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Some Remarks on the Issue of Suicide in Roman Criminal Law

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Abstract. This paper analyses the issue of suicide in the sources of Roman law, primarily criminal law. In the course of that, it will focus on the following key points: after a few introductory remarks outlining the Roman custom of committing suicide, first, it will discuss the judgement of suicide in criminal law in general; then, it will examine the appearance of the culprit's suicide as grounds for exclusion of culpability (and the limits thereof) in sources in imperial law; finally, it will briefly analyse the legal position of suicide in military criminal law.

Keywords: Roman criminal law, ius publicum, suicide, mors voluntaria

1. Introductory Remarks

When examining the terminology, the following terms for suicide can be found in Roman sources: *mortem sibi consciscere*,[1] *manus sibi inferre*[2] (cf. Gr. autokheiria), *mors voluntaria*.[3] There are more general phrases than the above: *vitam finire*, *se occidere*, and *se interficere*, including terms that refer to the form of committing the act, i.e. jumping into the depth in the first one and self-hanging in the second one, *se praecipitare*[4] and *vitam suspendio finire*.[5]

1 Ulp. D. 21, 1, 1, 1. *Item si quod mancipium capitalem fraudem admiserit, mortis consciscendae sibi causa quid fecerit, inve harenam depugnandi causa ad bestias intromissus fuerit, ea omnia in venditione pronuntianto: ex his enim causis iudicium dabimus.*

2 Marci. D. 48, 21, 3 pr. *Qui rei postulati vel qui in scelere deprehensi metu criminis imminentis mortem sibi consciverunt, heredem non habent.*

3 Diocl. C. 6, 22, 2, 1. *Quod si futurae poenae metu voluntaria morte supplicium antevenit, ratam voluntatem eius conservari leges vetant.*

4 Diocl. C. 6, 22, 2. *Si is, qui tecum uxorem tuam heredem scripsit, quando testamentum ordinavit, sanae mentis fuerit nec postea alicuius sceleris conscientia obstrictus, sed aut impatiens doloris aut aliqua furoris rabie constrictus se praecipitem dedit, euisque innocentia liquidis probationibus commendari potest a te, adscitae mortis obtentu postremum eius iudicium convelli non debet.*

5 Vandenbossche 1952. 472.[3] Battaglini 1970. 94. Wacke 1980. 41.

In this respect, it is worth briefly considering the forms of committing suicide. Regarding slaves, we can read mostly about throwing themselves into the depth.[6] Use of a rope as means of suicide made death especially dishonourable. Servius attaches the comment to the relevant locus in Aeneis, Vergil's epic – also serving to legitimize Augustus[7] –, that in this case the pontifices[8] refused burial of the dead person: 'cautum fuerat in pontificalibus libris, ut qui laqueo vitam finisset, insepultus abiciatur'.[9]

It is not by chance that Ulpian's responsum – by referring to Neratius – prohibits mourning for enemies and persons sentenced to death owing to high treason and those who have committed suicide using a rope, while this prohibition applies only to those persons who choose other means that voluntarily put an end to their life not because of being weary of life but owing to pangs of conscience felt over the crime committed by them: 'Nec solent autem lugeri, ut Neratius ait, hostes vel perduellionis damnati nec suspendiosi nec qui manus sibi intulerunt non taedio vitae, sed mala conscientia.'[10] This manner of death seemed unnatural to the ancient Greeks and Romans because they believed that by constricting the air passages the soul cannot leave the body in a proper manner and so cannot gain passage to the other world.

Natural restrictions were placed on committing the act by poison due to the fact that in antiquity only a very limited number of toxins were known which took effect quickly and painlessly; however, they included *cicuta* (water hemlock), which served as means in numerous cases of murder and suicide although selling poisons was strictly punished by lex Cornelia de sicariis et veneficis, i.e. it was deemed by it as identical to murder.[11] The dagger and the sword were regarded as the noblest forms of voluntarily chosen death; however, it must be added that in ancient times suicide was a much more complicated and painful act by all means, requiring greater moral strength than nowadays.[12]

As a tradition that cannot be supported by specific legal sources, it is worth briefly looking at the archaic age of Rome in terms of judging suicide. The fifth

6 Wacke 1980. 45.

7 On these tendencies, see Heinze 1915, Bailey 1935, Büchner 1945, Boyancé 1963, Wallace-Hadrill 1982. 19–36, Kühn 1971, Pötscher 1977, Monti 1981, Williams 1983, Hardie 1986, Wifstrand Schiebe 1997, Adler 2003, Reed 2007.

8 On the *pontifices*, see Nótári 2011. 468.

9 Verg. *Aen.* 12, 593–603. *Accidit haec fessis etiam fortuna Latinis / quae totam luctu concussit funditus urbem. / Regina ut tectis venientem prospicit hostem / incessi muros, ignis ad tecta volare, / nusquam acies contra Rutulas, nulla agmina Turni, / infelix pugnae iuvenem in certamine credit / extinctum et subito mentem turbata dolore / se causam clamat crimenque caputque malorum, / multaque per maestum demens effata furorem / purpureos moritura manu discindit amictus / et nodum informis leti trabe nectit ab alta.*

10 Ulp. D. 3, 2, 11, 3.

11 Marci. D. 48, 8, 3 pr. *Eiusdem legis Corneliae de sicariis et veneficis capite quinto, qui venenum necandi hominis causa fecerit vel vendiderit vel habuerit, plectitur.*

12 Hirzel 1908. 243.

king of Rome, Tarquinius Priscus, to prevent citizens – who intended to escape from his despotism at the expense of their life – from committing suicide, enacted a regulation much stricter than the prohibition of suicide usual in archaic Roman law, corresponding with Greek customary law, which we can learn also from Servius's Aeneis commentary.[13] As due to the king's certain measures – during the construction of the cloaca – numerous Roman citizens took their own life, the ruler ordered that the corpse of suicides had to be strung up to the cross to let birds and wild animals clear away the dead bodies.[14] Cassius Hemina – as we learn of it also from Servius –, in his Annales, allegedly noted that this was the first occasion in Roman history when suicide was deemed as a contemptible and punishable act since thereby the perpetrator deprived the state of one citizen.[15]

On the basis of the narratives of historians, we can declare that from the earliest period of the Republic the suicide of persons in non-military status was not liable to criminal prosecution; for example, Livius lets us know that in order to avoid total forfeiture of property affecting also their families, Appius Claudius and Spurius Coppius – the two decemviri who were charged with an act punishable by death penalty before the popular assembly – had put an end to their lives before the sentence was passed. It should be noted that they were nevertheless unable to avoid forfeiture of property thereby.[16] (Legal regulation of the connection between capital punishment, suicide, and forfeiture of property – as we shall see – would be carried out only in the time of Hadrian.)[17] It is worth mentioning that at the time of the Republic suicide committed in a 'shameful' manner, i.e. by self-hanging, did not constitute the subject of the facts of a case in criminal law either.[18]

2. Judging Suicide in Criminal Law

It is highly questionable whether Roman regulation in the classical age affected at all the legal problems arising in connection with suicide or not. Although Quintilian refers to an alleged law which prescribed that those who wanted to take their own life voluntarily had to show the cause of their decision and the planned manner of committing the act to the senate – and if they had failed to do so, they could not be buried: 'Qui causas voluntariae mortis in senatu non reddiderit, insepultus abiciatur.'[19] Quintilian's narrative is hardly worth of credit since the

13 Serv. *in Verg. Aen.* 12, 607.
14 Plin. *Nat. hist.* 36, 24.
15 Serv. *in Verg. Aen.* 12, 607.
16 Liv. 3, 58.
17 Cf. C. 9, 50, 1.
18 Val. Max. *Dicta* 5, 8, 3.
19 Quint. *Decl.* 4, 337.

account he gives of this alleged law is nothing else than a historical parable for the act carried out by Euphrates, the philosopher, who disclosed his intention to commit suicide to Emperor Hadrian and took poison only when the emperor had given authorization to do so.[20] The information on the one-time law can be considered even less reliable since suicides committed by free citizens with civil (i.e. military) legal standing were not deemed as punishable in Quintilian's time, and so Euphrates's case only enriched the list of exceptions. Similarly, we cannot forget that Quintilian's work entitled *Declamationes* discusses fictitious cases, and its purpose is not to provide an authentic historical narrative but merely to enumerate cases, paradigms that can be used in the training of orators and are suitable for those who intend to acquire rhetorical skills.[21]

The statutes of a funeral association from 133/136 AD (lex collegii funeraticii Lanuvini) do not allow to provide suicides with proper funeral: 'Item placuit: quisquis ex quacumque causa mortem sibi adsciverit, eius ratio funeris non habebitur.'[22] This regulation can be supposedly attributed to the belief that the soul of suicides will not find peace even in the other world, and therefore burying anybody near them should be avoided.[23]

Lex Cornelia de sicariis et veneficis did not contain any provisions to prohibit suicide. Its only locus referring to this subject discusses a case reminding us of aberratio ictus: 'In lege Cornelia dolus pro facto accipitur, neque in hac lege culpa lata pro dolo accipitur. Quare si quis alto se praecipitaverit et super alium venerit eumque occiderit … ad huius legis coercitionem non pertinet.'[24] Accordingly, no punishment was prescribed for a person who wanted to commit suicide by throwing himself into the depth but in the course of that he fell on somebody else and striking him dead he stayed alive since his act can be classified not as dolus but only as culpa lata. Paulus emphasizes that in cases belonging to the scope of *lex Cornelia de sicariis et veneficis*, dolus – contrary to the general rule[25] – is not judged identically as culpa lata.

The case when somebody would have been obliged to prevent a third party's suicide but failed to do so constituted the subject of criminal law regulation. By the application of analogia legis, a slave was obliged to do so on the basis of senatus consultum Silanianum. The senatus consultum Silanianum originating from 10 AD ordered to punish a slave by death who did not try to prevent a violent criminal attempt against his master's life and if he knew about and took part in

20 Quint. *Decl.* 337.
21 On Quintilian, see Gwynn 1926, Kennedy 1969, Laing 1920. 515–534, Leitch 2001, Logie 2003. 353–373.
22 Riccobono–Arangio Ruiz 1940–1943, III. 99.
23 Wacke 1980. 48.
24 Paul. D. 48, 8, 7 pr.
25 Cels. D. 16, 3, 36. *Dolus culpa aequiparatur.*

such an attempt.[26] The law withdraws murder committed by poison, in secret and treacherously, from this scope since the slave could not know about it and therefore was not able to do anything against it: 'Qui occisus dicitur, si constet eum sibi quoquo modo manus intulisse, de familia eius quaestio non est habenda, nisi forte prohibere potuit non prohibuit.'[27] On the basis of *analogia*, in the same way, it was obligatory to punish slaves who albeit saw that their master turned against himself in furious rage and although they could have prevented his act they did not do anything against it: 'Qui occisus dicitur, si constet eum sibi quoquo modo manus intulisse, de familia eius quaestio non est habenda, nisi forte prohibere potuit non prohibuit.'[28] 'Si sibi manus quis intulit, senatus consulto quidem Silaniano locus non est, sed mors eius vindicatur, scilicet ut, si in conspectu servorum hoc fecit potueruntque eum in se saevientem prohibere, poena adficiantur: si vero non potuerunt, liberentur.'[29] A similar obligation bound prison guards in Rome[30] in the case of persons in preliminary custody: 'Sed si se custodia interfecerit vel praecipitaverit, militi culpae adscribitur, id est castigabitur.'[31] This obligation binds prison guards the same way since they must prevent the confined person from escaping[32] and must make sure that nobody should smuggle weapons or poison into the prison.[33] (If they kill the confined person themselves, then their act will naturally be considered homicidium [homicide].)[34]

3. The Culprit's Suicide as Grounds for Exclusion of Culpability (and the Limits Thereof)

Valuable conclusion may be drawn from the description provided by Valerius Maximus, informing us of the death of Caius Licinuis Macer praetor. Macer was charged with crimen repetundarum, and the office of the president of the quaestio was fulfilled by Cicero. Macer, to save his honour and his family from forfeiture of property, committed suicide. After that, Cicero as the president of the quaestio did not conduct the proceedings, that is, did not have forfeiture of

26 Mommsen, Th. 1899. 630.
27 Ulp. D. 29, 5, 1, 18.
28 Paul. *Sent.* 3, 5, 4.
29 Ulp. D. 29, 5, 1, 22.
30 See also Eisenhut 1972. 268.
31 Mod. D. 48, 3, 14, 3. *Sed si se custodia interfecerit vel praecipitaverit, militi culpae adscribitur, id est castigabitur.*
32 Mod. D. 48, 3, 14, 2. *Qui si negligentia amiserint, pro modo culpae vel castigantur vel militiam mutant: quod si levis persona custodiae fuit, castigati restituuntur. Nam si miseratione custodiam quis dimiserit, militiam mutat: fraudulenter autem si fuerit versatus in dimittenda custodia, vel capite punitur, vel in extremum gradum militiae datur.*
33 Marci. D. 48, 3, 4. *Cum agere custodiam vel ferrum venenumve in carcerem inferri passus est, officio iudicis puniendus est: si nescit, ob negligentiam removendus est officio.*
34 Mod. D. 48, 3, 14, 4. *Quod si ipse custos custodiam interfecerit, homicidii reus est.*

property announced as a second punishment[35] – at the same time, it remains questionable whether Cicero's act was motivated by customary law or only by his own fairness.

According to Tacitus's accounts, in the first centuries of the period of the Roman Empire, numerous citizens took their own life voluntarily to avoid being sentenced and the shame of it as well as forfeiture of property, and, accordingly, emperors gave sometimes authorization to those threatened by capital punishment for executing the sentence not yet pronounced on themselves voluntarily.[36] It occurred several times that the culprits of capital offence left significant bequests to the emperor in their testament to induce the princeps thereby to grant the option of executing other testamentary provisions.[37] However, in certain cases, emperors – especially if they wanted to make up for the deficits of the state treasury – did not dispense with total forfeiture of property even after the voluntary death of the culprit. This custom is well exemplified by the case of Drusus Libo, who was charged with high treason by Trio (the ill-famed calumniator) and who wanted to forestall the lawsuit by suicide – after the death of the culprit, the charge was invariably maintained, and during the lawsuit Emperor Tiberius put the prosecutor in possession of the property of the deceased.[38] A similar fate fell to Classicus's lot, who was charged with negligent administration of his province and who wanted to prevent the lawsuit also by suicide – the accusers insisted on conducting the lawsuit; however, enforcement of this possibility was carried out only as an exception – as we learn it from the letter of Plinius maior.[39]

With regard to judging suicide, interesting problems are raised by the criminal procedure conducted in case of crimes sanctioned in accordance with Roman law by death as principal punishment – by exile for life in case of honestiores –[40] and by forfeiture of property as a second punishment. The testament of a citizen punished by death and forfeiture of property is invalid; instead of both his testamentary and intestate heirs, the fiscus will inherit exclusively. The children of the condemned person could get a fraction of the property only through 'special fairness' of the state to escape from total impoverishment thereby.[41] At the same

35 Val. Max. *Dicta* 9, 12, 7–8. *Consimili impetu mortis C. Licinius Macer vir praetorius, Calvi pater, repetundarum reus, dum sententiae diriberentur, Maenianum conscendit. si quidem, cum M. Ciceronem, qui id iudicium cogebat, praetextam ponentem vidisset, misit ad eum qui diceret se non damnatum, sed reum perisse, nec sua bona hastae posse subici, ac protinus sudario, quod forte in manu habebat, ore et faucibus suis coartatis incluso spiritu poenam morte praecucurrit. qua cognita re Cicero de eo nihil pronuntiavit. Igitur inlustris ingenii orator et ab inopia rei familiaris et a crimine domesticae damnationis inusitato paterni fati genere vindicatus est.*

36 Tac. *Ann.* 11, 3; 16, 11; 16, 33.

37 Tac. *Ann.* 16, 11; *Agricola* 43.

38 Tac. *Ann.* 2, 27–32; Dio Cass. 57, 15.

39 Plin. *Epist.* 3, 9.

40 Mommsen Th. 1899. 1005.

41 See Seidel 1955. 66ff.

time, forfeiture of property applied only to the assets owned by the condemned person at the time of passing the judgment;[42] so, until he was condemned, the accused was able to freely dispose of his goods.[43]

Furthermore, it should be noted that by the death of the accused the criminal procedure also terminated, no death sentence could be passed post mortem rei, and, in the absence of principal punishment, pronouncing any second punishment, i.e. the initial forfeiture of property, did not lie. So, in accordance with this regulation, if the accused, forestalling the judgment to come, successfully committed suicide during the criminal procedure, then his testament remained in force, and in accordance with that his property devolved not upon the fiscus but on his testamentary inheritors.[44] We cannot know exactly when this in fraudem legis state was ended; however, it is certain that in Hadrian's time we can find a perfectly worked out regulation contrary to the above,[45] and his successors, e.g. Antoninus Pius, refined these provisions.[46]

As we can learn from the *Digest* and the *Code of Justinian*, in case of crimes that the law ordered to be punished by death, mine work, animal fight, and deportatio as principal punishment[47] and if the perpetrator was caught in the act or the charge was already brought, the accused could not prevent forfeiture of property threatening his inheritors by his suicide. Contrary to earlier practice, execution of forfeiture of property did not require adopting a sentence in compliance with

42 Gaius D. 28, 1, 8, 1. *Bona quae tunc habuit cum damnaretur, publicabuntur.*

43 Wacke 1980. 53.

44 Concerning the so-called *adoptio fraudis causa facta*, see Paul. D. 48, 20, 7, 2. *Ex bonis damnatorum portiones adoptivis liberis, si non fraudis causa facta est adoptio, non minus quam naturalibus concedi aequum est. Fraudis autem causa adoptio facta videtur, etiamsi non in reatu, seddesperatione rerum per conscientiam, metu imminentis accusationis quis adoptet in hoc, ut ex bonis, quae se amissurum cogitat, portio detrahatur.*

45 D. 48, 21, 3, 5. Also mentioned: Ulp. D. 28, 3, 6, 7; Papin. D. 29, 1, 34 pr. *Eius militis, qui doloris impatientia vel taedio vitae mori maluit, testamentum valere vel intestati bona ab his qui lege vocantur vindicari divus Hadrianus rescripsit.*; Arr. Menander D. 49, 16, 6, 7. *Qui se vulneravit vel alias mortrem sibi conscivit, imperator Hadrianus rescripsit, ut modus eius rei statutus sit, ut, si impatientia doloris aut taedio vitae aut morbo aut furore aut pudore mori maluit, non aminadvertatur in eum, sed ignomia mittatur, si nihil tale praetendat, capite puniatur. Per vinum aut lasciviam lapsis capitalis poena remittenda est et militiae mutatio irroganda.*

46 Marci. D. 48, 21, 3, 8. *De illo videamus, si quis conscita morte nulla iusta causa praecedente in reatu decesserit, an, si parati fuerint heredes causam suscipere et innocentem defunctum ostendere, audiendi sint nec prius bona in fiscum cogenda sint, quam si de criminbe fuerit probatum: an vero omnimodo publicanda sunt.*

47 Ulp. D. 28, 3, 6, 6. *Sed et si quis fuerit capite damnatus vel ad bestias vel ad gladium vel alia poena quae vitam adimit, testamentum eius irritum fiet, et non tunc cum consumptus est, sed cum sententiam passus est: nam poenae servus efficitur: nisi forte miles fuit ex militari delicto damnatus, nam huic permitti solet testari, ut divus hadrianus rescripsit, et credo iure militari testabitur. qua ratione igitur damnato ei testari permittitur, numquid et, si quod ante habuit factum testamentum, si ei permissum sit testari, valeat? an vero poena irritum factum reficiendum est? et si militari iure ei testandum sit, dubitari non oportet, quin, si voluit id valere, fecisse id credatur.*

the rules of procedure, in other words, demonstrating the guilt of the accused; guilt was presumed from purely the fact of suicide as implicit acknowledgement, thereby substantiating the lawfulness of the sentence.[48]

At the same time, the legal successors of the accused had the option to request the continuation of the lawsuit and thereby prove the innocence of the accused, on the one hand, and find another reason for the suicide, which could not be construed as a confession, on the other – the following were considered such a cause: weariness of life, painful disease, death of a beloved person, insolvency, boasting, instantaneous mental disturbance, and madness.[49] If the inheritors did not waive the option to continue the lawsuit they were lawfully entitled to, and they managed to prove either the innocence of the accused (or lack of his guilt) or the fact that he committed suicide driven by any of the above-mentioned causes, then the state treasury could not carry out forfeiture of property, i.e. could not take the inheritors' place.[50] This procedure is well exemplified by Emperor Hadrian's rescriptum, which states that a father was charged with murdering his son, and the father put an end to his life already during the term of the investigation. When the case was brought before Hadrian, the emperor decided that – in view of the fact that the father committed suicide in his pain felt over the death of his son – his property could not constitute the subject of confiscation: 'Videri autem et patrem, qui sibi manus intulisset, quod diceretur filium suum occidisse, magis dolore filii amissi mortem sibi irrogasse et ideo bona eius non esse publicanda divus Hadrianus rescripsit.'[51]

In accordance with this modification, although in the case of the culprit's suicide a death sentence can be no longer imposed as principal punishment, the expected second punishment, forfeiture of property would be pronounced and executed even in the absence thereof, specifically on the basis of the well-known principle of confessus pro iudicato est;[52] so, the suicide committed is evaluated as a kind of a confession.[53] In this case, as a matter of fact, the motives of committing suicide must also be profoundly examined – the following four conditions had to exist at the

48 Marci. D. 48, 21, 3, 1. *Ut autem divus Pius rescripsit, ita demum bona eius, qui in reatu mortem sibi conscivit, fisco vindicanda sunt, si eius criminis reus fuit, ut, si damnaretur, morte aut deportatione adficiendus esset.*; Marci. D. 48, 21, 3, 3. *Ergo ita demum dicendum est bona eius, qui manus sibi intulit, fisco vindicari, si eo crimine nexus fuit, ut, si convinceretur, bonis careat.*; Diocl. et Maxim. C. 6, 22, 2. *Si is, qui tecum uxorem tuam heredem scripsit, quando testamentum ordinavit, sanae mentis fuerit nec postea alicuius sceleris conscientia obstrictus, sed aut impatiens doloris aut aliqua furoris rabie constrictus se praecipitem dedit, eiusque innocentia liquidis probationibus commendari potest a te, adscitae mortis obtentu postremum eius iudicium convelli non debet.*

49 D. 28, 3 ,6, 7; 48, 21, 3, 4. 5; 49, 14, 45, 2.

50 D. 24, 21, 3, 8.

51 D. 48, 21, 3, 5.

52 Paul. D. 42, 2, 1. *Confessus pro iudicato est, qui quodammodo sua sententia damnatur.* Kunkel 1968. I. 111ff.

53 Mommsen Th. 1899. 438., Vandenbossche 1952. 487ff., Wacke 1980. 55.

same time for pronouncing forfeiture of property.[54] On the one hand, the sanction (at least one of the sanctions) of the crime shall be forfeiture of property also in other – so-called normal – cases. On the other hand, either the perpetrator had to be manifestus or a charge had to be brought against him in a proper procedure. Thirdly, the accused had to commit suicide not owing to any other cause, e.g. out of weariness of life (taedium vitae) or mourning over the death of his relative (luctus),[55] madness (furor), disease (morbus), or unbearable pain (impatientia doloris), but owing to his bad conscience felt over the crime committed (conscientia admissi criminis).[56] Fourthly, the culprit's guilt had to be proved on its merits – at the same time, if no other motive of suicide[57] could be found, then the act was evaluated simply as a confession.[58] Forfeiture of property could be pronounced only in case of joint existence of the above-listed conditions; both legal scientists' writings and imperial decrees took firm action against attempts at interpreting the above provisions in practice in an extensive manner.[59]

Nevertheless, certain loci of Justinian's laws seem to imply that the property of the accused must be confiscated under any circumstances if he might commit suicide driven by fear of the punishment threatening him or bad conscience.[60]

54 Wacke 1980. 55. See Marcianus D. 48, 21, 3, pr., 1–5.

55 See also Nótári T.: De iure vitae necisque. *Jogtudományi Közlöny* 1998. 11: 421ff.

56 Cf. Ulp. D. 28, 3, 6, 7; Ulp. D. 48, 9, 8; Marci. D. 48, 21, 3, 7.

57 Ulp. D. 28, 3, 6, 7. *Nam eorum, qui mori magis quam damnari maluerint ob conscientiam criminis testamenta irrita constitutiones faciunt, licet in civitate decedant. Quod si quis taedio vitae vel valetudinis adversae impatientia vel iactatione, ut quidam philosophi, in ea causa sunt, ut testamenta eorum valeant.* (The prototype of these latter cases is described by Lucian in his work *De morte Peregrini*.)

58 See also Ulp. D. 48, 19, 8, 1.

59 Paul. D. 49, 14, 45, 2; C. 9, 50, 1; C. 9, 50, 2; C. 9, 6, 5; Ulp. D. 29, 5, 1, 23. C. 3, 26, 2; Ulp. D. 24, 1, 32, 7; Flor. D. 38, 2, 28. pr.

60 Ulp. D. 28, 3, 6, 7. *Eius qui deportatur non statim irritum fiet testamentum, sed cum princeps factum comprobaverit: tunc enim et capite minuitur. sed et si de decurione puniendo vel filio nepoteve praeses scribendum principi interlocutus est, non puto statim servum poenae factum, licet in carcere soleant diligentioris custodiae causa recipi. nec huius igitur testamentum irritum fiet, priusquam princeps de eo supplicium sumendum rescripserit: proinde si ante decesserit, utique testamentum eius valebit, nisi mortem sibi conscivit. nam eorum, qui mori magis quam damnari maluerint ob conscientiam criminis, testamenta irrita constitutiones faciunt, licet in civitate decedant: quod si quis taedio vitae vel valetudinis adversae impatientia vel iactationis, ut quidam philosophi, in ea causa sunt, ut testamenta eorum valeant. quam distinctionem in militis quoque testamento divus hadrianus dedit epistula ad pomponium falconem, ut, si quidem ob conscientiam delicti militaris mori maluit, irritum sit eius testamentum: quod si taedio vel dolore, valere testamentum aut, si intestato decessit, cognatis aut, si non sint, legioni ista sint vindicanda.*; Marci. D. 48, 21, 3. pr. *Qui rei postulati vel qui in scelere deprehensi metu criminis imminentis mortem sibi consciverunt, heredem non habent. papinianus tamen libro sexto decimo digestorum responsorum ita scripsit, ut qui rei criminis non postulati manus sibi intulerint, bona eorum fisco non vindicentur: non enim facti sceleritatem esse obnoxiam, sed conscientiae metum in reo velut confesso teneri placuit. ergo aut postulati esse debent aut in scelere deprehensi, ut, si se interfecerint, bona eorum confiscentur.*; C. 9, 50, 1. pr. *Eorum demum bona fisco vindicantur, qui conscientia delati admissique criminis metuque futurae sententiae manus sibi intulerint.*

In accordance with that, in the sources, we can find reference to the point that if suicide was committed during a procedure of indictment pursued owing to a crime that did not threaten the accused with capital sentence (e.g. in case of theft), then the property of the suicide could not constitute the subject of forfeiture of property: 'Idem rescripsit eum, qui modici furti reus fuisset, licet vitam suspendio finierit, non videri in eadem causa esse, ut bona heredibus adimenda essent, sicuti neque ipsi adimerentur, si compertum in eo furtum fuisset.'[61] However, in the event that owing to the above-mentioned causes forfeiture of property was carried out, not only was intestate succession excluded but also every testamentary disposition was repealed, and only legal transactions between living persons could continue to be in effect.[62]

4. Suicide in Roman Military Criminal Law

For soldiers, all forms of desertion, i.e. running away from military obligation, was considered as serious insubordination and was sanctioned – in addition to other forms of punishment – by life imprisonment.[63] As to whether suicide committed in the army was ranked among these facts, the sources before Hadrian do not provide any information.

It does not seem to be unworthy of briefly looking at how suicide was judged in Roman military criminal law. Attempted suicide committed by a soldier – if any of the causes that allowed more lenient judgement did not exist – was sanctioned by death and in other cases by discharge (missio ignominosa); if a soldier was prompted by an intoxicated state or foolish bragging to make an attempt at suicide, then he was punished by demotion. ('Milesqui sibi manus intulit nec factum peregit, nisi impatientia doloris aut morbi luctusve alicuius vel alia causa fecerit, capite puniendus est: alias cum ignomia mittendus est.'[64] 'Qui se vulneravit vel alias mortem sibi conscivit, imperator Hadrianus rescripsit, ut modus eius rei statutus sit, ut, si impatientia doloris aut taedio vitae aut morbo aut furore aut pudore mori maluit, non animadvertatur in eum, sed ignomia mittatur, si nihil tale praetendat, capite puniatur, per vinum aut lasciviam lapsis capitalis poena remittenda est et militiae mutatio irroganda.'[65]) Romans regarded suicide committed or attempted by a soldier as cowardice, just as running away

61 Marci. D. 48, 21, 3, 2.

62 Ulp. D. 24, 1, 32, 7. *Si maritus uxori donaverit et mortem sibi ob sceleris conscientiam consciverit vel etiam post mortem memoria eius damnata sit, revocabitur donatio: quamvis ea quae aliis donaverit valeant, si non mortis causa donavit.*

63 Val. Max. *Dicta* 6, 3, 3; Suet. *Aug.* 24.

64 Paul. D. 48, 19, 38, 12.

65 Arr. Menander D. 49, 16, 6, 7.

from fight, desertio.[66] If the soldier attempting suicide was able to prove any of the above-mentioned grounds for exculpation (for example, serious illness, unbearable pain, deep mourning), he was discharged from the army: 'Qui se vulneravit vel alias mortem sibi conscivit, imperator Hadrianus rescripsit, ut modus eius rei statutus sit, ut, si impatientia doloris aut taedio vitae aut morbo aut furore aut pudore mori maluit, non animadvertatur in eum, sed ignominia mittatur, si nihil tale praetendat, capite puniatur. per vinum aut lasciviam lapsis capitalis poena remittenda est et militiae mutatio irroganda.'[67] If a soldier put an end to his life owing to pangs of conscience felt over committing some military crime, his testament became invalid, and his property devolved on the fiscus, whereas if any of the above-mentioned grounds for exculpation justified his suicide, and he had no testament, then his property was given to his intestate heirs or, if there were none, to the legion:

> …Nec huius igitur testamentum irritum fiet, priusquam princeps de eo supplicium sumendum rescripserit: proinde si ante decesserit, utique testamentum eius valebit, nisi mortem sibi conscivit. Nam eorum, qui mori magis quam damnari maluerint ob conscientiam criminis, testamenta irrita constitutiones faciunt, licet in civitate decedant: quod si quis taedio vitae vel valetudinis adversae impatientia vel iactationis, ut quidam philosophi, in ea causa sunt, ut testamenta eorum valeant. quam distinctionem in militis quoque testamento divus Hadrianus dedit epistula ad Pomponium Falconem, ut, si quidem ob conscientiam delicti militaris mori maluit, irritum sit eius testamentum: quod si taedio vel dolore, valere testamentum aut, si intestato decessit, cognatis aut, si non sint, legioni ista sint vindicanda.[68]

Although this paper focuses on the criminal law aspects of suicide, it is worth adding that Roman law contains regulations concerning the suicide of slaves that takes account of several criteria. When calculating the peculium, the owner cannot deduct the loss suffered owing to the slave's self-mutilation or suicide since a slave, too, has the right to cause damage to his own body;[69] in accordance with the aedilis curulis edictum, the seller had to specify accurately if the slave had a history of escape or suicide attempts.[70] If he had, then the slave was worth

66 See also Brand 1968. 9ff.

67 Menen. D. 49, 16, 6, 7.

68 D. 28, 3, 6, 7.

69 Ulp. D. 15, 1, 9, 7. *Si ipse servus sese vulneravit, non debet (dominus) hoc damnum deducere, non magis quam si se occiderit vel praecipitaverit: licet enim etiam servis naturaliter in suum corpus saevire, sed si a se vulneratum servum dominus curaverit, sumptuum nomine debitorem eum domino puto effectum, quamquam, si aegrum eum curasset, rem suam potius egisset.*

70 Ulp. D. 21, 1, 1, 1; Ulp. 21, 1, 17, 4.

less, except if he attempted suicide due to unbearable pain;[71] and Ulpian intends to support this case – extended to suicide attempt in addition to escape – by an unconvincing reasoning, even if purely in terms of psychological deliberations, that what a slave has attempted to commit against himself he would not shrink back from attempting with others either; in other words, he is dangerous both to himself and the public.[72]

5. Summary

By analysing the Roman law aspects, primarily the criminal law aspects of suicide, we can establish the following as main points. Roman law – just as ancient Greek law – as a general rule, did not regard suicide as a punishable act. Although committing it, more accurately, the form of committing the act – e.g. self-hanging –, might have been contemptible but did not entail legal sanction on the merits (except for the possible prohibition of mourning). Regarding suicide, imperial jurists developed a peculiar – and at the same time reversible (!) – presumption. They presumed that a person charged with an act sanctioned by capital punishment and forfeiture of property committed suicide in captivity because his bad conscience tortured him and thereby, as it were, he admitted his act – this was necessary because death terminated the procedure; if it was not possible to impose the principal punishment (death penalty), then it was not possible to impose the second punishment (forfeiture of property) either, and by this presumption they prevented culprits of lawsuits (quite often of show trials) who were sure of being sentenced from saving their property for their heirs. Military criminal law – which was significantly different from 'civil' criminal law in Rome too – sanctioned suicide attempt committed by a soldier (as desertio) by death and suicide attempt committed for excusable reasons by missio ignominosa, i.e. dishonourable discharge.

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71 Paul. D. 21, 1, 43, 4.
72 Ulp. D. 21, 1, 23, 3; Marci. D. 48, 21, 3, 6.

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