CrimA 3854/02

1. John Doe

v.

1. District Psychiatric Board for Adults
2. The Attorney-General

The Supreme Court Sitting as the High Court of Justice
[January 22, 2003]
*Before President A. Barak, Justices E. Mazza and D. Beinisch*

Petition to the Supreme Court sitting as the High Court of Justice.

**Facts:** The Treatment of the Mentally Ill Law-1991 provides that, when a court is of the opinion that one accused of a criminal offence is unfit to stand trial, the accused may be hospitalized. The District Psychiatric Board is responsible to review the case of such a mentally ill accused person, and it can order the accused's release from the hospital. This petition concerns the amount of time a mentally ill accused person may be hospitalized on the authority of the initial judicially issued criminal hospitalization order.

**Held:** The Supreme Court held that the treatment of the psychiatric patient must balance between the patients' rights, on the one hand, and the public interest, on the other. Forced hospitalization of an incompetent criminal defendant infringes his constitutional rights, including his liberty, his dignity, his autonomy and his self image, by imposing a stigma upon the accused long after his release from commitment. Nevertheless, the court stated, these constitutional rights are not absolute. Opposite them stand the interests of protecting public peace and safety from the accused, as well as the public interest in treating the accused and protecting him from himself. Pursuant to these general principles, the Court held that a mentally ill accused person could not be held indefinitely pursuant to an initial criminal hospitalization order. As such, the Court ordered the court that had issued the original criminal hospitalization order to review the case in order o determine whether forced criminal hospitalization pursuant to the original order had become unreasonable. The Court noted that no explicit statutory provisions governed the reexamination of such criminal hospitalization orders. As such, until the Knesset examined the matter, the Court set out guidelines for the examination of such cases in the future.

**Legislation cited:**
Treatment of Mentally Sick Persons Law-1955, §6(a)
The Criminal Procedure Law [New Version]-1982, § 170
Treatment of the Mentally Ill Law-1991 §§ 10m 15(a), 16(a), 17, 21, 24(c), 28, 28(a), 28(b) 29(a), 30(a), 35(b)

**Israeli Supreme Court cases cited:**
[1] CApp 2060/97 *Valinchik v. Tel Aviv District Psychiatrist*, IsrSC 52(1) 697
[2] VCA 2305/00 *John Doe v. State of Israel*, IsrSC 54(4) 289
[3] VCA 92/00 *John Doe V. State of Israel*, IsrSC 54(4) 240
[4] VA 196/80 *Toledano v. State of Israel*, IsrSC 35(3) 332
[5] HCJ 547/84 *Of Haemek, Agricultural Society v. Ramat Yeshai Local Council*, IsrSC 40(1) 113

**United States cases cited:**
[6] *Jackson v. Indiana*, 406 US 715 (1972).

**Foreign books cited:**
[7] R.D. Makay. Mental Condition Defences in the Criminal Law 219 (1995);
[8] E. Tollefson & B. Starkman, Mental Disorder in Criminal Proceedings 115 (1993)

**Foreign articles cited:**
[9] P. Fennel & F. Koenraadt, *Diversion, Europeanization and the Mentally Disordered Offender*, *in Criminal Justice in Europe- A Comparative Study* 171 (P. Fennel et al. eds., 1995)
[10] A. Feinberg, *Out of Mind, Out of Sight: The Disposition of Mentally Disordered Persons Involved in Criminal Proceedings*, 3 Monash U.L. Rev. 134 (1975)
[11] Grant H. Morris & J. Reid Meloy, *Out of Mind? Out of Sight: The Uncivil Commitment of Permanently Criminal Defendants*, 27 U.C.D.L. Rev. 1 (1993)
[12] S.N. Verdon-Jones, *The Dawn of a 'New Legalism' in Australia? The New South Wales Mental Health Act, 1983 and Related Legislation*, 8 Int. J.L. & Psychiatry 95 (1986)

**Miscellaneous:**
[13] 9.3 *The Laws of Australia*, *Criminal Law Principles* (1993).

Petition denied.

For the petitioners— Yehonatan Ginat
For the respondent— Hovav Arzi

## JUDGMENT

**President A. Barak**

Petitioner was brought to criminal trial. The court found that the petitioner was mentally ill and was unfit to stand trial. The court ordered that the petitioner be hospitalized in a psychiatric institution. He currently resides in the psychiatric institution, and, despite his medical treatment, remains unfit for trial. How long may this hospitalization be carried out under the authority of the original judicial hospitalization order? Is the judicial hospitalization order limited by time, and if so, what is that limitation? This is the question before us in the petition at hand.

*Facts and Proceedings*

1. The petitioner was prosecuted. He was charged with assault and theft. The court ruled, based on the opinion of the District Psychiatrist, that the petitioner suffered from a mental disorder, schizophrenia, and that he was not fit to stand trial. On August 30, 1988, the court instructed that the petitioner be hospitalized pursuant to section 6(a) of the Treatment of Mentally Sick Persons Law-1955. During his hospitalization, petitioner was once again charged with assaulting and threatening his mother. Pursuant to this indictment, an additional hospitalization order was issued against the petitioner.

2. The petitioner recently approached the Psychiatric Board [hereinafter the Board]. The petitioner requested that the Board grant him a discharge, and cancel the hospitalization order issued against him. The petitioner based his application on the findings of the doctors of the ward in which the he was hospitalized. Those doctors had determined that the petitioner showed neither suicidal nor aggressive tendencies, and that he could be granted occasional leave. The Board rejected the discharge request. It determined that the petitioner presented a danger

both to himself as well as to others. However, the Board decided to allow the petitioner short periods of leave, not to exceed 72 hours. An appeal against this decision was submitted to the District Court. The petitioner argued that there was no justification for the fact that the original hospitalization was issued for an indefinite period of time. He also argued that there was no room to deviate from the doctors' conclusions—certainly not without giving reasons for doing so.

*District Court*

3. The District Court (Judge Berliner) ruled that the original hospitalization order was not issued for an indefinite period of time. It also ruled that the Board was permitted to determine, based on its experience and expertise, that the petitioner continued to present a danger, both to himself and to others. The court ordered the Board to reexamine the petitioner's condition within a month's time and, if the Board determined that he no longer presented any danger, consider whether to discharge him or take other steps to alleviate the conditions of his hospitalization. The court also drew the Board's attention to the need to give reasons when determining whether a patient presents a degree of danger which differs from that suggested by his doctors. An application for permission to appeal this judgment was submitted. The application was accepted and permission granted.

*Continuation of the Proceedings*

4. The Board reexamined the petitioner's case. He was not discharged from the forced hospitalization. The Board did not change its assessment of the danger presented by the petitioner. However, it extended the duration of the occasional periods of leave that could be granted.

*Petitioner's Arguments*

5. Petitioner argued that, in criminal proceedings, issuing a hospitalization order for an indefinite period of time is unreasonable and disproportional. Petitioner argued that, in consideration of the long

amount of time that has passed since the issue of the original hospitalization order, and taking into account the maximum sentence the petitioner would have been expected to serve had he been convicted, the Board should have cancelled the hospitalization order issued on the "criminal track." The petitioner noted that annulling the hospitalization order does not necessarily lead to the discharge of the petitioner from forced hospitalization, as he may still be hospitalized via the "civil track." The infringement of the petitioner's liberty is less severe in civil hospitalization. The petitioner also claimed that the Board has the responsibility to give reasons for its decision, if that decision conflicts with the position of the doctors treating the petitioner.

*Respondents' Arguments*

6. The Attorney-General (respondent 2) relies upon the District Court's judgment. He claims that, due to their nature, the duration of mental illness cannot be predicted, and thus the validity of judicial, criminal hospitalization orders should not be bound by time. Such limitations would disturb the delicate balance provided by the current law and would also harm the public interest. The "civil track" is also insufficient, as it does not offer the necessary supervision and control over a person who has proven himself to be dangerous—so it is argued—by committing a criminal offense. The Attorney-General agrees that the Board must give reasons for its decision. However, in this case, he asserts that the fact that it neglected to do so is not reason enough to invalidate the Board's decision.

*The Normative Framework*

7. When there is an indictment, the court, whether by its own initiative or by the appeal of one of the parties, is faced with the question of whether, due to mental illness, the accused is fit for trial. If the court decides that the accused is unfit for trial, the court must suspend the proceedings. *See* The Criminal Procedure Law [New Version]-1982, § 170. The court may order that the accused be hospitalized in a psychiatric institution. See Treatment of the Mentally Ill Law-1991, § 15, which states:

15(a) *Hospitalization or Clinical Treatment of an Accused by Virtue of a Court Order*

> Where an accused person is brought to trial, and the court is of the opinion, based on the evidence before it, that the accused is not fit to stand trial by reason of his being ill, it may order that he be admitted to a hospital or receive clinical treatment; Where the court has decided to investigate the guilt of the accused pursuant to section 170 of the Criminal Procedure Law [New Version]-1982 [hereinafter the Criminal Procedure Law], the hospitalization order issued will be valid until the investigation is complete. When it has been completed, or the investigation has been discontinued and the accused has not been acquitted, the court shall decide on the question of his hospitalization or clinical treatment.

While he is in the hospital, the accused is treated by a staff of doctors. Nevertheless, neither the staff of doctors nor the hospital's director may order that the accused be discharged. His liberty is in the hands of the District Psychiatric Board. This Board reviews the case of an incompetent criminal defendant at least once every six months. Treatment of the Mentally Ill Law, § 28(a). It is authorized to approve periods of leave. It has the authority to unconditionally discharge the patient from the hospital. Treatment of the Mentally Ill Law, § 28(b). One of those notified of the date of discharge is the Attorney-General, who may order that the accused be prosecuted for the crime he was charged with. *See* Treatment of the Mentally Ill Law, § 21.

8. What is the objective of hospitalizing an accused person who suffers from mental illness? The primary objective is "to provide medical treatment." *See* Treatment of the Mentally Ill Law, § 35(b). If this treatment is successful, the Psychiatric Board will order that the patient be discharged. The Attorney-General will then consider whether to continue the criminal proceedings against the accused. What is the law, however, in a case where the medical treatment is unsuccessful, such that the patient cannot be discharged from the hospital due to the danger he

presents to himself and to others, and such that he cannot to be brought to criminal trial? In such a case, the mentally ill accused will remain in the psychiatric institution on the authority of the hospitalization order. *See* Treatment of the Mentally Ill Law, § 35(b). This forced hospitalization infringes upon the liberty and dignity of the patient. Nevertheless, this infringement is justified in that it is intended both for the protection of the accused as well as for the protection of society. *See* CApp 2060/97 *Valinchik v. Tel Aviv District Psychiatrist*, [1] at 707.

9. This petition is raised against this legal background. For what length of time may the mentally ill accused be held on the authority of a hospitalization order? The petitioner before us has been hospitalized for over fourteen years. Had his trial continued regularly, and had he been convicted, he would have finished serving his sentence long ago. Can the accused be forcibly hospitalized for such a long period of time? Does a judicial hospitalization order, which authorizes the hospitalization of the accused, have the power to compel hospitalization for a period of time which exceeds the maximum punishment the accused may have been sentenced to? *See* R.D. Makay. Mental Condition Defences in the Criminal Law 219 (1995) [7]; P. Fennel & F. Koenraadt, *Diversion, Europeanization and the Mentally Disordered Offender*, *in Criminal Justice in Europe- A Comparative Study* 171, 175 (P. Fennel et al. eds., 1995) [9]. And if the Psychiatric Board does not order that the accused be discharged, will he be held in the hospital for the remainder of his life, only because of a hospitalization order issued after charges of assault and theft? Does this not amount to life imprisonment without the possibility of a pardon? *See* A. Feinberg, *Out of Mind, Out of Sight: The Disposition of Mentally Disordered Persons Involved in Criminal Proceedings*, 3 Monash U.L. Rev. 134, 144 (1975) [10].

10. It must be noted that the alternative to the indefinite validity of the judicial hospitalization order is not the discharge of the mental patient. We assume that the accused continues to pose a danger, both to himself and to others. Thus, continuing the forced hospitalization is justified. Yet, is it justified that his hospitalization be carried out under the authority of a judicial hospitalization order which originates from a criminal charge that cannot be prosecuted? In order to understand this

dilemma, it is appropriate to clarify that forced hospitalization on the authority of a judicial hospitalization order issued during a criminal proceeding is not the only form of forced hospitalization recognized by the law. *See, e.g.*, Treatment of the Mentally Ill Law, § 17 (examination of a suspect); Treatment of the Mentally Ill Law, § 16(a) (hospitalization of a suspect); Treatment of the Mentally Ill Law, § 15(a) (hospitalization of the accused). In addition to criminal hospitalization under the authority of a judicial order ("the criminal track"), the law also recognizes hospitalization on the authority of a "civil" hospitalization order ("the civil track"). *See* VCA 2305/00 *John Doe v. State of Israel* [2]. A comparative study of the criminal and civil tracks shows that the infringement upon the mental patient's liberty is more severe in the criminal track. Justice M. Cheshin correctly noted:

> Comparing the status of those moving along the civil tack to the status of those moving along the criminal track will reveal to us—unsurprisingly—that the status of the former is more comfortable than that of the latter; the civil track is more comfortable for the patient; the criminal track more difficult.

*John Doe*, [2] at 311. Thus, for example, in the criminal track, only the Psychiatric Board is authorized to discharge a mentally ill accused, and only it has the authority to grant periods of leave. Treatment of the Mentally Ill Law, § 28. In the civil track, on the other hand, the director of the hospital may discharge the patient from the hospital and approve periods of leave. Treatment of the Mentally Ill Law, § 30(a). Furthermore, in the criminal track, the forced hospitalization, on the authority of the judicial order, continues until the Psychiatric Board orders that the accused be discharged. Treatment of the Mentally Ill Law, § 28. In the civil track, on the other hand, the period of hospitalization cannot exceed six months, unless the Psychiatric Board extends the period, and each additional extension cannot exceed six months. Treatment of the Mentally Ill Law, § 10.

11. As such, the real question before us is for what length of time may a mentally ill accused person be held on the criminal track? Is there not a point in time at which the accused may no longer be held through

the criminal track, and where the hospitalization must be carried out through the civil track, which is more comfortable for the mental patient? Of course, on both tracks, the mental patient will be discharged from hospitalization if such discharge is medically justified. However, where the mental patient presents a danger to himself and to others in such a way as to justify his forced hospitalization, when should the mental patient be transferred from the criminal track to the civil track?

12. These questions are not unique to us. They have arisen in several modern democracies. In the United States, for example, in the State of Indiana, a law was in effect which allowed the indefinite pretrial commitment of incompetent criminal defendants The Supreme Court of the United States unanimously ruled that this law was unconstitutional. It ruled that a period of judicially forced hospitalization can last only for the period of time reasonably necessary to decide whether the accused will, in the future, be fit for trial. Justice Blackmun wrote:

> We hold, consequently, that a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period necessary to determine whether there is substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the state must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant.

*Jackson v. Indiana*, 406 US 715, 738 (1972) [6]. Following this judgment, a number of states changed their laws. The new statutes generally established a period of time, after which the mentally ill criminal defendant would be transferred to a civil track. *See* Grant H. Morris & J. Reid Meloy, *Out of Mind? Out of Sight: The Uncivil Commitment of Permanently Criminal Defendants*, 27 U.C.D.L. Rev. 1, 9 (1993) [11] [hereinafter Morris & Meloy]. In Canada, the Penal Law specifies the maximum period that an incompetent criminal defendant may be forcibly hospitalized. After that period has passed, if the accused continues to present a danger, he may be hospitalized under civil

legislation. *See* E. Tollefson & B. Starkman, Mental Disorder in Criminal Proceedings 115 (1993) [8] [hereinafter Tollefson & Starkman]. In New South Wales, Australia, the law establishes a special mechanism through which an incompetent criminal defendant is transferred from the criminal track to the civil track. *See* S.N. Verdon-Jones, *The Dawn of a 'New Legalism' in Australia? The New South Wales Mental Health Act, 1983 and Related Legislation*, 8 Int. J.L. & Psychiatry 95, 110 (1986) [12] [hereinafter *Verdon-Jones*].

13. What, then, is the law in Israel? The law contains no explicit provision regarding a maximum time period for a judicially ordered hospitalization issued during a criminal proceeding. Furthermore, there is no explicit provisions concerning the transfer of an accused from the criminal track over to the civil track. Does this mean that the judicial criminal order is indefinite, and that so long as the Psychiatric Board does not order that the mentally ill accused be discharged, in accordance with its authority under section 28(b) of the law, he will remain hospitalized via the criminal track?

14. Our response to these questions is that the Treatment of Mentally Sick Persons Law-1991 is deficient in that it does not explicitly regulate the issue at hand. We hope that, following this judgment, the law will be amended and will provide a comprehensive statutory arrangement which appropriately balances the psychiatric patient's liberty against concerns of public safety. Yet, until the law is amended, can we not offer any assistance? Our response is that although we cannot, through judicial means, set up the mechanisms and institutions which can only be established through legislation, we can make progress towards the proper arrangement with the few legal tools at our disposal.

15. The Treatment of Mentally Sick Persons Law-1991 does not stand alone. It is one link in a long chain of Israeli legislation. It exists within the framework of the Israeli legal system, which constitutes the "normative material" in which the law is embedded. This normative framework includes values and fundamental principles which constitute the objective goals of the law. Relevant to the issue at hand is the principle of reasonableness. We must keep in mind that the psychiatric

patient's treatment demands that we reasonably balance between the patients' rights, on the one hand, and the public interest, on the other. Forced hospitalization of an incompetent criminal defendant infringes his constitutional rights, including his liberty, his dignity, his autonomy and his self image, by imposing a stigma upon the accused long after his release from commitment. *See Valinchik* [1]; VCA 92/00 *John Doe V. State of Israel*, [3] at 249-51; VA 196/80 *Toledano v. State of Israel*, [4] at 336. Nevertheless, these constitutional rights are not absolute. Opposite them stand the interests of protecting public peace and safety from the accused, as well as the public interest in treating the accused and protecting him from himself.

16. The principle of reasonableness also applies to hospitalization orders issued by judges during criminal proceedings. *Compare* HCJ 547/84 *Of Haemek, Agricultural Society v. Ramat Yeshai Local Council*, [5] at 141. It also applies to the conditions for issuing those orders, as well as to the conditions for their continuing validity. Hospitalization orders lie outside the "zone of reasonableness" when it becomes apparent that there is no longer an actual probability that the mentally ill accused will become fit for trial. Hospitalization orders also go fall outside the zone of reasonableness when—regardless of the probability of the defendant eventually becoming fit for trial—the ratio between the period of time the accused has been hospitalized and the maximum sentence that the accused would have received had he been convicted is unreasonable. In these and other situations, continuing to implement the hospitalization order may become unreasonable over time.

Comparative law may also be of aid here. In a number of states of the United States, the period of hospitalization via the criminal track may last only as long as the maximum period of imprisonment which one would have served for committing the crimes he has been charged with. *See* Morris & Meloy, [11] at 16-17. In contrast, in some of the states, there is one uniform hospitalization period set for all offences. Morris & Meloy, [11] 14-15. Canada has implemented the "caps" method, which divides criminal offences into three categories and sets a maximum period of "criminal track" hospitalization for each. In the first category, which includes offences such as treason and murder, the maximum period

is hospitalization for life. In the second category, which includes offences for causing bodily harm or compromising national security, the maximum period is hospitalization for ten years. The third, residual category consists of the remainder of unspecified offences, and the maximum period of hospitalization for these offences is two years. *See* Tollefson & Starkman, [8] at 116. New South Wales, in Australia, employs a different method. There, when a person is held to be unfit for trial, his case is transferred to a Psychiatric Tribunal which assesses whether he will become fit for trial within the next 12 months. If the tribunal determines that he will become fit for trial, the court then orders that he be hospitalized for that period of time. If, on the other hand, the tribunal decides that the defendant will not recover within one year, the Public Prosecutor must decide whether a special hearing should be held or whether the charges should be dropped. This hearing is held in a manner which is as similar as possible to criminal proceedings, and it may result either in acquittal, acquittal by reason of mental illness, or a ruling that the crime was committed. If the hearing concludes that the crime was indeed committed, the court must rule on whether the accused would have been sentenced to imprisonment had he been fit for trial and been convicted. This period is called the "limiting term," and it constitutes the maximum period for "criminal track" hospitalization. *See* 9.3 *The Laws of Australia*, *Criminal Law Principles* 133-34 (1993). This law also grants the court the authority to determine that a patient who is unfit for trial be considered a "continued treatment patient," thus entitling him to the rights to which a patient hospitalized via the civil track is entitled. *See* Verdon-Jones, [12] at 113.

17. What is the result when the duration of the hospitalization order lies outside the zone of reasonableness? The result, of course, is not the immediate cancellation of the order, nor is the mentally ill accused allowed to leave the hospital as he wishes. Such a result would be unreasonable and should be avoided. Hospital gates should not open of themselves. A conscious determination is necessary, which may not lead to the release of the patient, but rather to transferring him from the criminal track to the civil track. What conscious determination must be made and who is to make it? It is of course appropriate that these questions be explicitly answered in legislation. Yet, what is the law

where such an explicit provision is absent? It is insufficient to simply determine that in principle, the hospitalization order is unreasonable. Detailed arrangements are needed to actualize this determination. What are these arrangements and what is their legal basis?

18. It seems to me that the answer to these questions is that the court must decide whether the hospitalization order should be cancelled. The court issued the original hospitalization order, and it is responsible to decide whether time has brought the need for its cancellation. A hospitalizing order is not automatically cancelled as a result of its having becoming unreasonable. However, unreasonableness is a cause for the cancellation of the hospitalization order by whoever issued it, namely, the court itself. So long as the court has not cancelled the hospitalization order, it remains valid. No other official may cancel the hospitalization order. As such, we are of the opinion that the Psychiatric Board does not have the power to cancel the hospitalization order.

19. How will the court become aware of the need to reconsider the reasonableness of the hospitalization order? Usually, the court does not act of its own initiative. It must be prompted by an interested party. Who is this party? Of course, the psychiatric patient himself is allowed to approach the court and request the annulment of the hospitalization order. However, due to his condition, this task must not only be left to him. An institutional arrangement that has the ability to follow the development of the situation must be ensured. For this reason, we should also not be satisfied with granting permission to the relatives of the accused. Which institutions may here be considered? One of the institutions which may be considered is the Psychiatric Board. It reviews the psychiatric patient's case every six months. *See* Treatment of the Mentally Ill Law, § 28(a). It is familiar with the psychiatric patient's condition. It is aware of whether there is an actual probability that the accused may be fit for trial, and what the chances of his recovery are. A jurist who is able to assess the necessity of approaching the court stands at the head of the Board. *See* Treatment of the Mentally Ill Law, § 24(c). One of the obstacles before such a resolution is that the Psychiatric Board is a statutory body of limited authority. I doubt that the authority to approach the court in the matter at hand falls within its authority.

20. Another institutional agent is the Attorney-General. He charged the accused, and is aware of the hospitalization order. He has the ability to appeal the decisions of the Psychiatric Board before the court. *See* Treatment of the Mentally Ill Law, § 29(a). As such, he has information regarding the condition of the accused. As one who is appointed over the public interest, he has the responsibly, and the means, to follow the development of the situation and examine whether the continuing validity of the hospitalization order lies outside the zone of reasonableness. He has the ability to turn to the court and request that the hospitalization order be cancelled or that the charges be dropped. As one who is responsible for the public interest, he also has the ability to approach the District Psychiatrist and encourage him to transfer the patient from the criminal track to the civil track.

21. Thus, absent specific legislation, and so long as such legislation has not been passed by the Knesset, the practical resolution which may be achieved within the bounds of the law is that the Attorney-General shall be responsible for ensuring the continuing reasonableness of the hospitalization order. It is appropriate that, for this purpose, detailed guidelines be set out which arrange a system for supervising the hospitalization of the accused. Within the framework of this system, the Psychiatric Board may be asked to report to the Attorney-General regarding its decision for continuing to hospitalize the accused. Furthermore, the guidelines may also specify that, after a certain period of time, the Attorney-General will examine the need to continue hospitalizing the accused via the criminal track. If the Attorney-General is of the opinion that there is room to cancel the hospitalization order, he may approach the court. He can simultaneously approach the District Psychiatrist, in order to bring to his attention the need to transfer the accused to the civil track. Additionally, the guidelines may specify a maximum period of hospitalization that a mentally ill accused may remain on the criminal track. When designating this period, The Attorney-General can draw upon the comparative law here discussed. The Attorney-General will have to take into account the nature of the offence that the mental patient is charged with, its severity, the conditions under which it was committed, the sentence specified by the law, the

amount of time which has passed since the beginning of his hospitalization, as well as the patient's chances of recovery. In our opinion, this solution, whereby the authorities will be directed by detailed, clear guidelines, is the proper resolution to be implemented until the Knesset considers this matter. We are aware that our resolution is not free of difficulty. However, these difficulties pale in comparison to the current situation, where an accused may be forcibly hospitalized under the authority of an unreasonable hospitalization order.

*From the General to the Specific*

22. The case at hand cries for help. For over fourteen years the petitioner has been in a psychiatric institution under the authority of a hospitalization order. He has been forgotten, and had it not been for his commendable attorney, he would probably have continued in that situation for some time. The attorney acted admirably in approaching the District Court. The court must examine the accused's case. It must hear the Attorney-General's opinion regarding the continuing validity of the charge and the validity of the hospitalization order. It must decide whether there is room to cancel the hospitalization order, while also taking into account the arrangements for hospitalization via the civil track.

The result is that we grant this appeal, and return the case to the District Court so that it may rule in accordance with par. 22.

**Justice E. Mazza**

I agree.

**Justice D. Beinisch**

I agree.

Petition Granted.
January 22, 2003

TRANSLATED BY: Leora Dahan
EDITED BY: Eli Greenbaum

Comments, questions and suggestions are all welcomed, and may be directed towards elig@supreme.court.gov.il