ASSISTED SUICIDE IN THE JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS: A MATTER OF LIFE AND DEATH

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O ignorant are they of their ills, who do not laud death and look forward to it as the most precious discovery of Nature! Whether it shuts off prosperity, or repels calamity, or terminates the satiety and weariness of the old man, or leads off the youth in the bloom of life while he still hopes for happier things, or calls back the boy before the harsher stages of life are reached, it is to all the end, to many a relief, to some an answer to prayer and to none does it show more favour than to those to whom it comes before it is asked for! ... this it is, I say, that keeps my birth from being a punishment, that keeps me from falling in the face of threatening misfortunes, that makes it possible to keep my soul unharmed and master of itself: I have a last appeal. Yonder I see instruments of torture, not indeed of a single kind, but differently contrived by different peoples; some hang their victims with head toward the ground, some impale their private parts, others stretch out their arms on a fork-shaped gibbet; I see cords, I see scourges, and for each separate limb and each joint there is a separate engine of torture! But I see also Death. There, too, are bloodthirsty enemies and proud fellow-countrymen; but yonder, too, I see Death. Slavery is no hardship when, if a man wearsies of the yoke, by a single step he may pass to freedom. O Life, by the favour of Death I hold thee dear!

Seneca, On Consolation to Marcia, para. XX

I. Prolegomena

The right to life as a fundamental human right is unquestionable. However, both law and society recognize that there might exist some cases where allowing an individual to die might be the most humane option. In the passage from De Consolatione ad Marciam (On Consolation to Marcia) cited above, Seneca approaches death not as a punishment but something that could be even regarded as a gift:

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[death] is to all the end, to many a relief, to some an answer to prayer and to none does it show more favour than to those to whom it comes before it is asked for... O Life, by the favour of Death I hold thee dear.\(^3\)

Although the aim is to offer Marcia some form of consolation\(^3\) it is notable that this consolation work seems to be lacking in empathy towards Marcia and her loss, the death of her son, and is more an exposition on the tenets of Stoic philosophy on life and death.\(^4\) However, this seems to be in line with the general tradition of formulation of such essays, and in any event De Consolatione ad Marciam offers a unique insight into the mind and beliefs of one of the greatest philosophers of the Roman era with respect to the value of life and death.\(^5\) In addition to this, the statements made within as to the value of death may be considered as reflective of the greater degree of tolerance, if not acceptance, of suicide in Antiquity. As Lecky points out there can be no question that the ancient view of suicide was broadly and strongly opposed to our own. A general approval of it floated down through most of the schools of philosophy, and even to those who condemned it, it never seems to have assumed its present aspect of extreme enormity. This was in the first instance due to the ancient notion of death; and we have also to remember that when a society once learns to tolerate suicide, the deed, in ceasing to be disgraceful, loses much of its actual criminality, for those who are most firmly convinced that the stigma and suffering it now brings upon the family of the deceased do not constitute its entire guilt, will readily acknowledge that they greatly aggravate it. In the conditions of ancient thought, this aggravation did not exist ... [and] it was in the Roman Empire and among the Roman Stoics that suicide assumed its greatest prominence, and its philosophy was most fully elaborated.\(^6\)

However, the focus of the present article is slightly different than what Lecky examined, both temporally and substantively. Whereas Lecky examined the evolution of morals\(^7\) in Europe from Antiquity to early Middle Ages, the present article shall examine the current legal situation with respect to the issue of assisted suicide, as this is reflected in the

\(^2\) Seneca, supra note 1.

\(^3\) Or even to gain her favour.


\(^5\) Interesting is also another moral essay by Seneca, *i.e. De Brevitate Vitae* (On Shortness of Life), where he elaborates on the need of making the most of our allotted time; a translation of this essay can be found in Basore, supra note 1.


\(^7\) Including the stance to suicide.