Cause list numbers 6030, 6033 and 6034
Judgment no. 153/2015 of 29 October 2015

JUDGMENT

In the case of: the actions for annulment of the Act of 28 February 2014 amending the Act of 28 May 2002 on euthanasia to extend euthanasia to minors, instituted by the non-profit association "Jurileven" and the non-profit association "Pro Vita", by Raymond Elsen and Lucien Borkes, and by the non-profit association "Jongeren voor het Leven" (Young People for Life).

The Constitutional Court,

Composed of Presidents J. Spreutels and A. Alen, and judges E. De Groot, L. Lavrysen, J.-P. Snappe, J.-P. Moerman, E. Derycke, T. Merckx-Van Goey, P. Nihoul, F. Daoût, T. Giet and R. Leysen, assisted by Registrar F. Meersschaut, under the chairmanship of President J. Spreutels,

Delivers the following judgment after deliberation:

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I. *Purpose of the actions and judicial procedure*

a. By an application addressed to the Court by registered letter sent on 9 September 2014 and received by the court registry on 11 September 2014, an action was instituted for the annulment of the Act of 28 February 2014 amending the Act of 28 May 2002 on euthanasia to extend euthanasia to minors (published in the *Belgisch Staatsblad* of 12 March 2014), by the non-profit association “Jurileven” and the non-profit association “Pro Vita”, assisted and represented by Me F. Krenc, lawyer at the Bar of Brussels.

b. By two applications addressed to the Court by registered letter sent on 12 September 2014 and received by the court registry on 15 September 2014, actions were instituted for the annulment of the same Act by Raymond Elsen and Lucien Borkes, assisted and represented by Me H. Coveliers, lawyer at the Bar of Antwerp, and by the non-profit association “Jongeren voor het Leven” (Young People for Life), assisted and represented by Me B. Van Weerdt, lawyer at the Bar of Antwerp.

Those cases, registered under numbers 6030, 6033 and 6034 on the cause list of the Court, were joined together.

The Council of Ministers, assisted and represented by Me E. Jacubowitz, Me P. Schaffner and Me A. Poppe, lawyers at the Bar of Brussels, has submitted statements of case, the applicants have submitted statements of reply, and the Council of Ministers has also submitted statements of rejoinder.

By court order of 20 May 2015, the Court, after having heard judges-rapporteurs J.-P. Moerman and E. De Groot, decided that it can adjudicate on the cases, that no hearing will take place, unless a particular party has asked to be heard within seven days after receiving notification of that court order, and that, barring such request, the proceedings will be closed on 10 June 2015 and the cases will be taken under advisement.

Since one of the parties has asked to be heard, the Court has set the date of the hearing for 24 June 2015 by court order of 10 June 2015.

At the public hearing of 24 June 2015:

- Have appeared:

. Me F. Krenc and Me H. Sunnaert, lawyer at the Bar of Brussels, for the applicants in case no. 6030;

. Me H. Coveliers, for the applicants in case no. 6033;

. Me B. Van Weerdt, for the applicant in case no. 6034;

- Me E. Jacubowitz, Me P. Schaffner and Me A. Poppe, for the Council of Ministers;

- Judges-rapporteurs J.-P. Moerman and E. De Groot delivered their report;

- The aforementioned lawyers were heard;

- The cases were taken under advisement.

The provisions of the Special Act of 6 January 1989 on the Constitutional Court with regard to the judicial procedure and the use of languages were applied.

II. *At law*

(…)

Regarding the Act of 28 May 2002 on euthanasia, as amended by the contested Act

B.1.1. The actions in cases nos. 6030, 6033 and 6034 are directed against the Act of 28 February 2014 “amending the Act of 28 May 2002 on euthanasia to extend euthanasia to minors”.

B.1.2. The contested Act amends the Act of 28 May 2002 on euthanasia, which as a result of those amendments provides as follows:

“Article 1. This Act governs a matter provided for in Article 78 of the Constitution.

CHAPTER I. – *General provisions*

Article 2. For the purposes of this Act, euthanasia is defined as intentionally terminating life by someone other than the person concerned, at the latter’s request.

CHAPTER II. – *Conditions and procedure*

Article 3 (1). The physician who performs euthanasia commits no criminal offence if he has ascertained that:

- the patient is a legally competent person of age, a legally competent emancipated minor, or a minor with the capacity for discernment, and conscious at the moment of making the request;

- the request is voluntary, well-considered and repeated, and is not the result of any external pressure;

- the adult or emancipated minor patient is in a medically futile condition of constant and unbearable physical or mental suffering that cannot be alleviated, resulting from a serious and incurable condition caused by illness or accident;

- the minor patient with the capacity for discernment is in a medically futile condition of constant and unbearable physical suffering that cannot be alleviated and will result in death within the foreseeable future, and is the result of a serious and incurable condition caused by illness or accident;

and he has observed the conditions and procedures as provided for in this Act.

(2) Without prejudice to any additional conditions which the physician wishes to impose on his own action, before carrying out euthanasia, he must in each case:

1° Inform the patient about his health condition and his life expectancy, discuss with the patient his request for euthanasia and any therapeutic and palliative courses of action still remaining and their consequences. Together with the patient, the physician must come to the belief that there is no reasonable alternative solution for the patient's situation and that the patient's request is entirely voluntary;

2° Be certain of the patient's constant physical or mental suffering and of the durable nature of his request. To this end, the physician has several conversations with the patient spread out over a reasonable period of time, taking into account the progress of the patient's condition;

3° Consult another physician about the serious and incurable nature of the condition and inform him about the reasons for this consultation. The physician consulted reviews the medical record, examines the patient and must ascertain the patient's constant and unbearable physical or mental suffering that cannot be alleviated. The physician consulted reports on his findings.

The physician consulted must be independent vis-à-vis the patient as well as vis-à-vis the attending physician, and must be competent to give an opinion on the condition in question. The attending physician informs the patient about the results of this consultation;

4° If there is a nursing team that has regular contact with the patient, discuss the patient's request with the nursing team or members of that team;

5° If the patient so desires, discuss his request with relatives appointed by the patient;

6° Ascertain that the patient has had the opportunity to discuss his request with the persons that he wanted to meet;

7° If the patient is a non-emancipated minor, also consult a child and adolescent psychiatrist or a psychologist and inform him of the reasons for this consultation.

The specialist consulted reviews the medical record, examines the patient, ascertains the minor's capacity for discernment, and certifies this in writing.

The attending physician informs the patient and his legal representatives about the results of this consultation.

During an interview with the minor's legal representatives, the attending physician provides them with all the information referred to in (2)(1°), and ascertains that they give their consent with respect to the minor patient's request.

(3) If the physician believes the adult or emancipated minor patient is manifestly not expected to die within the foreseeable future, he must also:

1° Consult a second physician, who is a psychiatrist or a specialist in the condition in question, and inform him of the reasons for this consultation. The physician consulted reviews the medical record, examines the patient and must ascertain the constant and unbearable physical or mental suffering that cannot be alleviated, and the voluntary, well-considered and repeated nature of the euthanasia request. The physician consulted reports on his findings. The physician consulted must be independent vis-à-vis the patient as well as vis-à-vis the attending physician and the first physician consulted. The attending physician informs the patient about the results of this consultation;

2° Allow at least one month between the patient's written request and the act of euthanasia.

(4) The patient's request and the consent of the legal representatives if the patient is a minor must be in writing. The document is drawn up, dated and signed by the patient himself. If the patient is not capable of doing this, the document is drawn up by an adult who has been designated by the patient and who must have no material interest in the death of the patient.

This person indicates that the patient is incapable of formulating his request in writing and states the reasons why. In such case, the request is drafted in the presence of the physician whose name the designated person records on the document. This document must be annexed to the medical record.

The patient may revoke his request at any time, in which case the document is removed from the medical record and returned to the patient.

(4/1) After the physician has handled the patient's request, the persons concerned are offered the possibility of psychological counselling.

(5) All the requests formulated by the patient, as well as any actions by the attending physician and their results, including the report(s) of the consulted physician(s), are regularly noted in the patient's medical record.

Article 3*b*. The pharmacist who dispenses a euthanasia agent commits no criminal offence if he acts on the basis of a medical prescription in which the physician clearly states that he is acting in accordance with this law.

The pharmacist personally delivers the prescribed euthanasia agent to the physician. The King determines the rules of due care and the conditions which the medical prescription and the dispensing of medicines used as euthanasia agent must meet.

The King takes the necessary measures to ensure the availability of euthanasia agents, including in retail pharmacies that are open to the public.

CHAPTER III. - *The advance directive*

Article 4 (1). Every legally competent person of age or emancipated minor may, in anticipation of the event that he is no longer able to express his will, draw up an advance directive in writing instructing a physician to perform euthanasia if the physician has ascertained that:

- the patient suffers from a serious and incurable condition, caused by illness or accident;

- the patient is no longer conscious;

- this condition is irreversible given the current state of medical science

In the advance directive, one or more adult confidant(s) may be designated in order of preference, who inform(s) the attending physician about the patient's will. Each confidant replaces his or her predecessor as mentioned in the advance directive in case of refusal, hindrance, incompetence or death. The patient's attending physician, the physician consulted and the members of the nursing team may not act as confidants.

The advance directive may be drawn up at any time. It must be composed in writing in the presence of two adult witnesses, at least one of whom has no material interest in the death of the patient, and must be dated and signed by the person issuing the advance directive, the witnesses and, where applicable, by the confidant(s).

If a person who wishes to draw up an advance directive is permanently physically incapable of writing and signing an advance directive, he may designate an adult person who has no material interest whatsoever in the death of the person in question to draw up his request in writing, in the presence of two adult witnesses, at least one of whom has no material interest in the patient's death. The advance directive indicates that the person in question is incapable of signing and why. The advance directive must be dated and signed by the person drawing up the request in writing, the witnesses and, where applicable, by the confidant(s).

A medical certificate must be annexed to the advance directive certifying that the person in question is permanently physically incapable of drafting and signing the advance directive.

The advance directive can only be taken into account if it has been drafted or confirmed less than five years prior to the person's loss of his ability to express his will.

The advance directive may be amended or revoked at any time.

The King determines the manner in which the advance directive is drawn up, registered, reconfirmed or revoked, and communicated to the physicians involved via the offices of the National Register.

(2) The physician who performs euthanasia in accordance with an advance directive as provided for in (1) commits no criminal offence if he has ascertained that:

- the patient suffers from a serious and incurable condition, caused by illness or accident;

- the patient is no longer conscious;

- this condition is irreversible given the current state of medical science;

and he has observed the conditions and procedures as provided for in this Act.

Without prejudice to any additional conditions which the physician wishes to impose on his own action, he must, before carrying out euthanasia:

1° Consult another physician about the irreversibility of the patient's medical condition and inform him about the reasons for this consultation. The physician consulted reviews the medical record and examines the patient. He reports on his findings. If the advance directive names a confidant, the latter will be informed by the attending physician about the results of this consultation.

The physician consulted must be independent vis-à-vis the patient as well as vis-à-vis the attending physician, and must be competent to given an opinion on the condition in question;

2° If there is a nursing team that has regular contact with the patient, discuss the contents of the advance directive with that team or members of that team;

3° If a confidant is designated in the advance directive, discuss the patient's request with that person;

4° If a confidant is designated in the advance directive, discuss the contents of the advance directive with the relatives of the patient designated by the confidant.

The advance directive and all actions by the attending physician and their results, including the report of the consulted physician, are regularly noted in the patient's medical record.

CHAPTER IV. - *Notification*

Article 5. Any physician who has performed euthanasia is required to complete the registration form referred to in Article 7 of this Act and to deliver this document to the Federal Control and Evaluation Commission referred to in Article 6.

CHAPTER V. - *The Federal Control and Evaluation Commission*

Article 6 (1). For the application of this Act, a Federal Control and Evaluation Commission is established, hereinafter referred to as “the Commission”.

(2) The Commission is composed of sixteen members, appointed on the basis of their knowledge and experience in the issues belonging to the Commission’s remit. Eight members are doctors of medicine, of whom at least four are professors at a Belgian university. Four members are professors of law at a Belgian university, or practising lawyers. Four members are drawn from groups that deal with the issue of incurably ill patients.

Membership of the Commission cannot be combined with membership of one of the legislative assemblies or with membership of the federal government or one of the regional or community governments.

While respecting language parity – where each linguistic group has at least three candidates of each gender – and ensuring pluralistic representation, the members of the Commission are appointed by Royal Decree enacted after deliberation in the Council of Ministers for a renewable four-year term from a double list of candidates put forward by the House of Representatives. A member’s mandate is terminated as of right if the member loses the capacity on the basis of which he is appointed. The candidates not appointed as sitting members are appointed as replacements in the order of succession determined by a list. The Commission is chaired by a Dutch-speaking and a French-speaking member. These chairpersons are elected by the Commission members of the respective linguistic group.

The Commission can only validly deliberate and decide if two-thirds of the members are present.

(3) The Commission establishes its own internal rules of procedure.

Article 7. The Commission draws up a registration form that must be completed by the physician each time he performs euthanasia.

This document consists of two parts. The first part must be sealed by the physician. It contains the following information:

1° The patient’s full name and address;

2° The full name, address and RIZIV (National Institute for Sickness and Disability Insurance) registration number of the attending physician;

3° The full name(s), address(es) and RIZIV registration number(s) of the physician(s) consulted about the euthanasia request;

4° The full names, addresses and capacity of all persons consulted by the attending physician, and the dates of those consultations;

5° Where there exists an advance directive in which one or more confidants are designated, the full name(s) of such person(s).

This first part is confidential, and is transmitted to the Commission by the physician. It can only be consulted following a decision by the Commission. Under no circumstances may the Commission use this document as a basis for its evaluation.

The second part of the document is also confidential and contains the following information:

1° The patient's gender, date of birth and place of birth; if the patient was a minor, whether he was emancipated;

2° The date, time and place of death;

3° The nature of the serious and incurable condition, caused by accident or illness, from which the patient suffered;

4° The nature of the constant and unbearable suffering;

5° The reasons why this suffering could not be alleviated;

6° The elements underlying the assurance that the request was voluntary, well-considered and repeated, and not the result of any external pressure;

7° Whether the patient was expected to die within the foreseeable future;

8° Whether an advance directive had been drawn up;

9° The procedure followed by the physician;

10° The qualification of the physician(s) consulted, the opinion(s) formulated, and the dates of those consultations;

11° The capacity of the persons consulted by the physician, and the dates of those consultations;

12° The manner in which the euthanasia was performed and the pharmaceuticals used.

Article 8. The Commission examines the completed registration form submitted to it by the attending physician. On the basis of the second part of the registration form, the Commission determines whether the euthanasia was performed in accordance with the conditions and the procedure stipulated in this Act. In case of doubt, the Commission may decide by simple majority vote to revoke anonymity and to examine the first part of the registration form. The Commission may request the attending physician to provide any information from the medical record relating to the euthanasia.

The Commission hands down a verdict within two months.

If, by a decision taken with a two-thirds majority vote, the Commission is of the opinion that the conditions laid down in this Act have not been fulfilled, it will turn the case over to the public prosecutor of the jurisdiction in which the patient died.

If, after anonymity has been revoked, facts or circumstances come to light which would compromise the independence or impartiality of one of the Commission members, that member will recuse himself or may be recused during the discussion of this case in the Commission.

Article 9. For the benefit of the legislative assemblies, the Commission will draw up the following reports, the first time within two years of this Act coming into force and every two years thereafter:

a) A statistical report based on information from the second part of the completed registration forms submitted by the physicians pursuant to Article 8;

b) A report in which the application of this Act is described and evaluated;

c) Where appropriate, recommendations that could lead to new legislation and/or other measures relating to the implementation of this Act.

For the purpose of carrying out those tasks, the Commission may seek additional information from the various public services and institutions. The information thus gathered is confidential.

None of those documents may reveal the identities of any persons named in the case files submitted to the Commission for the purposes of the review as specified in Article 8.

The Commission can decide to supply statistical and purely technical data, to the exclusion of all personal details, to university research teams that submit a reasoned request for such data. The Commission can grant hearings to experts.

Article 10. The King provides the Commission with an administrative framework to enable it to carry out its legal functions. The composition and language framework of the administrative personnel are established by Royal Decree following consultation in the Council of Ministers, on the recommendation of the Minister of Health and the Minister of Justice.

Article 11. The Commission's operating costs and personnel costs, including remuneration for its members, are divided equally between the budget of the Minister of Health and the budget of the Minister of Justice.

Article 12. Any person who is involved, in whatever capacity, in the application of this Act is required to maintain confidentiality regarding information that is disclosed to him in the exercise of his function and is connected therewith. He is subject to Article 458 of the Penal Code.

Article 13. Within six months of submitting the first report and, where appropriate, the Commission's recommendations referred to in Article 9, a debate is to be held in the House of Representatives. That six-month period is suspended during the time that the House of

Representatives is dissolved and/or during the time that there is no Government having the confidence of the House of Representatives.

CHAPTER VI. – *Special provisions*

Article 14. The request and the advance directive referred to in Articles 3 and 4 are not compulsory in nature.

No physician may be compelled to perform euthanasia.

No other person may be compelled to assist in performing euthanasia.

If the physician consulted refuses to perform euthanasia, he must inform the patient or the person confidant, if any, of this fact in a timely manner, and explain the reasons for his refusal. If the refusal is based on medical reasons, those reasons are noted in the patient's medical record.

At the request of the patient or the confidant, the physician who refuses to perform euthanasia must communicate the patient's medical record to the physician designated by the patient or the confidant.

Article 15. Any person who dies as a result of euthanasia performed in accordance with the conditions established by this Act is deemed to have died of natural causes for the purposes of contracts he has entered into, in particular insurance contracts.

The provisions of Article 909 of the Civil Code apply to the members of the nursing team referred to in Article 3 of this Act.

Article 16. This Act enters into force at the latest three months following its publication in the *Belgisch Staatsblad*."

B.1.3. Article 2 of the Act of 28 May 2002 on euthanasia defines euthanasia as "intentionally terminating life by someone other than the person concerned, at the latter's request".

B.1.4. As of its entry into force, the Act of 28 May 2002 decriminalizes euthanasia performed by a physician if the patient is a legally competent person of age or a legally competent emancipated minor who is conscious at the moment of making his request, and on condition that he is in a medically futile condition of constant and unbearable physical or mental suffering that cannot be alleviated, resulting from a serious and incurable condition caused by illness or accident.

B.1.5. The request for euthanasia of an adult or emancipated minor must be voluntary, well-considered and repeated, must not be the result of any external pressure (Article 3(1)),

and must be made in writing (Article 3(4)). The document is drawn up, dated and signed by the patient himself.

If the patient is not capable of formulating his request in writing, the document is drawn up by an adult designated by the patient who must have no material interest in the patient's death (Article 3(4)). The patient may revoke his request at any time (Article 3(4), third paragraph).

Every legally competent person of age or emancipated minor may, in anticipation of the event that he is no longer able to express his will, draw up an advance directive in writing instructing a physician to perform euthanasia if the physician has ascertained that the patient suffers from a serious and incurable condition, caused by illness or accident, that the patient is no longer conscious, and that this condition is irreversible given the current state of medical science. Such an advance directive can only be taken into account if it has been drafted or confirmed less than five years prior to the person's loss of his ability to express his will, and may be amended or revoked at any time (Article 4(1)).

B.1.6. The attending physician is required to observe a number of obligations that are defined in Article 3(2) and (3) of the Act of 28 May 2002:

- The attending physician must inform the patient about his health condition and his life expectancy, discuss with the patient his request for euthanasia and any therapeutic and palliative courses of action still remaining and their consequences. Together with the patient, the physician must come to the belief that there is no reasonable alternative solution for the patient's situation and that the patient's request is entirely voluntary (Article 3(2)(1°));

- The physician must be certain of the patient's constant physical or mental suffering and of the durable nature of his request. To this end, the physician has several conversations with the patient spread out over a reasonable period of time, taking into account the progress of the patient's condition (Article 3(2)(2°));

- The physician must consult another physician about the serious and incurable nature of the condition. That second physician must be independent vis-à-vis the patient as well as vis-à-vis the attending physician, and must be competent to give an opinion on the condition in question. After having examined the patient, the second physician also reports on the patient's constant and unbearable physical or mental suffering that cannot be alleviated. The patient is informed about the results of this consultation (Article 3(2)(3°));

- If there is a nursing team that has regular contact with the patient, the attending physician must discuss the patient's request with the team or members of that team (Article 3(2)(4°));

- If the patient so desires, the attending physician must discuss his request with relatives appointed by the patient (Article 3(2)(5°));

- The physician must ascertain that the patient has had the opportunity to discuss his request with the persons that he wanted to meet (Article 3(2)(6°));

- If the physician believes the adult or emancipated minor patient is manifestly not expected to die within the foreseeable future, he must allow at least one month between the patient's written request and the act of euthanasia. He must also consult a second physician, who is a psychiatrist or a specialist in the condition in question, who must ascertain the constant and unbearable physical or mental suffering that cannot be alleviated, and the voluntary, well-considered and repeated nature of the euthanasia request (Article 3(3)).

B.2.1. The contested Act amends the Act of 28 May 2002 with a view to decriminalizing euthanasia for non-emancipated minors. Under that Act, the physician who performs euthanasia on a non-emancipated minor with the capacity for discernment and conscious at the moment of making his request commits no criminal offence on condition that he observes the conditions and procedures as provided for in the Act.

B.2.2. As amended by Article 2 of the contested Act, Article 3(1) of the aforementioned Act of 28 May 2002 provides:

“The physician who performs euthanasia commits no criminal offence if he has ascertained that:

[…]

- the minor patient with the capacity for discernment is in a medically futile condition of constant and unbearable physical suffering that cannot be alleviated and will result in death within the foreseeable future, and is the result of a serious and incurable condition caused by illness or accident;

and he has observed the conditions and procedures as provided for in this Act.”

B.2.3. Except for the obligation referred to in Article 3(3) of the Act of 28 May 2002 that relates to the situation where the physician believes that the adult or emancipated minor patient is manifestly not expected to die within the foreseeable future, the obligations defined in B.1.6 which the attending physician is required to observe also apply to euthanasia performed on non-emancipated minors (*Parl. St.*, Senate, 2013-2014, no. 5-2170/4, p. 31).

The contested Act, however, stipulates additional obligations with regard to non-emancipated minors.

As amended by Article 2 of the contested Act, Article 3(2) of the Act of 28 May 2002 provides:

“Without prejudice to any additional conditions which the physician wishes to impose on his own action, before carrying out euthanasia, he must in each case:

[…]

7° If the patient is a non-emancipated minor, also consult a child and adolescent psychiatrist or a psychologist and inform him of the reasons for this consultation.

The specialist consulted reviews the medical record, examines the patient, ascertains the minor’s capacity for discernment, and certifies this in writing.

The attending physician informs the patient and his legal representatives about the results of this consultation.

During an interview with the minor's legal representatives, the attending physician provides them with all the information referred to in (2)(1°), and ascertains that they give their consent with respect to the minor patient's request."

B.2.4. As amended by the contested Act, Article 3(4), first sentence, of the Act of 28 May 2002 provides:

"The patient's request and the consent of the legal representatives if the patient is a minor must be in writing."

B.2.5. In comparison with the conditions governing euthanasia of an adult or emancipated minor patient, the legislature makes the following distinction:

- The non-emancipated minor patient with the capacity for discernment must be in a medically futile condition of constant and unbearable physical – i.e. not mental – suffering (Article 3(1), fourth indent, of the Act of 28 May 2002), whereas in the case of adults and emancipated minors constant and unbearable mental suffering may under certain conditions also be taken into consideration (Article 3(1), third indent);

- The medically futile condition of the non-emancipated minor with the capacity for discernment must result in death within the foreseeable future (Article 3(1), fourth indent), whereas in the case of adults and emancipated minors euthanasia may also be performed if the physician believes that the patient in question is manifestly not expected to die within the foreseeable future (Article 3(3));

- In the case of euthanasia performed on non-emancipated minors, the physician must consult a child and adolescent psychiatrist or a psychologist. That specialist "reviews the medical record, examines the patient, ascertains the minor's capacity for discernment, and certifies this in writing". The attending physician "informs the patient and his legal representatives about the results of this consultation" (Article 3(2)(7°)). For euthanasia performed on adults and emancipated minors, no such consultation is required;

- In the case of euthanasia performed on non-emancipated minors, the attending physician must have an interview with the "legal representatives of the minor", "provide them with all the information referred to in [Article 3(2)(1°) of the Act]", and ascertains that "they give

their consent with respect to the minor patient's request" (Article 3(2)(7°)). The consent of the legal representatives of the minor must be in writing (Article 3(4)). No similar requirements apply in the case of adults and emancipated minors;

- Non-emancipated minors cannot draw up an advance directive in anticipation of the event that they are no longer able to express their will, whereas adults and emancipated minors can (Article 4(1)).

B.2.6. Observance of the conditions stipulated in the Act of 28 May 2002 is monitored by the Federal Control and Evaluation Commission referred to in Article 6 of that Act. That Commission is composed of sixteen members, appointed on the basis of their knowledge and experience in the issues belonging to the Commission's remit. Eight members are doctors of medicine, of whom at least four are professors at a Belgian university. Four members are professors of law at a Belgian university, or practising lawyers. Four members are drawn from groups that deal with the issue of incurably ill patients.

B.2.7. To carry out its monitoring function, the Federal Control and Evaluation Commission uses a registration form which must be completed by the physician who performed euthanasia and delivered to the Commission (Article 7 of the Act of 28 May 2002).

That document must contain, among other things, a description of:

- The nature of the serious and incurable condition, caused by accident or illness, from which the patient suffered;

- The nature of the constant and unbearable suffering;

- The reasons why this suffering could not be alleviated;

- The elements underlying the assurance that the request was voluntary, well-considered and repeated, and not the result of any external pressure;

- The elements underlying the belief that the patient was expected to die within the foreseeable future;

- The qualification of the physician(s) consulted, the opinion(s) formulated, and the dates of those consultations;

- The capacity of other persons consulted by the physician, and the dates of those consultations.

If the patient was a minor, the registration form must also specify whether he was emancipated or not (Article 7, fourth paragraph, 1°).

B.2.8. If, by a decision taken with a two-thirds majority vote, the Commission is of the opinion that the conditions laid down in the Act have not been fulfilled, it will turn the case over to the public prosecutor (Article 8, third paragraph, of the Act of 28 May 2002).

Regarding the objective pursued by the legislature

B.3.1. With regard to the general objective of the contested Act, the parliamentary proceedings read as follows:

"The Act of 28 May 2002 on euthanasia has been in effect for ten years now, and has decriminalized euthanasia in certain well-defined circumstances.

[…]

This Act has given the patient control over his own life again and at the same time protects him against abuse. The Act has enabled the patient and the physician to discuss the end of life candidly and in full confidence, without withholding information and without taking rash decisions. This is a great comfort to the patient who, once he knows that his request can be heard, will more serenely agree to palliative care if he so wishes. He will no longer need to fear great suffering or loss of dignity. It is also reassuring to the physician, who now knows that he can administer that ultimate act of humanity to put the patient out of his misery without breaking the law, if he performs that act within the framework of that law and at the patient's request.

The legislature set up a legal framework not only for euthanasia in 2002; an arrangement was worked out for palliative care as well. Both approaches were necessary.

The hearings that took place between February and May 2013 helped to identify certain implementation issues and to examine certain amendments or extensions of the law.

The initiators of this proposal have included some of those points which they believe a majority of the senators would support.

[…]

The present proposal is concerned with the situation of minors.

[…]

The Act which partly decriminalizes euthanasia is limited in its scope to adult patients or emancipated minors who are legally competent. The law therefore does not apply to non-emancipated minors.

Caregivers are already resorting to the administration of lethal substances to minors in situations of unbearable pain in order to accelerate or bring about the decease. Most specialists who treat minors (intensive care paediatricians, oncologists, etc) confirmed this at the hearings. The reality of this practice, which was already known at hearings in 2001, is borne out once again.

In the Act of 2002, the right to euthanasia is limited to legally competent individuals.

The criterion of legal capacity had already been called into question at the time from the perspective of the health of the minor patient.

The legislature was perfectly aware of this, because along with the parliamentary proceedings on the end-of-life issue, the law on patients' rights was drawn up. This Act of 22 August 2002 provides that the opinion of minors with respect to medical decisions must be taken into account. More specifically: "If the patient is a minor, the rights enshrined in this Act are exercised by the parents who have authority over the minor or by his guardian". Paragraph 2 of Article 12 stipulates: "The patient is involved in the exercise of his rights according to his age and maturity. The rights enumerated in this Act may be exercised autonomously by a minor patient who may be deemed capable of reasonably assessing his interests".

In line with this legislative development, the Medical Association had already considered in 2003: "From a medical ethics viewpoint, the mental age of a patient is more important than his chronological age".

Numerous experts confirmed this position at the hearings before the united committees.

Several of them called for a legislative initiative.

[…]

On the basis of the experience which they gained in the application of the Act of 2002 with regard to legally competent individuals, several physicians made a case for a legislative initiative allowing euthanasia for minors under certain conditions.

Euthanasia is defined by the law, which adopted the definition proposed by the Bioethics Committee and which reads as follows: “The act of intentionally terminating life by someone other than the person concerned, at the latter’s request”.

Euthanasia is therefore an act committed at the request of the person concerned.

To make a valid request, the person concerned must be capable of reasonably assessing his interests.

According to the legal definition given by the initiators of the proposal, euthanasia for minors is only possible if they have the capacity for discernment. We should point out that the capacity for discernment is not an absolute condition which an individual possesses from a certain age onward and for the rest of his life in every situation he finds himself in. That capacity is evaluated for each individual in a particular situation. It must be certified for every new issue.

Furthermore, a non-emancipated minor has no legal capacity. His legal representatives (parents exercising parental authority, guardian, etc) act on his behalf in legal acts. The intervention of the legal representatives is required to be able to perform euthanasia on a minor.

The purpose of this proposal is to authorize euthanasia on minors in accordance with the conditions set out in the Act of 2002, if the minor’s capacity for discernment has been certified and the request was made in accordance with the conditions of the law and confirmed by the minor’s legal representatives.

The capacity for discernment must be assessed by a child psychiatrist or a psychologist, who must certify in writing that the minor is capable of reasonably judging the consequences of his request.

The child’s capacity for discernment should not be merely inferred from its age. All specialists who have been heard agree that the capacity for discernment varies from one individual to another and from one situation to another.

All specialists in paediatric medicine who have been heard insisted that children are capable of gaining an extraordinary degree of maturity when they are confronted with a fatal illness. In view of their opinion, it is better not to set an arbitrary age limit, but to ask the question: is the patient’s request carefully considered, and is he capable of judging all the consequences of that request?” (*Parl. St.*, Senaat, 2012-2013, nr. 5-2170/1, pp. 1-4).

B.3.2. It shows that the legislature was willing to meet the request formulated by paediatricians and other caregivers to decriminalize euthanasia for minors who are in a medically futile condition of constant and unbearable suffering that cannot be alleviated. In that respect, it considered that a minor can have sufficient capacity for discernment to judge the implications of a request for euthanasia and that this capacity for discernment must be assessed case by case. In that context, the legislature based itself on the position of the Medical Association, namely that, in medical matters, “the mental age of a patient is more

important than his chronological age". Nevertheless, it considered it necessary, on account of the fundamental legal incapacity of minors, also to require the consent of the legal representatives of a minor who requests euthanasia.

Regarding the admissibility

B.4. Article 142 of the Constitution and Article 2(2°) of the Special Act of 6 January 1989 on the Constitutional Court require that each natural person or legal entity instituting an action for annulment must demonstrate an interest. Only persons whose situation might be directly and adversely affected by the contested act can demonstrate an interest. Consequently, the *actio popularis* is not admissible.

B.5.1. The non-profit associations "Jurileven" and "Pro Vita", applicants in case no. 6030, and the non-profit association "Jongeren voor het Leven", applicant in case no. 6034, believe that they demonstrate the requisite interest in requesting the annulment of the contested act in that it directly affects their purpose, which is to promote and protect human life until death by natural causes, by taking legal action.

B.5.2. When a non-profit association that does not invoke its personal interest takes action in court, its purpose must be specific and therefore distinct from the public interest; it must defend a collective interest; its purpose must be liable to be affected by the contested act; it must not turn out that this purpose is not, or no longer, being effectively pursued.

B.5.3. The applicants in cases nos. 6030 and 6034 fulfil the above conditions, notably insofar as their purpose includes defending human life in all stages of its development until death by natural causes. That purpose is distinct from the public interest and their actions for annulment of the contested act are not unrelated to it. Consequently, the applicants in those cases demonstrate the requisite interest.

B.6.1. The applicants in case no. 6033 are natural persons. One of the arguments they put forward is that, given their personal situation, they may be directly and adversely affected by the contested act. They point out that this law may be applied to close family members under the age of 18 and permit them to request euthanasia.

B.6.2. Given the irreversible nature of euthanasia, the applicants in case no. 6033 demonstrate a sufficient personal and direct interest in requesting the annulment of the contested act.

The objection of the Council of Ministers regarding the interest of the applicants in case no. 6033 is dismissed.

The merits

Regarding the first ground in case no. 6030, the third ground in case no. 6030, the second ground in case no. 6033, and the first ground in case no. 6034

B.7. The first ground in case no. 6030, the third ground in case no. 6030, the second ground in case no. 6033 and the first ground in case no. 6034 all primarily concern the compatibility of the contested Act with the right to life and are therefore dealt with jointly.

B.8.1. The first ground in case no. 6030 alleges the infringement of Articles 10, 11, 22 and 22*b* of the Constitution, read in conjunction with Articles 2 and 3 of the European Convention on Human Rights and Article 6 of the Convention on the Rights of the Child.

In the first part, the applicants criticize the legislature for failing in its obligation to protect minors. In the second part, they criticize the legislature for treating minors in the same way as adults, whereas their situation is fundamentally different.

B.8.2. The third ground in case no. 6030 alleges the infringement of Articles 10, 11, 22 and 22*b* of the Constitution, read in conjunction with Article 2 of the European Convention on Human Rights and Article 6 of the Convention on the Rights of the Child.

The ground concerns the consultation by the attending physician of a child and adolescent psychiatrist or a psychologist, referred to in Article 3(2)(7°) of the Act of 28 May 2002, as inserted by Article 2 of the contested Act. The applicants argue that the guarantee enshrined

in that provision is insufficient to fulfil the requirements set out in the constitutional and international law provisions referred to in the ground, since:

- The contested Act requires no specific qualification and competence on the part of the child and adolescent psychiatrist or psychologist (first part);

- The contested Act defines no criteria on the basis of which the attending physician must either consult a child and adolescent psychiatrist or a psychologist (second part);

- The contested Act defines no criteria for the assessment of the minor's capacity for discernment by the above-mentioned practitioners (third part);

- The contested Act does not provide that the child and adolescent psychiatrist or psychologist must be independent vis-à-vis the attending physician, the minor patient and his legal representatives (fourth part);

- The contested Act does not provide for a second opinion on the minor's capacity for discernment if the child and adolescent psychiatrist or the psychologist finds that the minor patient has the capacity for discernment (fifth part); and

- The contested Act does not rule out the possibility that the attending physician performs the act of euthanasia if the child and adolescent psychiatrist or the psychologist finds that the non-emancipated minor does not have the requisite capacity for discernment (sixth part).

B.8.3. The second ground in case no. 6033 alleges the infringement of Articles 22*b* and 23 of the Constitution, read in conjunction with Article 2 of the European Convention on Human Rights.

The applicants argue that the right to life does not entail the right to terminate life, and that authorizing euthanasia of non-emancipated minors is in breach of the obligation incumbent on the legislature to protect the life of those patients.

Insofar as the applicants in case no. 6033 also argue in their statement of reply that the contested Act introduces an unwarranted difference in treatment between legally capable and

legally incapable minors, and that the requirement of consent from the legal representatives of the minor patient is inconsistent with the acceptance of the minor's capacity for discernment, they adduce new grounds, which for that reason are not admissible.

B.8.4. The first ground in case no. 6034 alleges the infringement of Articles 22, 22*b* and 23 of the Constitution, read in conjunction with Articles 2 and 8 of the European Convention on Human Rights.

The ground concerns the requirement contained in Article 3(2)(7°) of the Act of 28 May 2002, as inserted by Article 2 of the contested Act, of the consent of the minor's legal representatives to his request for euthanasia. The applicant in case no. 6034 essentially argues that euthanasia with the consent of a third party constitutes a direct and irreversible violation of the minor's moral and physical integrity, as well as a violation of his right to life.

B.9.1. The Council of Ministers argues that the applicant in case no. 6034 has no interest in its first ground since an annulment of the provision that provides for the consent of the minor's legal representatives would have the effect of removing a guarantee that is given in the context of euthanasia of a minor, whereas the applicant in actual fact seeks a prohibition of euthanasia of minors.

B.9.2. Since the applicant in case no. 6034 has demonstrated its interest in the annulment of the provisions of the contested Act, there is no need to investigate whether it also has an interest in each of the grounds it adduces.

The objection is dismissed.

B.10.1. Article 22 of the Constitution provides:

"Everyone has the right to respect of his private and family life, except in the cases and conditions determined by the law.

The laws, federate laws and rules referred to in Article 134 guarantee the protection of this right."

Article 8 of the European Convention on Human Rights provides:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The parliamentary proceedings for Article 22 of the Constitution show that the Constitutional legislature sought the greatest possible concordance with Article 8 of the European Convention on Human Rights (*Parl. St.*, House of Representatives, 1992-1993, no. 997/5, p. 2).

B.10.2. The right to respect for private and family life, as enshrined in the above-mentioned provisions, is essentially intended to protect individuals against interference in their private and family lives.

Article 22, first paragraph, of the Constitution and Article 8 of the European Convention on Human Rights do not rule out interference by the public authorities in the right to respect for private life, but require that such interference is permitted by a sufficiently precise legal provision, that it answers a pressing social need, and that it is proportionate to the legitimate aim pursued.

Those provisions also entail the positive obligation for the public authorities to adopt measures designed to secure effective respect for private and family life, even in the sphere of the relations of individuals between themselves (ECHR, 27 October 1994, *Kroon and others* v. the Netherlands, §31; Grand Chamber, 12 November 2013, *Söderman* v. Sweden, §78).

B.11.1. Article 22*b* of the Constitution provides:

"Each child is entitled to have his or her moral, physical, mental and sexual integrity respected.

Each child has the right to express his or her views in all matters affecting him or her, the views of the child being given due weight in accordance with his or her age and maturity.

Each child has the right to benefit from measures and facilities which promote his or her development.

In all decisions concerning children, the interest of the child is a primary consideration.

The law, federate law or rule referred to in Article 134 ensures these rights of the child."

B.11.2. The first paragraph of that provision was adopted further to the final report of the National Commission against the Sexual Exploitation of Children. That paragraph was justified as follows:

"The report stresses that children are not adults and that it does not suffice to say that every individual has the right to moral, physical, mental and sexual integrity. Emphasis should be on the state of being a child, since there is a tendency, due in part to an erroneous interpretation of the Convention on the Rights of the Child, to treat children and adults equally. A correct interpretation of the Convention on the Rights of the Child shows that children are not only persons with legal rights, but also individuals who need to be protected.

[…]

The term 'right to respect' is broader than protection. It indicates that this is not only a passive right, but that it also holds an obligation for the public authorities to pursue an active policy in that respect.

[…]

[By] using the term 'right to respect', the child is treated as a person with legal rights and not just as a legal object or an individual needing protection" (*Parl. St.*, Senate, 1999-2000, no. 2-21/4, pp. 5 and 49).

Reference was also made to the connection between Article 22*b*, first paragraph, of the Constitution and Articles 2 and 3 of the European Convention on Human Rights (*Parl. St.*, Senate, 1999-2000, no. 2-21/1, p. 3).

B.11.3. The second to fourth paragraphs of Article 22*b* of the Constitution were inserted by the constitutional review of 22 December 2008, which purported to extend the

constitutional recognition of children’s rights to the essence of the Convention on the Rights of the Child. Those paragraphs purport to “emphasize the position of the child in society and its right to express its views”, and must in the first place “establish a link between the Constitution and the Convention on the Rights of the Child” (*Parl. St.*, House of Representatives, 2007-2008, DOC 52-0175/005, pp. 6 and 7).

Both Article 22*b*, fourth paragraph, of the Constitution and Article 3, first paragraph, of the Convention on the Rights of the Child require all institutions that take measures with respect to children to put the child’s interest first in the procedures that affect it. Article 22*b*, fifth paragraph, of the Constitution instructs the competent legislature to ensure that the interest of the child is the primary consideration. In determining what is in the child’s interest, due weight must be given to the views of the child “in accordance with his or her age and maturity” (Article 22*b*, second paragraph, of the Constitution).

B.12. Article 23 of the Constitution provides:

“Everyone has the right to lead a life in keeping with human dignity.

To this end, the laws, federate laws and rules referred to in Article 134 guarantee economic, social and cultural rights, taking into account corresponding obligations, and determine the conditions for exercising them.

These rights include among others:

1° the right to employment and to the free choice of an occupation within the context of a general employment policy, aimed among others at ensuring a level of employment that is as stable and high as possible, the right to fair terms of employment and to fair remuneration, as well as the right to information, consultation and collective negotiation;

2° the right to social security, to health care and to social, medical and legal aid;

3° the right to decent accommodation;

4° the right to the protection of a healthy environment;

5° the right to cultural and social fulfilment;

6° the right to family allowances.”

B.13. Article 6 of the Convention on the Rights of the Child provides:

"1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child."

B.14. Article 2 of the European Convention on Human Rights provides:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

a) in defence of any person from unlawful violence;

b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

c) in action lawfully taken for the purpose of quelling a riot or insurrection."

B.15. Article 3 of the European Convention on Human Rights provides:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

B.16. It follows from the case law of the European Court of Human Rights that "an individual's right to decide by what means and at what point his or her life will end, provided he or she is capable of freely reaching a decision on this question and acting in consequence" is one of the aspects of the right to respect for private life (ECHR, 20 January 2011, *Haas* v. Switzerland, §51; see also: 19 July 2012, *Koch* v. Germany, §52; 14 May 2013, *Gross* v. Switzerland, §59).

The free and fully informed choice of an individual to avoid what he or she considers will be an undignified and distressing end to his or her life is safeguarded by the fundamental rights enshrined in Article 8 of the European Convention on Human Rights (ECHR, 29 April 2002, *Pretty* v. United Kingdom, §67; 20 January 2011, *Haas* v. Switzerland, §50) and Article 22 of the Constitution.

B.17.1. The right to life and the right to physical integrity as guaranteed by the constitutional and treaty provisions cited in the grounds do not conflict with the very principle

of the decriminalization of euthanasia. After all, from those fundamental rights there cannot ensue an obligation to live, imposed on an individual with the capacity for discernment, irrespective of the circumstances with which this individual is confronted.

B.17.2. The right to life, as enshrined in Article 2 of the European Convention on Human Rights, does however create for the legislature a duty to take the necessary measures to "protect vulnerable persons, even against actions by which they endanger their own lives", which implies that it must make sure to prevent "an individual from taking his or her own life if the decision has not been taken freely and with full understanding of what is involved" (ECHR, 20 January 2011, *Haas* v. Switzerland, §54).

Such a positive obligation to take measures to protect the physical integrity of vulnerable persons, such as children, also follows from Article 3 of the European Convention on Human Rights (ECHR, Grand Chamber, 10 May 2001, *Z and others* v. United Kingdom, §73; 4 December 2003, *M.C.* v. Bulgaria, §149), Article 6 of the Convention on the Rights of the Child, and Article 22*b* of the Constitution.

B.17.3. Given their vulnerability, children are entitled to State protection, in the form of effective prevention, to safeguard them against grave types of interference with their physical or moral integrity (ECHR, 2 December 2008, *K.U.* v. Finland, §46; 17 December 2009, *B.B.* v. France, §62). "In the case of vulnerable persons, including children, the authorities must be particularly attentive and guarantee the victims increased protection" (ECHR, 10 May 2012, *R.I.P. and D.L.P.* v. Romania, §58).

B.18. It follows from the foregoing that, where the legislature permits euthanasia for non-emancipated minors who are in a medically futile condition, it must put in place increased protective measures to prevent abuses in that area in order to safeguard the right to life and the right to physical integrity. It is the duty of the legislator to "establish a procedure capable of ensuring that a decision to end one's life does indeed correspond to the free will of the individual concerned" (ECHR, 20 January 2011, *Haas* v. Switzerland, §§57-58).

B.19.1. As the Council of Ministers argues, the European Court of Human Rights grants a considerable margin of appreciation to the States in the regulation of euthanasia, particularly given the absence of a European consensus on this matter (ECHR, 20 January 2011, *Haas* v. Switzerland, §55; 19 July 2012, *Koch* v. Germany, §70).

B.19.2. The Court should, however, bear in mind that, in ethical issues, it is primarily up to the legislature to judge what choices should be made in that respect.

B.20. It is up to the Court, taking into account the power of discretion given to the legislature in this matter, to examine whether or not the contested Act establishes a fair balance between, on the one hand, the right ensuing from the right to respect for private life to make life-ending decisions in order to avoid an undignified and distressing end to life and, on the other hand, the right ensuing from the right to life and to physical integrity of vulnerable persons to increased protective measures put in place by the legislature.

To this end, the Court must examine whether the legislature has fulfilled its positive obligation to provide effective safeguards to prevent abuses in the practice of euthanasia on non-emancipated minors.

B.21.1. By virtue of Article 3(1), fourth indent, of the Act of 28 May 2002, as inserted by Article 2 of the contested Act, a physician who performs euthanasia on a minor patient commits no criminal offence if he has ascertained that the minor patient with the capacity for discernment "is in a medically futile condition of constant and unbearable physical suffering" which is the result of a "serious and incurable condition caused by illness or accident", and this suffering "cannot be alleviated" and "will result in death within the foreseeable future".

B.21.2. As was recalled in B.2.5, unlike in the case of adults and emancipated minors, euthanasia of a non-emancipated minor with the capacity for discernment is not allowed if the minor's suffering is of a mental nature and the suffering is manifestly not expected to result in death within the foreseeable future.

The parliamentary proceedings read as follows in that respect:

"[Mrs] […] [finds it] totally unacceptable that euthanasia should be performed on minors for merely mental suffering. Also those paediatricians who call for extending euthanasia to minors mean cancer patients or patients with a terminal muscular disease, but not patients with mental disorders. The speaker is therefore of the opinion that this amendment meets the request from practitioners in the field, and does not want an extension of euthanasia law to minors suffering from merely mental disorders. It is, after all, very difficult to make a psychiatric diagnosis in minors.

[…]

Mr […] agrees that it is particularly difficult to establish mental disorders in young people under the age of eighteen. It is also clear that paediatricians who call for an extension of euthanasia law to minors mean patients who are in a condition of unbearable suffering as a result of a physical disorder. [...]

[…]

Mr […] goes on to discuss the issue of mental suffering. […] It has emerged from the hearings that mental suffering should not be treated in the same way in the case of minor patients.

Where only mental suffering is involved that is not the consequence of physical suffering, Mr […] believes that it is wiser not to take this criterion into consideration for euthanasia of a minor. In any case, this is essentially an academic question, since there are no known cases of euthanasia requests for purely mental suffering.

Mr […] adds that the diagnosis of a mental illness is often progressive. It takes some time to establish that such an illness is incurable. For all those reasons, the speaker agrees with the idea of excluding the criterion of mental suffering for minors. This does not call into question the logic of the Act of 2002.

[…]

[...] The present legislation makes reference to “physical or mental suffering”. If this were to be simply extended to minors, as draft bill no. 5-2170/1 does, that could also mean that a young person suffering from depression might request euthanasia in a perfectly legal way. The speaker feels that this goes too far.

[…] Obviously minor patients with a physical disorder also suffer mentally. However, euthanasia for minors suffering from a purely mental disorder goes much too far as it is impossible to establish a correct psychiatric diagnosis in young people under the age of eighteen. It takes time to see such mental suffering in its proper context and to look for solutions.

Mr […] agrees with the previous speaker’s position on the issue of mental suffering. It has emerged from the hearings and debates that it is acceptable that mental suffering as such should not be taken into consideration as a criterion for performing euthanasia on a minor.

Mr […] refers to the call made by sixteen paediatricians in certain media to extend euthanasia law to minors who are able to express their wish and who are afflicted by unbearable physical suffering. […] The initiators of the draft bill sought an extension of euthanasia law in the easiest possible way to minors who are able to express their wish, but the speaker has no problem with the fact that mental suffering should be expressly excluded for minors. Obviously the idea is not to perform euthanasia on a teenager with a broken heart” (*Parl. St.*, Senate, 2013-2014, no. 5-2170/4, pp. 61-65).

B.21.3. The parliamentary proceedings cited above show that the legislature, in determining the circumstances in which euthanasia may be performed on non-emancipated minors with the capacity for discernment, did not wish to go beyond the request from paediatricians who are confronted in their practice with minors in a medically futile condition of constant and unbearable suffering, and also took into account the specific characteristics typical of the psychology of minors, and which in its view do not warrant the performance of euthanasia on minors who are merely suffering mentally. Furthermore, the exclusion of mental suffering is consistent with the condition that the suffering must result in death within the foreseeable future.

B.21.4. Taking into account the extreme situation in which non-emancipated minor patients with the capacity for discernment and fulfilling the conditions referred to in B.21.1 find themselves, the legislature reasonably considered that those patients are in principle entitled to request euthanasia.

B.22.1. As was mentioned in B.1.6, the attending physician is required to observe a number of obligations that relate to the conditions referred to in B.21.1.

In accordance with Article 3(2)(3°) of the Act of 28 May 2002, the attending physician must consult another physician about the “serious and incurable nature of the condition”. That second physician must be independent vis-à-vis the patient as well as vis-à-vis the attending physician, and must be competent to give an opinion on the condition in question.

As concerns the “constant and unbearable physical suffering that cannot be alleviated”, the attending physician must, in accordance with Article 3(2)(2°) of the Act of 28 May 2002, ascertain this suffering by having several conversations with the patient which must be spread out over a reasonable period of time, taking into account the progress of the patient’s condition. In accordance with Article 3(2)(3°) of that Act, the aforementioned second physician, after having examined the patient, must also report on “the patient’s constant and unbearable physical [...] suffering that cannot be alleviated”.

In accordance with Article 3(2)(1°) of the Act of 28 May 2002, the attending physician must inform the patient about his health condition and his life expectancy, discuss with the patient his request for euthanasia and any therapeutic and palliative courses of action still remaining and their consequences, whereupon the physician, together with the patient, must come to the belief that there is no reasonable alternative solution for the patient’s situation and that the patient’s request is entirely voluntary.

B.22.2. The legislature reasonably considered that the aforementioned obligations incumbent on the attending physician guarantee an objective and correct diagnosis of the “serious and incurable nature of the condition” and the “constant and unbearable physical [...] suffering that cannot be alleviated”, particularly as the attending physician, as was recalled in B.2.7, is required to describe the nature of the condition and of the suffering in the registration form which he must submit to the Federal Control and Evaluation Commission. Thus the

attending physician is aware that if the Commission – half of whose members are physicians – is of the opinion that the above-mentioned conditions have not been fulfilled, his case may be turned over to the public prosecutor.

B.23.1. In accordance with Article 3(1) of the Act of 28 May 2002, a request for euthanasia must be "voluntary, well-considered and repeated"; it must "not [be] the result of any external pressure", and the patient must be "conscious at the moment of making the request".

That provision obliges the attending physician to ascertain that the euthanasia request meets those conditions. This obligation is also stressed in Article 3(2) of the Act of 28 May 2002, as the physician, in accordance with that provision, must come to the belief "that the patient's request is entirely voluntary" (§2, 1°, second sentence), and must be certain of the "durable nature of his request" (§2, 2°).

In accordance with Article 3(2)(4°) of the same Act, the physician must, if there is a nursing team that has regular contact with the patient, discuss the patient's request with the nursing team or members of that team; that discussion must primarily be about the voluntary, well-considered and repeated nature of the request. In accordance with Article 3(2)(6°) of the same Act, the physician must also ascertain that the patient has had the opportunity to discuss his request with the persons that he wanted to meet. In accordance with Article 3(2)(7°) of the same Act, the physician must also have an interview with the legal representatives of the minor patient, during which he must not only ascertain that they give their consent, but also that, having regard to the essential conditions concerning the voluntary nature of the euthanasia request, the minor's decision is not the result of pressure from his relatives.

In accordance with Article 7, fourth paragraph, 6°, of the Act of 28 May 2002, the physician must describe, in the registration form to be submitted to the Federal Control and Evaluation Commission, "the elements underlying the assurance that the request was voluntary, well-considered and repeated, and not the result of any external pressure". Thus the attending physician is aware that, if the Commission is of the opinion that the elements he has taken into consideration are not convincing, his case may be turned over to the public prosecutor.

B.23.2. The legislature reasonably considered that the above-mentioned conditions and the obligations incumbent on the attending physician guarantee that an act of euthanasia will be performed solely if a minor patient with the capacity for discernment has made such a voluntary and well-considered request.

B.24.1. In accordance with Article 3(1), fourth indent, of the Act of 28 May 2002, as inserted by Article 2 of the contested Act, euthanasia can only be performed on a non-emancipated minor if he has the "capacity for discernment".

It follows from that provision that if the physician were to perform euthanasia on a non-emancipated minor who does not have that capacity for discernment, he would be acting outside the scope of the law and be committing a criminal offence.

The manner in which the physician must ascertain the capacity for discernment of a non-emancipated minor who makes a request for euthanasia is regulated by Article 3(2)(7°) of the Act of 28 May 2002, as inserted by Article 2 of the contested Act.

B.24.2. It emerges from the parliamentary proceedings for the contested Act that the legislature did not deem it advisable to set an age limit from which euthanasia may be requested for a minor, and that it was guided primarily by the position of the Medical Association which "has long been urging to omit the criterion of the patient's age in favour of the criterion of the patient's actual capacity for discernment" (*Parl. St.*, Senate, 2013-2014, no. 5-2170/4, p. 38), as well as by the positions adopted by several experts who were consulted when the contested Act was being drafted (see *Parl. St.*, Senate, 2012-2013, no. 5-2170/1, p. 4; no. 5-2170/4, pp. 8, 11, 26, 28 and 36; House of Representatives, 2013-2014, DOC 53-3245/004, p. 28).

It also emerges from the parliamentary proceedings that the legislature considered the criterion of capacity for discernment to be less "arbitrary" than the criterion of age, since its assessment is based on data that are not merely legal but medical, and are evaluated *in concreto* (*Parl. St.*, Senate, 2012-2013, no. 5-2170/1, p. 3; House of Representatives, 2013-2014, DOC 53-3245/004, pp. 4, 8, 28 and 36). It was also stressed that "maturity, biological as well as intellectual, […] [is] far more important than age", and that the minor's maturity evolves as a result of his illness and may be identical to that of an adult with regard

to the way he thinks about death (*Parl. St.*, Senate, 2013-2014, no. 5-2170/4, pp. 13, 14, 21, 22 and 27; House of Representatives, 2013-2014, DOC 53-3245/004, p. 50). It was also pointed out that the term “capacity for discernment” of a minor is not new in medical law, and is in line with what is provided for in Article 12 of the Act of 22 August 2002 on patients’ rights (*Parl. St.*, Senate, 2013-2014, no. 5-2170/4, p. 38; House of Representatives, 2013-2014, DOC 53-3245/004, pp. 36 and 50).

B.24.3. Regarding the scope of the term “capacity for discernment”, the parliamentary proceedings state the following:

“Capacity for discernment can only be evaluated case by case, according to the nature and significance of the act under consideration. The Swiss Federal Court and the Canadian Supreme Court have given a definition for the term “capacity for discernment”. A number of guidelines have been set and indications given. The factors to be taken into consideration are the nature, purpose and utility of the medical treatment, the risks and benefits, the intellectual capacity of the child, the sophistication needed to understand the information relevant to making the decision and to appreciate the potential consequences, the stability of the child’s views, the question whether those views are a true reflection of his core values and beliefs, etc.

So many criteria were used owing to the fact that capacity for discernment must be evaluated on a case by case basis. This was the logic that the initiators of the draft bill followed in order to come all the more precisely to the conclusion that the act to be performed is extremely drastic” (*Parl. St.*, Senate, 2013-2014, no. 5-2170/4, pp. 69-70).

“This term should not be interpreted from a strictly legal viewpoint. It is a clinical term that concerns the actual capacity and should be understood in the light of the particular act – making a euthanasia request – to be performed. The minor must indeed have the capacity for discernment, since he – and he alone – is granted the right to a dignified end to life. That right is strictly individual and is given exclusively to the minor. The term “capacity for discernment” must be clearly distinguished from “legal capacity”, which is of a legal nature. That legal capacity is crucial to the question whether or not the legal representatives should intervene” (*Parl. St.*, House of Representatives, 2013-2014, DOC 53-3245/004, p. 52).

“Moreover, [the Minister of Justice] agrees with the interpretation given by Mrs […] of the term “capacity for discernment”. She adds that it should be understood in the same way as in Article 12(2) of the Act of 22 August 2002. That means, among other things, “taking into account his age and maturity” (*ibid.*, p. 53)”.

B.24.4. It emerges from the excerpts cited from the parliamentary proceedings as well as from the purpose and general scope of the contested Act that the term “capacity for discernment” relates to the ability of the minor to understand the real implications of his

euthanasia request and its consequences. In that connection, it was stressed during the parliamentary proceedings that "the intention [is] to extend euthanasia to minors who are able to express their wish and [that] obviously […] newborn babies and infants do not fall under this definition" (*Parl.* St., Senate, 2013-2014, no. 5-2170/4, p. 65).

B.24.5. It is inherent in the criterion used that a minor's capacity for discernment must be assessed case by case, taking into account all the circumstances that determine his situation (medical condition, age, maturity, etc). Contrary to what the applicants in case no. 6030 claim in the third part of the third ground, it is not without reasonable justification that the legislature has not set more specific criteria to determine a minor's capacity for discernment, having regard to the sufficiently clear meaning of the term in question and the fact that, in its assessment, account should be taken of all the circumstances that determine the minor's situation.

B.24.6. In accordance with Article 3(1) of the Act of 28 May 2002, it is first of all up to the physician to whom the euthanasia request is addressed to ascertain the minor's capacity for discernment.

As was mentioned in B.1.6, the physician must discuss with the patient his request for euthanasia; he must also have several conversations with the patient about "the patient's constant physical [...] suffering", which must be spread out over a reasonable period of time, taking into account the progress of the patient's condition; as a result of those conversations, he must come to the belief together with the patient that the request is "entirely voluntary", and must be certain of the durable nature of the patient's request.

Furthermore, the physician must discuss the patient's request with the nursing team that has regular contact with the patient, and must, in accordance with Article 3(2)(7°), last paragraph, of the Act of 28 May 2002, have an interview with the legal representatives of the minor, on which occasion the members of the nursing team and the legal representatives can express their opinion on the minor's capacity for discernment.

B.24.7.1. In accordance with Article 3(2)(7°) of the Act of 28 May 2002, as inserted by Article 2 of the contested Act, the attending physician must also consult a child and adolescent psychiatrist or a psychologist, who must also ascertain the minor's capacity for

discernment and certify this in writing. The attending physician must inform the patient and his legal representatives about the results of this consultation.

In view of the qualifications which a child and adolescent psychiatrist and a psychologist must have in order to gain access to their profession, the legislature, contrary to what the applicants in case no. 6030 allege in the first and second parts of the third ground, reasonably considered that the child and adolescent psychiatrists and psychologists have the necessary knowledge and skills to assess and certify the minor's capacity for discernment.

Having regard to the fact that the patient is in a situation of constant and unbearable physical suffering that will result in death within the foreseeable future, and that the attending physician must also ascertain the minor patient's capacity for discernment, it is reasonably justified, contrary to what the applicants in case no. 6030 allege in the fifth part of the third ground, that the contested Act does not provide for a second opinion on the minor's capacity for discernment if the child and adolescent psychiatrist or the psychologist finds that the minor patient does indeed have the capacity for discernment.

B.24.7.2. As the applicants in case no. 6030 argue in the fourth part of the third ground, Article 3(2)(7°) of the Act of 28 May 2002 does not provide that the child and adolescent psychiatrist or psychologist must be independent vis-à-vis the attending physician, the minor patient and his legal representatives, whereas Article 3(2)(3°) of the same Act provides that the physician consulted by the attending physician on the serious and incurable nature of the condition "[must] be independent vis-à-vis the patient as well as vis-à-vis the attending physician".

Article 121(1) of the Code of Medical Ethics drawn up by the National Council of the Medical Association provides that "the physician who is entrusted with one of the assignments referred to in Article 119 must refuse to examine individuals with whom he has or had relations that are liable to affect his freedom of judgment". Article 119 concerns "the physician entrusted with an expert examination of the physical or mental capacity or suitability of an individual". Article 122 of the same Code specifies: "The physician entrusted with one of the assignments listed in Article 119 must keep his full professional independence vis-à-vis his principal as well as vis-à-vis any other parties. He must formulate his medical findings solely in accordance with his conscience".

Article 34 of the Royal Decree of 2 April 2014 establishing the rules of the ethical code of psychologists provides:

"In case of illness, conflicts of interest or moral incapacity liable to entail an impairment of his objectivity or a limitation of his professional competencies, the psychologist shall ask his client or subject to approach a colleague."

Article 45 of the same Royal Decree specifies:

"Where a psychologist carries out several activities (for example expert examination, diagnosis requested by third parties, therapy, administrative duties, etc), he must ensure that the client or subject is aware of those different types of activities. He must always clearly specify at the outset to his client or subject in what capacity he is seeing him or her. He shall confine himself to one single activity with the same person."

The texts cited above show that child and adolescent psychiatrists and psychologists, under the ethical rules by which they are bound, cannot accept the assignment of certifying a minor's capacity for discernment in the context of the contested Act if they are not independent vis-à-vis the minor and his legal representatives as well as vis-à-vis the attending physician.

The basic assumption of the fourth part of the third ground is therefore incorrect.

B.24.8.1. Taking into account the above-mentioned obligations incumbent on the attending physician, as well as the fact that a person can only have access to the profession of physician if he has the right medical qualifications that meet the conditions defined by law, the legislature reasonably considered that the attending physician is in a position that allows him to judge, with full knowledge of the facts, whether the minor patient understands the real implications of his euthanasia request and its consequences.

B.24.8.2. The physician who performs euthanasia also knows that in the registration form that he must submit to the Federal Control and Evaluation Commission he must describe the elements underlying the assurance that the request was "voluntary, well-considered and repeated, and not the result of any external pressure", and must also supply information about the child and adolescent psychiatrist or the psychologist who was consulted, and the opinion that was formulated. If the Commission is of the opinion that the elements described by the attending physician with respect to the minor's capacity for discernment are not convincing, that Commission may turn the case over to the public prosecutor.

Bearing in mind what was said in B.24.1, the contested Act, contrary to what the applicants in case no. 6030 argue in the sixth part of the third ground, cannot reasonably be interpreted in the sense that, if the child and adolescent psychiatrist or psychologist finds that the minor patient does not have the requisite capacity for discernment, the attending physician may nevertheless go ahead to perform euthanasia on the minor. The consultation of a child and adolescent psychiatrist or a psychologist is seen by the legislature as an additional safeguard for the proper application of the law; it has provided that this person, who is specially qualified, "certifies in writing" that the minor has the capacity for discernment (new Article 3(2)(7°), second paragraph, of the Act of 28 May 2002) and has therefore departed from the wording that was chosen for paragraph 2, 3°, and for paragraph 3, 1°, of the same

provision regarding the consultation of another physician: although the latter's assignment is also to review the medical record, examine the patient and ascertain in this case the patient's constant and unbearable physical or mental suffering that cannot be alleviated, he subsequently confines himself to "report[ing] on his findings", which seems less decisive than, as is pointed out in the proceedings for the draft bill, "certifying that the minor is capable of reasonably understanding the consequences of his request" (*Parl. St.*, Senate, 2012-2013, no. 5-2170/1, p. 4). It would therefore not be consistent to ignore the evaluation thus made. During the parliamentary proceedings, the Minister of Justice declared, in order to obtain the rejection of an amendment that was intended to entrust that evaluation to a multidisciplinary team that is in charge of the minor patient, that "in this bill it was decided to entrust final responsibility for the assessment of the minor's capacity for discernment to a child and adolescent psychiatrist or a psychologist" (*Parl. St.*, House of Representatives, 2013-2014, DOC 53-3245/004, pp. 59 and 60). The contested provision, which cannot be interpreted in any other way, is compatible with the provisions of which the infringement is alleged in the ground.

B.25.1. In accordance with Article 3(2)(7°), last paragraph, of the Act of 28 May 2002, as inserted by Article 2 of the contested Act, euthanasia cannot be performed on a minor patient if his legal representatives do not agree with the minor patient's request. If the legal representatives consent to the request, that consent must be put in writing in accordance with Article 3(4) of the Act of 28 May 2002, as inserted by Article 2 of the contested Act.

B.25.2. The parliamentary proceedings for the contested Act show that the legislature considered it advisable to require the express consent of the minor's legal representatives, on account of the minor's fundamental legal incapacity and the resulting legal necessity for the minor to be represented (*Parl. St.*, Senate, 2013-2014, no. 5-2170/1, p. 3; no. 5-2170/4, pp. 9, 26 and 50).

The legislature also sought to take account of the emotional difficulties which parents face when their child requests euthanasia. In that sense, it was stressed that "from a human perspective […] it [seems] hardly conceivable to grant a minor's request for euthanasia when one or both of his parents totally disagree" (*Parl. St.*, Senate, 2013-2014, no. 5-2170/4, p. 26).

Finally, the condition of consent of the legal representatives was clearly prompted in part by the concern not to compromise the legal certainty of the attending physician (*Parl. St.*, Senate, 2013-2014, no. 5-2170/4, pp. 50-51).

B.25.3. In the context of a euthanasia request made by a minor patient, it is not unreasonable to have consideration for the emotional interests of the minor's legal representatives, who are usually the parents. In so far as the requirement of consent of the legal representatives limits the minor's autonomy, that limitation is justified by the parents' right to respect for their private and family life and by their duty to take care of their child's well-being.

The legislature also reasonably considered that the requirement of consent of the legal representatives was an additional safeguard for the attending physician's compliance with the conditions set out in the law regulating the performance of euthanasia on non-emancipated minor patients. Although the legal representatives need not necessarily have had medical training, their situation generally allows them to judge, with full knowledge of the facts, the minor's "capacity for discernment", the "voluntary, well-considered and repeated" nature of his request, and his "constant and unbearable physical suffering".

B.26. Having regard to the safeguards described in B.21 to B.25, the Act of 28 May 2002, as amended by the contested Act, is based on a fair balance between, on the one hand, the right of every person to make life-ending decisions in order to avoid an undignified and distressing end to life, a right that follows from the right to respect for private life, and, on the other hand, the minor's right to measures aimed at preventing abuses in the performance of euthanasia, a right that follows from the right to life and physical integrity.

B.27. In the second part of the first ground in case no. 6030, the applicants argue that the legislature failed to take into consideration the fundamentally different situations of minors and adults, where the adult, unlike the minor, has the capacity to perform acts in relation to his person and his property, and that, in this way, the legislature has treated equally, without reasonable justification, two categories of persons who are in fundamentally different situations.

B.28.1. As regards the medically futile condition of constant and unbearable physical suffering that cannot be alleviated and will result in death within the foreseeable future, and is the result of a serious and incurable condition caused by illness or accident, as referred to in the Act of 28 May 2002, the situation of a non-emancipated minor is not essentially different from that of an adult or emancipated minor patient.

On the other hand, as was mentioned in B.2.5, the other legal conditions for performing euthanasia differ according to whether non-emancipated minors are involved or adults and emancipated minors. Those differences are precisely prompted by the condition of vulnerability and legal incapacity of the non-emancipated minor patient.

B.28.2. The circumstance that a minor does not in principle have the legal capacity to perform acts relating to his person and his property does not prevent the legislature, in the context of a legal framework for euthanasia, from partly derogating from that fundamental incapacity in order to take account of the voluntary and well-considered choice of a minor who has the capacity for discernment and is in a condition of constant and unbearable suffering.

B.29. Subject to the interpretation referred to in B.24.8.2, the first ground in case no. 6030, the third ground in case no. 6030, the second ground in case no. 6033 and the first ground in case no. 6034 are unfounded.

Regarding the second ground in case no. 6030, the first ground in case no. 6033 and the second ground in case no. 6034

B.30.1. In the second ground in case no. 6030, the first ground in case no. 6033 and the second ground in case no. 6034, the applicants essentially argue that the term “capacity for discernment” contained in Article 3(1), fourth indent, of the Act of 28 May 2002, as inserted by Article 2 of the contested Act, is insufficiently clear in scope and therefore incompatible with the legality principle enshrined in the constitutional and treaty provisions cited in the grounds in question.

B.30.2. The second ground in case no. 6030 alleges the infringement of Articles 10, 11, 12, 14 and 22 of the Constitution, read in conjunction with Articles 2, 7 and 8 of the European Convention on Human Rights, Article 15 of the International Covenant on Civil and Political Rights, and Article 6 of the Convention on the Rights of the Child.

The first ground in case no. 6033 alleges the infringement of Article 12 of the Constitution.

The second ground in case no. 6034 alleges the infringement of Articles 12, 14, 22, 22*b* and 23 of the Constitution, read in conjunction with Articles 2, 7 and 8 of the European Convention on Human Rights.

B.31.1. The Council of Ministers argues that the applicants have no interest in adducing an infringement of Articles 12 and 14 of the Constitution, since they are not physicians and therefore cannot be held criminally liable for an unlawfully performed act of euthanasia.

B.31.2. Since the applicants have demonstrated their interest in the annulment of the provisions of the contested Act, there is no need to examine whether they also have an interest in each of the grounds they adduce.

The objections are dismissed.

B.32.1. Articles 12 and 14 of the Constitution provide:

"Article 12. The freedom of the individual is guaranteed.

No one can be prosecuted except in the cases provided for by the law, and in the form prescribed by the law.

Except in the case of a flagrant offence, no one can be arrested except on the strength of a reasoned judge's order, which must be served at the time of arrest or at the latest within twenty-four hours."

"Article 14. No punishment can be introduced or administered except by virtue of the law."

B.32.2. Article 7.1 of the European Convention on Human Rights provides:

"No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

Article 15(1) of the International Covenant on Civil and Political Rights provides:

"No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby."

B.32.3. In so far as they guarantee the principle of legality in criminal matters, Article 7.1 of the European Convention on Human Rights and Article 15(1) of the International Covenant on Civil and Political Rights are similar in scope to Articles 12(2) and 14 of the Constitution.

To that extent, the safeguards enshrined in those provisions therefore constitute an inseparable whole.

B.33. By empowering the legislature to determine in what cases there can be criminal prosecution, Article 12(2) of the Constitution guarantees every citizen that no conduct shall be punishable other than on the basis of rules adopted by a democratically elected deliberative assembly.

Furthermore, the legality principle in criminal matters that ensues from the above-mentioned constitutional and treaty provisions is based on the idea that criminal law must be formulated in such a way that each person, when he or she assumes a particular conduct, knows whether or not that conduct is punishable. This means that the legislature must specify in sufficiently precise and clear terms that offer legal certainty which acts are punishable so that, on the one hand, the person who assumes a particular conduct can adequately judge in advance what the penal consequences of that conduct will be and, on the other hand, not too much discretion is left to the courts of law.

The legality principle in criminal matters does not, however, prevent the law from giving the courts power of discretion. Account must be taken of the general character of the laws, the diversity of situations to which they apply, and the evolution in the kinds of conduct they penalize.

The requirement that a criminal offence must be clearly defined in the law is fulfilled if the citizen, on the basis of the wording of the relevant provision and, if necessary, with the help of the interpretation thereof by the courts of law, is able to know which acts and omissions incur his criminal liability.

It is only by examining a specific penal provision that it is possible, taking into account the elements proper to the criminal offences it purports to penalize, to determine whether the general terms employed by the legislature are so vague as to infringe the principle of legality in criminal matters.

B.34. The contested Act has neither the purpose nor the consequence of introducing a new criminal offence. Its purpose is to decriminalize, under certain strict conditions, a specific conduct that is characterized as a criminal offence. As such, that Act also specifies the conditions under which the conduct in question is characterized as a criminal offence. For that reason, it must satisfy the requirements imposed by the principle of legality in criminal matters.

B.35. In accordance with Article 3(1), fourth indent, of the Act of 28 May 2002, as inserted by Article 2 of the contested Act, the physician who performs euthanasia on a minor patient commits no criminal offence on condition that this patient has the “capacity for discernment”.

B.36.1. As was considered in B.24.4, it emerges sufficiently clearly from the wording of that provision, having regard also to the purpose and general scope of the contested Act, that the term “capacity for discernment” relates to the ability of the minor to understand the real implications of his euthanasia request and its consequences.

B.36.2. As was considered in B.24.5, it is inherent in the criterion used that a minor’s capacity for discernment must be assessed case by case, taking into account all the

circumstances that determine the minor patient's situation (medical condition, age, maturity, etc). As such, that criterion is in line with the requirement contained in the Act of 28 May 2002 – and applicable to both adults and minors – that the euthanasia request must be "voluntary and well-considered", a requirement that must also necessarily be assessed case by case by the physician to whom the request is made.

B.36.3. It is for the physician to whom the euthanasia request is made to ascertain that the minor patient in question has the ability to understand the real implications of his request and its consequences. He must consult a child and adolescent psychiatrist or a psychologist who must also ascertain the minor patient's capacity for discernment and certify this in writing.

The attending physician and the child and adolescent psychiatrist or psychologist being consulted are persons acting in a professional capacity. In that capacity, they cannot be deemed, also in view of the qualifications which they must have in order to gain access to their profession, not to know the scope of the term "capacity for discernment" used in the contested Act.

The contested Act also obliges the attending physician to have several conversations with the patient about his request for euthanasia and the legal conditions attached to such a request, to discuss the patient's request with the nursing team that has regular contact with the patient, and to consult the minor's legal representatives, without whose consent the minor's request cannot be granted. The attending physician therefore has the necessary information to make an informed assessment of the minor patient's "capacity for discernment".

In view of the fact that the term "capacity for discernment" is essentially medical in scope, the circumstance that the psychiatrist or psychologist being consulted does not need to have had any legal training does not prevent the practitioners in question from judging the minor's ability to understand the real implications of his euthanasia request and its consequences.

B.36.4. Contrary to what the applicants in case no. 6030 claim, the term "capacity for discernment" used in the contested Act does not essentially differ from the term used in Article 12(2) of the Act of 22 August 2002 on patients' rights, according to which the minor

“[may] be deemed capable of reasonably assessing his interests”. During the parliamentary proceedings for the contested Act, the Minister of Justice declared in this connection that the term capacity for discernment “should be understood in the same way as in Article 12(2) of the Act of 22 August 2002” (*Parl. St.*, House of Representatives, 2013-2014, DOC 53-3245/004, p. 53).

B.37. Taking the foregoing into account and having regard to the fact that euthanasia may only be performed on a non-emancipated minor patient if that patient is in a medically futile condition of constant and unbearable physical suffering that cannot be alleviated and “will result in death within the foreseeable future”, the legislature reasonably considered that, in view of the patient’s right, ensuing from the right to respect for private life, to make life-ending decisions in order to avoid an undignified and distressing end to life, it would not be advisable to set up a specific judicial procedure to challenge the judgment of the practitioners in question regarding the minor’s ability to understand the real implications of his euthanasia request and its consequences.

B.38. In so far as they allege the infringement of the principle of legality in criminal matters, the second ground in case no. 6030, the first ground in case no. 6033 and the second ground in case no. 6034 are unfounded.

B.39. No legality principle can be inferred from the other constitutional and treaty provisions cited in those grounds that is broader in scope than the legality principle that applies in criminal matters.

In so far as the above-mentioned grounds allege the infringement of the legality principle contained in those provisions, they are equally unfounded.

B.40. In the second part of the second ground in case no. 6034, the applicant also argues that it is not reasonably justified to permit a minor to request euthanasia, whereas in civil law he is treated as an “immature, impressionable and inexperienced person [to whom] the sale of tobacco and alcohol [is prohibited] because it is injurious to [his] health”.

B.41. As was considered in B.26, the contested Act is based on a fair balance between, on the one hand, the right of every person to make life-ending decisions in order to avoid an

undignified and distressing end to life, a right that follows from the right to respect for private life, and, on the other hand, the right to measures aimed at preventing abuses in the performance of euthanasia, a right that follows from the right to life and physical integrity.

As was considered in B.28.2, the circumstance that a minor does not in principle have the legal capacity to perform acts relating to his person and his property does not prevent the legislature, in the context of a legal framework for euthanasia, from partly derogating from that fundamental incapacity in order to take account of the voluntary and well-considered choice of a minor who has the capacity for discernment and is in a condition of constant and unbearable suffering. Moreover, euthanasia on a non-emancipated minor can only be performed with the consent of his legal representatives.

Having regard to the fundamentally different object and purpose of emancipation and euthanasia, from the circumstance that the emancipation of a minor in principle requires a court order cannot be inferred an obligation for the legislature also to provide for a prior court authorization to perform euthanasia. The legislature reasonably considered that, in view of the right of the patient whose suffering "will result in death within the foreseeable future" to make life-ending decisions in order to avoid an undignified and distressing end to life, it is not advisable to provide for a prior court authorization. Such an authorization involves a judicial procedure which, even if it were organized in such a way that it can be concluded within a short timeframe, would cause emotional distress to a patient who will die within the foreseeable future.

B.42. The second ground in case no. 6030, the first ground in case no. 6033 and the second ground in case no. 6034 are unfounded.

Regarding the fourth ground in case no. 6030 and the third ground in case no. 6033

B.43. The applicants in case no. 6030 allege in a fourth ground the infringement by the contested Act of Articles 10, 11, 22 and 22*b* of the Constitution, read in conjunction with Article 160 of the Constitution and Articles 2 and 8 of the European Convention on Human Rights.

They criticize the contested Act for not being preceded by the opinion of the Legislation Section of the Council of State, whereas that was the case with the Act of 28 May 2002 authorizing euthanasia for adults and emancipated minors. The applicants believe that the persons concerned by the contested Act are thus denied a safeguard without objective and reasonable justification.

B.44. The third ground in case no. 6033 alleges the infringement of the principle of due care, since the contested Act "[is] imposed on the citizen, without the approval of the current philosophical, religious, ethical or moral beliefs in this country, or of any international body". The applicants believe that this "constitutes [...] a violation of the rights of the child enshrined in Article 22*b* and Article 23 of the Constitution".

B.45. In accordance with Article 1 of the Special Act of 6 January 1989 on the Constitutional Court, the Court rules in the form of judgments on actions for full or partial annulment of a statute, decree or rule referred to in Article 143 of the Constitution for infringement of:

"1° the rules that have been established by or in pursuance of the Constitution to determine the respective powers of the State, the Communities and the Regions; or

2° the articles of Title II "The Belgians and their Rights", and Articles 170, 172 and 191 of the Constitution;

3° Article 143(1) of the Constitution".

B.46. By virtue of that provision, the Court is only competent to review the substance of a legislative provision against Articles 10, 11, 22 and 22*b* of the Constitution cited in the fourth ground in case no. 6030.

This competence does not permit the Court to verify the way in which a law has been enacted. As was already considered in judgment no. 97/99 of 15 September 1999, the Court is not competent to verify whether or not the obligation to consult the Council of State ensuing from Articles 2 *et seq.* of the laws on the Council of State has been observed. The circumstance that, unlike the draft proposal that resulted in the contested Act, the draft proposal that resulted in the original Act of 28 May 2002 was submitted for an opinion to the Council of State does not lead to a different conclusion.

B.47.1. In accordance with the above-mentioned Article 1 of the Special Act of 6 January 1989, the Court is not competent to review a legislative instrument against the principle adduced in the third ground in case no. 6033.

B.47.2. In order to satisfy the requirements of Article 6 of the Special Act of 6 January 1989, the grounds of the petition must indicate which of the rules, the observance of which is guaranteed by the Court, have been infringed, but must also specify which provisions infringe those rules, and explain in what respect those rules have supposedly been infringed by the provisions in question.

The applicants in case no. 6033 fail to explain in any way in their third ground in what respect the circumstance that the contested Act "[is] imposed on the citizen, without the approval of the current philosophical, religious, ethical or moral beliefs in this country, or of any international body" might constitute "a violation of the rights of the child enshrined in Article 22*b* and Article 23 of the Constitution".

B.48. The fourth ground in case no. 6030 and the third ground in case no. 6033 are inadmissible.

For those reasons,

The Court,

Subject to the interpretation referred to in B.24.8.2, dismisses the actions.

Thus pronounced in French, Dutch and German, in accordance with Article 65 of the Special Act of 6 January 1989 on the Constitutional Court, on 29 October 2015

The Registrar,	The President,
F. Meersschaut	J. Spreutels