily basis.

The involvement of the Juvenile Court and the monitoring that it exercises, in the context of Article 3E of the Youth Law, in reliance upon the opinion and recommendation of the Child and Adolescent District Psychiatric Committee, in the case of a minor ward of the state or ostensible ward of the state, removes the need for appealing the Committee's decision and supplants it. In other words, in accordance with Article 10 of the Treatment of the Mentally Ill Law, **the Psychiatric Committee is the one that decides** extension of hospitalization, and the judicial monitoring over it is the appeal in the District Court in accordance with Article 29 of the law, whereas in accordance with the Youth Law, **the Juvenile Court is the one that decides** extension of hospitalization, based on the opinion and recommendation of the Child and Adolescent District Psychiatric Committee, and the appeal of the Juvenile Court rulings is to the District Court as the sole hearer in accordance with Article 16 of the Youth Law.

In any case, and purely for precaution, since the mother's appeal concerns both the Juvenile Court ruling and the Adolescent District Psychiatric Committee decision, I will hear the mother's petition both as the instance of appeal on the Juvenile Court's ruling and with "my hat" as the instance of appeal in accordance with Article 29 of the Treatment of the Mentally Ill Law, on the Child and Adolescent District Psychiatric Committee decision.

The continuation of forced hospitalization of the Minor

47. After we reached the conclusion that the Juvenile Court acted legally via the emergency route in accordance with Article 12, and in the context of Article 3E of the Youth Law, we reach the difficult central and human question before us. The mother

appealed to order the release of her minor son from forced hospitalization, under the conditions proposed by her, including the Minor's travel restriction for leaving the country, in order to assuage the views of those who worry lest she should return and take the Minor with her to Tibet.

On the other hand, the attending physicians at Sieff Hospital, Zfat, believe that the Minor should not be released from hospitalization. The legal guardian of the Minor and the representative of the Attorney General believe that under the circumstances, the matter should return to the Adolescent District Psychiatric Committee in order to rexamine the matter of the Minor, in light of the time that has elapsed since its last decision.

I shall not deny that the decision in this case was difficult for me, and that none of the options that stand before the Court is particularly bright, considering the present condition of the Minor.

48. I will precede by stating that despite the serious disputes between the entities involved, I was under the impression that everyone engaged in the effort, sincerely and honestly wants the best interest of the Minor and is not motivated by ulterior considerations. There is no dispute that the Minor suffers from a disturbance, but the parties dispute both the question of the diagnosis and the methods of treatment. The attending physicians believe that the Minor suffers from a psychotic-catatonic state and needs psychiatric hospitalization and psychiatric treatment, while the experts on behalf of the Appellants maintain that this is a meditative state, that the Minor can get out of it with the mother's help and treatment by methods and ways that are accepted in Tibet in cases such as these.

A number of opinions were given in the matter of the Minor:

On behalf of the Respondents

(-) A quasi-opinion by Prof. Tiano, who was brought to the hospital as an advisor on 4.10.2009 – a recommendation to continue forced hospitalization and psychiatric treatment.

(-) The opinion of the Child and Adolescent District Psychiatric Committee of 5.5.2009 – a recommendation to continue forced hospitalization and psychiatric treatment.

(-) Three opinions by Dr. Vorgraft, the last of 6.23.2009 – a recommendation to extend the hospitalization order.

On behalf of the Appellants

(-) An opinion of 4.10.2009 by the psychiatrist Rodika Goichman – a recommendation to extend the forced hospitalization and psychiatric treatment.

(-) An opinion of 5.15.2009 by Dr. Naomi Cahn, clinical psychologist – a recommendation to transfer the Minor to another hospitalization setting and even to release him.

(-) An opinion of 6.21.2009 by Orni Sachs, Amji-la – a recommendation to release the Minor from forced hospitalization and to allow him to receive appropriate treatment for the diagnosis of “sok-lung.”

(-) An opinion of 7.5.2009 by the Dr. Flashman, child and adolescent psychiatric specialist – a recommendation to transfer the Minor to the mother.

Thus we see that at the beginning, the psychiatrist on behalf of the mother thought that it was appropriate to order the forced hospitalization of the Minor. Later on, as time passed, the experts on behalf of the mother maintained that the Minor should be returned to her possession.

49. As we are still approaching a decision in the matter of the Minor, let us put before us the two starting points for discussion:

A. The parent is the natural guardian of his child, is entitled to keep his child and to keep him as someone who is acting in the best interest of the minor.

B. Forced hospitalization is a serious violation of the autonomy, the choice, the respect and the self image of the mental patient and

"**it is one of the most serious and oppressive forms of deprivation of the rights of a person.**" Petition for Release 196/80 **Toledano v. The State of Israel**, Verdict 35(3) 332, 336.

Forced hospitalization of a minor against the wishes of the parent, therefore violates the two constitutional and natural rights – that of the parent and that of the minor. The violation of these rights needs to be proportionate. A means should be implemented that realizes the goal of the Youth Law and of the Treatment of the Mentally Ill Law, in a manner in which injury to the minor is slightest. Forced hospitalization is an extreme measure, and should only be implemented if it is not possible to ensure the well-being of the minor by a more moderate means – compare Criminal Request for Appeal 2060/97 **Vilnachik v. The District Psychiatrist of Tel-Aviv**, Verdict 52(1) 697, 708 (1998); **Anonymous [female]** above Paragraph 8 of her verdict by Judge Prokachiya. The Court ruling is therefore not derived only from medical considerations, but needs to balance the various considerations that do not have a medical character – **Vilnachik** above.

In light of these starting points, let's examine the matter of the Minor.

50. It seems that the mother bears the responsibility for the current condition of the Minor. The mother uprooted her son from his natural environment in Israel to Tibet at the age of 12, did not take care to integrate him into a school, exposed him to the spiritual teachings of the East at a young age, and allowed him to engage at meditation at his age for many long hours a day, which brought him, also according to the mother herself, to his current condition.

However, forced hospitalization is not intended to punish the Minor or his mother. It is not the role of the Court to "judge" the mother on her lifestyle or beliefs, and her being involved in spiritual searching and various Buddhist teachings. The question that concerns our matter is, if the mother can be relied on today to care for the Minor properly if he is released from forced hospitalization.

Against the mother I will hold her behavior in the hospital, which led to a situation in which the hospital had no choice but to petition a distancing order against her. I trust the description in Dr. Vorgraft's opinion of 5.6.09, where he writes that "**the mother complains a lot to the staff, raises her voice, and refuses to listen to the staff instructions, interferes repeatedly with the work of the nursing staff, inappropriately contacted the other adolescents on the ward or photographed on the ward against what is accepted and permitted.**"[4] I also trust the words of Adv. Grunfeld, the Minor's legal guardian, that he visited the hospital and was impressed by the efforts and investment in the treatment that was given to the Minor. Hence, the main reason for the lack of faith that was created between the hospital and the mother, lies mainly with her.

On the other hand, the mother did not deny the Minor's condition. On the contrary, the mother acknowledged that the Minor entered into an abnormal state that he needs to be extricated from - in her view, a meditative state called "sok-lung," known in Tibet among young people who engage intensively in meditation. When the mother saw that the Minor was in danger, she went to the doctor and to the hospital, she acknowledges Western medicine and is willing to be helped by it. She is grateful for the hospital treatment that led to an improvement in her son's condition, and, in her words, that was precisely the reason for which she brought him to the hospital, and had he been released at that stage, she could have continued taking care of him (see the photographs that she submitted to the court file in which we can see the Minor drawing after 4 days of treatment in the hospital). Also, Dr. Flashman, in his opinion and in his words in Court, insisted that the mother acknowledges Western medicine and that this is a responsible woman who can take care of her son and who can ask for help if she needs it.

We shall recall that the Minor has not yet been declared a ward of the state, and it has not been claimed, and in any case has not been proven, that the mother does not have parental competency to care for her son.

And finally, we will again recall the starting point with regard to the natural and constitutional right of the parent to keep his child; "**Violation of this right is not only a violation of the legal right. It reflects directly on the best interest of the child, who is naturally in need of the natural parental custody that consists of blood relations that are forever**

4 Mother's comment: Although the court ruled that Dr. Vorgraft's opinion was not credible, the court arbitrarily accepted and cited portions of it. In fact, the nursing staff frequently harrassed the mother during visits, when the mother and child were engaged in activities together, such as reading, watching a movie, and so on, shouted at the mother, and removed her from the child's bedside cutting short the visits, for no apparent reason. Other visiting parents who witnessed such interactions were stunned by the blatant and unprovoked harassment. It is true that the mother photographed and documented her son's progressive demise in the hospital, documentation which was presented to the court and mentioned in this ruling.

the starting point and beginning of everything" - **Anonymous [female]** aforementioned, Paragraph 9 of Judge Prokachiya's verdict.

51. Normally, "extra" weight should be given to the attending physician's opinion, but in this case, the Appellants' work was done by the District Psychiatrist who harshly attacked Dr. Vorgraft's opinion in his letter of 6.28.09; "**In three opinions by the respected Dr. Vorgraft... there were substantial flaws and we cannot endorse them or authorize them with our signature. For example, the three psychiatric examinations in the opinion, that are supposed to be the core of every medical record and medical opinion are, to say the least, sparse, and do not meet the minimal standards of a reasonable doctor as accepted by any professional psychiatric textbook... to read, after four months of hospitalization, that 'the Minor looks young for his age' and 'it is not really possible to form an impression of the thought process and content,' with all due respect, we cannot sign this opinion that determines, at the same time, that the Minor, despite all the aforementioned, 'is in a severe psychotic state with catatonic characteristics.' After four months of hospitalization and treatment, to read in the diagnosis that 'this is probably a broad non-specific developmental disorder from the beginning of development (from birth?),'** [sic] **raises professional questions and questions of common sense... and these are just a few examples...**"

As mentioned, Dr. Vograft and Dr. Farbstein responded to this letter in a reply, in which they answered, one for one, to each of the reservations that were raised by the District Psychiatrist. I do not see the need to address this internal conflict in the health system, nor the need to determine who is professionally and medically "right." What is important for our matter is that there is an attack of the District Psychiatrist on the attending physician's opinion, in order to erode its weight. Additonally, we will recall that also today, almost four months since the beginning of the hospitalization, the District Psychiatrist's opinion is still not before the Court.

51. [sic] On the other hand, stands the opinion of Dr. Flashman, a child and adolescent psychiatrist. Although this is a private opinion on behalf of the mother, but already at the outset we have shown that the psychiatrist Dr. Goichman, on behalf of the mother, actually recommended continued forced hospitalization and psychiatric treatment, indicating that this is not an opinion "on behalf of." Similarly, I do not attribute to Dr. Flashman the slanting of his professional opinion, due to this being an opinion on behalf of the mother. My impression is that the opinion was given out of professional consideration and out of awareness of the weight of the responsibility, and after Dr. Flashman took the measure of the mother.

I will delineate below the main points of Dr. Flashman's opinion.

In the opinion it was mentioned that the Appellant's mother (the Minor's grandmother) suffered from psychoses and was hospitalized several times for extended psychiatric hospitalizations, and five years ago, the Appellant herself suffered from a brief psychosis that was accompanied by short drug treatment. Nevertheless, as for the mother's condition and her relationship with the Minor, Dr. Flashman believes that this is a woman who can distinguish between herself and her son, and has no particular psychopathology. She acknowledges the ability of Western medications to help in cases of psychosis. Although he only spent three hours in her company and was in contact with her by email and by phone several times for the preparation of the opinion, Dr. Flashman considers that, although this is a unique woman with a lifestyle that is foreign to Israeli society, she is suitable to care for the Minor, is aware of his condition and this is not a neglectful parent or someone who suffers from a mental illness.

On 6.30.2009, Dr. Flashman examined the Minor twice, once in the presence of the mother and once alone, and spent a total of two hours with him. According to Dr. Flashman, during the examination the Minor made eye contact and even smiled several times, and Dr. Flashman had the feeling of a deeply communicative gaze. His movements were not rigid or hard but soft and gentle. Other than eye contact several times, or stopping the continual movements for a few seconds, the Minor did not respond to Dr. Flashman, or to the various noises that were heard during the examination, and did not speak with him. Dr. Flashman's conclusion was that the Minor's condition does not fit the course of schizophrenia, catatonia or hallucinatory activity, and this for the following reasons:

(-) His responses do not match someone who has hallucinations or who hears voices, since the impression he gave was of listening to the person speaking to him and not to other voices, and silence or staring should not be interpreted as a sign of hallucinations.

(-) The minor lets others get close to him and can maintain boundaries of his "self" and of the meeting with the "self" of others.

(-) There are no physical characteristics of catatonia.

(-) The mother's descriptions of the Minor's condition prior to hospitalizaton do not fit the diagnosis. According to these descriptions, the Minor's disturbance began when they started moving from one place to another, the phenomena of urination and motoric changes were reversible, came and disappeared, and came again without drug treatment, which is not characteristic of schizophrenia or catatonia that generally only worsen without drug therapy.

(-) The department's behavior towards the mother worsened his condition, and since the medication was stopped his condition has not worsened and has perhaps improved.

Dr. Flashman also finds support for his conclusion in the opinions of Prof. Tiano and the District Psychiatrist, who rejected the diagnosis of catatonia and used the term stereotypic movements.

According to Dr. Flashman, the Minor's condition is prolonged and it resembles his condition at the time of acceptance to the department, **his condition is not a danger to himself or to others and this is not an emergency condition**. Since ending drug treatment, his mental condition and the condition of his neck have even improved. It is not possible to characterize or to categorize his condition according to the Western scientific literature, and the closest to his condition is what is called spontaneous trance, and is the most appropriate to a meditative complication like the Tibetan "sok lung" phenomenon. This is the most probably diagnosis now for the Minor's disturbance. This is a phenomenon that is not sufficiently clear in Western medicine, is known in Eastern culture, and we need to be open to and to make use of the experts and the knowledge that the Appellant has accumulated in the area in order to assist the Minor and to try to find a differential diagnosis. **The Minor's mother is not a danger to him but rather is mobilized in his behalf**, and any attempt to give the Minor treatment against her consent is not beneficial for him.

The bottom line of Dr. Flashman's opinion is that the best interest of the child is not continued hospitalization, since the mother does not want it, since there is no indication today for hospitalization, and therefore release of the Minor from forced hospitalization should be ordered immediately, and he should be transferred to his mother who will care for him according to her discretion without any need for social supervision.

In the court hearing, Dr. Flashman refuted the diagnosis that the Minor suffers from a broad developmental disturbance, according to the conjecture that the attending physicians raised. In response to my question and to the legal guardian's questions about the Minor, if he is aware of the heavy responsibility that he has taken upon himself in light of his conclusion, he answered confidently that he does not see any reason to expropriate treatment of the Minor from the mother and he does not see any danger in the Minor being treated by her. On the contrary, in his view the mother is the entity that is most capable of caring for the Minor.

52. Next to this opinion, it is worthwhile to mention the opinion of the clinical psychologist Dr. Naomi Cahn of 5.15.09, that mentioned that she consulted with five colleagues whose names she listed, senior experts that have worked in the field for 35-40 years. In her opinion, Dr. Naomi Cahn mentions that in her meeting with the Minor she realized that he is experiencing "**helplessness and suffering, anxiety bordering on terror from strangers, and a huge need to be comforted and held by someone he trusts, someone calming, soft and containing. The minor responds with suspicion and fear of any change in his immediate surroundings. He is responsive to feelings of affection and warmth when these are showered on him, and disconnects contact and withdraws when he senses feelings of strangeness and alienation.**" In reply to the questions directed to her from Adv. Grunfeld, she replied in a letter of 5.20.09, that it is not possible to treat the Minor in his condition without the mother's emotional help and support, as she is the most significant figure throughout his life and that "**I do not think that he needs to be forced hospitalized. The minor was raised to freedom. Freedom has been and is a most important value in his life.**" In her view and evaluation, it is even possible to favorably consider

the option that the mother would take him back to Tibet with her, just as other sick children travel in serious medical conditions for treatments abroad. Furthermore, the mother is connected with the best Tibetan professionals and she herself is a professional in the field and there is no doubt about her devotion and loyalty to her son.

The opinion by Dr. Sachs Orni, graduate of Tibetan medical studies, stated that in Tibetan medicine the phenomemon is known, in which in the course of practice the practitioner enters a state of *sok rlung*, a state in which the practitioner "**is withdrawn in himself, reacts little to the surroundings, insomnia (lack of sleep), and also repetitive motions appear. Involuntary urination is common. This is a known condition, and I have encountered, time and again, during the period of my studies there, practitioners who have reached this state.**" According to her opinion, the required treatment is "**strengthening herbal medicines, ongoing stay in the company of close people, continual physical contact and mainly many games and songs.**" In her view, the treatment the Minor is receiving in the hospital is exactly the opposite of what he needs. Instead of warmth, affection, games and songs, the Minor experiences long hours of loneliness and distance from his friends and family, and in her view his immediate return to his mother's embrace, correct treatment and support, and medical assistance, will ensure his quick and complete recovery.

53. The provisions of the Treatment of the Mentally Ill Law and the Youth Law allow forced hospitalization when the patient is an immediate physical danger to himself or others. In this case, and considering the condition of the Minor upon reaching the hospital, it seems that there is no dispute that the Minor was in actual danger, to which his mother-the Appellant also admits. The question is: Is continued forced hospitalization of the Minor the only way to ensure that he receives the necessary treatment for his well-being and safety?

We will mention the obvious, that the reason for hospitalization is to administer treatment to the minor in order to save his life, and see Article 35(B) of the Treatment of the Mentally Ill Law which determines that "**the main purpose of hospitalization of a patient in a hospital is receipt of medical treatment, and a person should not be hospitalized in order to protect the public or himself solely, except in accordance with the provisions of this law.**"

There is no dispute that the Minor is not a danger to others, and the main question that the Court should examine is what is the danger to himself if he is released from forced hospitalization. The attending physician, Dr. Vorgraft, replied to this at the hearing:

"**This is a child that needs to be fed, bathed, to try to create a connection with him, to be taken care of, and these are professional things that the child needs to receive. Since we stopped the drug treatment, his negative phenomena have increased and there is difficulty feeding him. Therefore, some of our professional role is to discuss methods of treatment, including whether or not to renew the drug treatment, and that will be done at a new location if the Court orders... If he goes home tomorrow – what is the danger – I reply that since he is in such as condition that requires feeding him in most cases, and we are feeding him not artificially, but with great investment. He needs therapeutic interaction and most likely we will need to renew drug therapy; 8 months before he was hospitalized, after the most serious symptoms started, the mother continued to travel with him and to take him from country to country despite his very serious condition. This is not reasonable treatment and therefore I think he needs to be in the hospital. He is not a danger to others. A danger to himself – he doesn't take care of himself, doesn't eat. He needs to be treated... We haven't reached the point that says "this is the child's condition and this is how he needs to remain." For this purpose, an additional hospitalization period is needed, and to make an effort with other treatments, also medications, and only afterwards will the adolescent psychiatric unit be able to decide if he needs institutional care.**"

I was not convinced by this answer that forced hospitalization is the only possible way to ensure the physical and emotional safety of the Minor. Feeding and caring can be done by the mother, in a surrounding that is suppportive of the mother. Drug treatment was stopped several weeks ago and after almost four months of hospitalization, the mental treatment amounted to nothing. We recall that the attending physicians even petitioned to treat the Minor with electroconvulsive therapy, but their opinion was not accepted, and also Prof. Tiano was opposed to this. In such a situation, I believe that it is time to consider alternate means, so that there is less injury to the Minor and the mother.

54. It shall be emphasized that I do not see the case before us as a "cultural war" between conventional Western medicine and Eastern-mystical medicine. There are those who maintain that it is difficult to evaluate and to judge normalcy and "normality" of irrational mental states that go by various names: spiritual experience, mystical experience, trance, states of connection to the universal, rituals, etc. All these are terms from the world of transpersonal psychology, a stream of psychology that deals with the intersection of Western psychology and mystical traditions around the world - "**Man at the Edge of Ego**" Mati Lieblich (Keter and Rimon Publishers, 5769 [2009]).

However, the very special circumstances of the case before us need to be taken into consideration. There is no dispute that the during his stay in Tibet, the Minor spent many hours a day meditating, and as a result finds himself in the situation he is in today (catatonic or meditative-trance). We have learned that "as it is immersed so it is emitted," [Translator's note: Talmudic verse that is a reference to the ritual cleansing of kitchen utensils for Passover use; utensils used for cold foods may be immersed in cold water, while utensils used for cooked foods must be immersed in hot water.] and in the same manner that the Minor got into his serious and unexplained condition, a manner that is unclear to the attending physicians, he must be given a chance to get out of his serious condition with the help of tools taken from that same path. This was addressed by Dr. Flashman in his opinion: "...**since Western science cannot characterize or categorize the phenomena of people who deal in these areas well, the Western approach necessitates openness to learning from people with experience in these areas. The minor's mother is a recognized expert in the area of traditional medicine including Chinese medicine, and she is humble and scientific enough to enlist experts who are more experienced than her in the area of meditation in Tibet (Document 29). She opens all the extensive information she has to anyone who will listen. There is no scientific reason whatsoever to refrain from adopting the information the mother has gathered and to determine that the Minor's condition, according to my present examination, and according to the developmental history of the disturbance (more on this below), fits a condition described as "sok lung" better, and the Minor's treatment should be planned accordingly.**"

So it is that after 4 months of hospitalization, there has been an improvement in the Minor's physical condition, and for that we thank and extend warm wishes to the hospital team for devoted care of the Minor. But the improvement in the Minor's mental status is minor, if any, and there are those who maintain that as more time passes, the condition is even worsening. Under these circumstances, I believe the Appeal should be accepted and the termination of forced hospitalization ordered.

Operative orders

55. Finally, I order the release of the Minor from forced hospitalization. Within 48 hours of receipt of this ruling. And under the following conditions:

(-) A travel restriction preventing exit from Israel against the Minor for a period of one year from today is hereby issued.

(-) The minor's mother shall submit the exact address where the Minor will stay (the address was submitted at the hearing – … Street, … , and in any event of change of address she shall notify of her intent in advance.

(-) In addition to the Minor's mother, another person will remain with the Minor at all times, at least during the first 60 days following his release. However, it is clarified that the Minor is not under "house arrest." The mother claimed that the Minor has many friends and she is requesting to take him to a surrounding with children. The Court has recorded before it the letter from Ms.... , educational director of the open school, who expressed her willingness and the willingness of other parents to accept the Minor and his mother into their homes, and to accept the Minor at school in a surrounding with other children.

(-) Dr. Flashman will report to the Juvenile Court case file and to the Child Welfare Officer, within 15 days from the day the Minor is transferred to the mother's custody, his impressions regarding the Minor's condition and the treatment he is receiving. Thereafter, Dr. Flashman will report to the Court case file after 30 days. Additionally, after 30 days, an opinion/evaluation by Dr. Naomi Cahn shall be given.

(-) The Child Welfare Officer or someone on her behalf, and also Adv. Dr. Grunfeld, the Minor's legal guardian, shall be entitled to visit the Minor at any time, at their discretion.

Nothing in the aforestated shall limit the authority of the Child Welfare Officer to order changes in care and supervision

at her discretion, such as the requirement that the Minor be examined or receive treatment by a psychiatrist or a psychological specialist.

(-) The case will return to the Juvenile Court for follow up of the Minor. In order to dispel doubt, this ruling does not restrict the Juvenile Court from using its discretion according to developments that may arise, if they arise, in the Minor's condition. Without limiting the generality of the aforementioned, the Juvenile Court shall be entitled at any time to go back and exmaine the routes before it in accordance with Articles 3B-3E of the law, all at its discretion.

Several remarks before closing

56. I order the Attorney General's representative to submit (with attention to protection of privacy as required) a copy of this ruling to the Ministry of Health legal representative considering the conduct of the District Psychiatrist and his deputy, the relations between them and the hospital, and the lack of a child and adolescent district psychiatric committee in the northern district, as stated in Articles 42-43 above.

57. The Youth Law is an arcane law, built up patch over patch. Its formulation is unclear, and as an example, I will mention that the whole subject of declaration of a ward of the state does not appear explicitly in the law, and whoever reads Article 2(6) of the law literally, is likely to reach the conclusion that any minor in a life threatening health situation is considered a child who is a ward of the state. It is time for the lawmaker, to whom the role of lawmaking has been assigned, to have his say and to install a new law. As an interim step and until a new law has been passed, I recommend amending the provisions of the law so that they fit the provisions of the Treatment of the Mentally Ill Law, in order to avoid obfuscations, such as those we have addressed in this ruling.

58. The affair has already been given wide media coverage by all the media, so in any event there is no point in prohibiting its publication. Therefore, this ruling may be publicized, but attention is called to all of those pertaining to the matter , regarding the provisions of Article 24 of the Youth Law, that prohibits publication of any particular that is likely to lead to the identification of the Minor or to hint at his identity.

Comment: In this version of the verdict, the Minor's particulars have been omitted.

Issued on this day, <the 20th of Tamuz 5769>, <July 12, 2009>, in the absence of the parties.