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Legal Aspects of the Sacraments at a Distance

Abstract: The article addresses the problem of the possibility of administering the sacraments of marriage, penance and Eucharist at a distance, that is, using information and communication technologies. Electronic means of communication change not only our understanding of time and space, but also the experience of building a community and contact with other people. The conducted analysis led to the conclusion that taking into account the spiritual good of the faithful, especially those who found themselves in danger of death or as a result of a great distance or due to isolation, they have no access to a priest and the real community of the faithful, as well as the fact that the Holy See did not give an authoritative answer opposing the administration of the sacraments by means of new communication tools, this form should not be excluded from the practice of the Church.

Keywords: sacraments, power of attorney, media, broadcasting, telecommunications

Introduction

We live in very interesting times. Technological advancement is taking place like never before. One of its great achievements is the ability to communicate over a distance. Without leaving home, without overcoming long and tiring routes, you can not only lead an intense and extensive social life thanks to the widely available various types of telecommunication devices, but also participate in very serious debates using professional teleconferences, and even take part in complex medical operations. The recent lockdown experience caused by the

global COVID-19 pandemic has forced the need to use instant messaging on an unprecedented scale to undertake professional activities, for example, in the field of education.

This arouses real admiration, but also poses very specific questions, going beyond the sphere of our work and social contacts, and also touching the sphere of religious life related to the sacramental life of the Catholic Church. Will the sacrament be effective only when we experience it in one place and time? Is it possible to participate in the sacramental life of the Church remotely? Is it possible to transmit the invisible grace of God—as defined by the old Catechism—hidden in the sacrament, that is, the visible sign of Christ's saving action, using the electronic means of communication available today, such as telephones, computers, and various types of communicators connected to the Internet?

Electronic means of communication change not only our understanding of time and space, but also the experience of building a community and contact with other people. The article is an attempt to answer the questions posed, focusing on three sacraments: marriage, penance, and the Eucharist.

The Sacrament of Matrimony

One of the necessary conditions for a valid marriage is the expression of a marriage consent act by the prospective spouses present at the same place and time. The aforementioned presence of the parties means, in principle, personal presence, which is a *de iure* and *de facto* presence.

However, canon law, strongly based on Roman law, allows for the possibility of contracting a marriage at a distance, that is, taking a marriage vow by the bridegroom who is not physically present at the wedding ceremony. The Romans considered the marriage consent itself to be so important that until the Justinian period, no formalities were required when expressing consent to marriage, that is, neither the direct participation of contractors, nor the utterance of certain formulas, nor even the drawing up of an official document of marriage. The mere declaration of two persons that they were married was enough for secular authorities to consider them as such. Therefore, if there were reasons that prevented the prospective couple from expressing their will in person by means of words or signs (e.g., due to illness, military service, distance from the permanent place of residence or imminent danger), this message could be sent either by letter or by messenger. The role of the messenger was then limited to verbally conveying the marriage will of the one who sent him, and that was

the end of his task. It was considered only a "living tool" used by the sender. In other words, the person concerned—being actually absent at the time of the marriage—gave their consent through a messenger, which in this case served as a kind of "mechanism" to transfer someone else's words, or through a letter expressing the appropriate content.[1]

In the Latin Church, the first information about a marriage concluded between absentees appears in the 12th century in the "Decree of Gratian," which, based on the marriage of Isaac and Rebecca, devoted two canons to this issue. They draw attention to the fact that the authorization granted to the envoy was very broad—he could choose any person at his discretion (but only from the lineage of Abraham), and after Rebecca's family consented to the marriage, and through them to leave, Isaac was already entitled to the legal title "husband." These references indicate that, according to Gratian, not only marriages contracted by letter or messenger, but also by proxy were considered valid. Gratian norms were confirmed in later legal collections.

According to the law in force, sacramental marriage can be concluded at a distance (can. 1104 and 1105 CIC). The condition for this is that the absent prospective party appoints their proxy. They will then replace the absent spouse by expressing the marriage consent on their behalf.

Contracting a marriage by proxy is based on a legal fiction, which is related to the understanding of the canonical form of contracting a marriage. Although marriage is a personal act by which the spouses mutually give each other and accept each other as wife and husband, it does not change the fact that in the internal law of the Latin Church canonical consent has a constitutive character, and marriage is a bilateral legal act, similar to a contract. One of its necessary conditions is the requirement to express this act of consent by both prospective spouses, present at the same place and time. The aforementioned presence of the parties means, in principle, personal presence, which is a *de iure* and *de facto* presence. The requirement of presence, and thus the requirement of the unity of the act in time and place, is also met when the party is present only *de iure*, that is, when it is represented by a substitute, that is, when the marriage consent is expressed on its behalf and for its benefit, proxy.

Therefore, since the law of the Latin Catholic Church allows for a marriage to be concluded at a distance, that is, between those who are absent, through a proxy, the question arises whether instead of a proxy it would be possible to use some kind of telecommunication, video-phone, for example, Skype? Thanks to this kind of technical possibilities, will the fundamental principle of unambiguous presence of both parties at their own wedding ceremony—which is required by canon law—be preserved?

[1] Lucjan Świto, *Zawarcie małżeństwa przez pełnomocnika w formie wyznaniowej ze skutkami cywilnymi w prawie polskim* (Olsztyn: Wydawnictwo UWM, 2019).

Although the above question is not groundless, following the current position of the Church, the answer should probably be negative.

According to the well-established position of the doctrine, developed under the rule of the Code of Canon Law of 1917, in relation to marriages concluded between absentees, the church legislator—unlike the principles adopted in Roman law—excluded the possibility of contracting marriages by letter (*per litteras*) and the messenger (*per nuntium*), unambiguously stipulating that marriage between absentees is allowed only through a proxy. Thus, the proxy is not only a kind of "transmission belt" used to recreate the principal's position, but this person replaces the physical absence of the prospective party, their role requires reasonable and to some extent even autonomous action. The proxy is not a messenger, that is, a person who only mechanically transfers the words of the person who commissioned this action. The proxy is the one who in a reasonable and real way expresses the will of another person and ultimately—in the event of finding any formal and legal obstacle to the conclusion of marriage—may refrain from doing so. The power of attorney in this case is based on trust and conviction that in the event of circumstances where the principal would not marry, the proxy will not do so either. For this reason, the attorney is obliged to perform the task entrusted to them personally.

The Sacrament of Penance

Repentance and reconciliation bring a little more hope for the celebration of the sacrament at a distance. The usual way of celebrating the sacrament of penance is individual and integral confession and absolution (can. 960 CIC), and the proper place for receiving confessions is the church and chapel, where the confessional should be located. However, in the case of a justified reason, canon law allows the possibility of confession outside the confessional (can. 964 § 3 CIC), for example, a hearing impaired person in a closed sacristy room, a sick person in a hospital, etc.

Therefore, the question arises whether in special situations (e.g., due to difficult direct access to the priest or in danger of death) it is possible to confess, during which the penitent and the confessor are at a considerable distance from each other?

This question was raised in the 16th century, 200 years before the invention of the telephone, before modern devices for distance communication appeared.[2]

[2] Zbigniew Janczewski, "Sprawowanie sakramentu pokuty i pojednania 'na odległość,'" *Prawo Kanoniczne* 50, nr 1–2 (2007): 111–126.

The Congregation of the Holy Office received an inquiry: can a penitent write down their sins on paper, send them by postal courier to a confessor, and expect a return letter containing absolution?

In response, Pope Clement VIII not only disapproved of the practice of confession by mail, but in 1602 introduced the penalty of excommunication *latae sententiae* reserved to the Holy See for those who would use or propagate such a practice. The reason for this very firm and sharp decision was the principle that the sacrament of penance must be celebrated simultaneously in the same place and time.[3]

More than 200 years later, less than ten years after the invention of the telephone, the Holy See was asked again about the possibility of remote confession, this time by telephone. However, this question has not received a clear answer. On July 1, 1884, the Apostolic Penitentiary replied briefly: *Nihil est respondendum*.[4]

It is not known why the answer was such. Also after that, no other congregation took a clear position on this matter. On the other hand, many comments appeared in the doctrine, which, when addressing the issue of the validity of confession over the phone, were radically different from each other.

Among the arguments justifying the inappropriateness of confession over the phone, the artificiality of the telephone conversation, the lack of physical presence of the penitent and the confessor preventing eye contact between them were pointed out, which—according to these representatives of the doctrine—strikes at the naturalness of the sign required by each sacrament.[5] Concerns were also raised about the possibility of eavesdropping on confessions, for example, by mistakenly picking up the phone by a third party as a threat to the secrecy of confession.[6]

The above arguments were refuted by supporters of the validity of confession over the phone,[7] claiming—and rightly so—that in the confessional the confessor does not always hear and see the penitent's face clearly, as is the case during a telephone conversation, and confession can also be overheard in the confessional. Naturally, the proponents of telephone confession pointed out that there must be a serious reason for telephone confession to be undertaken.

[3] Marian Pastuszko, *Sakrament pokuty i pojednania* (Kielce: Wydawnictwo Jedność, 1999), 464.

[4] Janczewski, *Sprawowanie sakramentu*, 116.

[5] Felix M. Capello, *Tractatus canonico-moralis de sacramentis. Depaenitentia*, t. 2 (Romae: Marietti, 1951), 72.

[6] Pastuszko, *Sakrament pokuty*, 467.

[7] Stanisław Witek, *Sakrament pojednania* (Poznań–Warszawa: Pallotinum, 1979), 169; Piotr Hemperek, *Komentarz do Kodeksu Prawa Kanonicznego*, t. 3, *Uświęcające zadanie Kościoła* (Lublin: Wydawnictwo KUL, 1986), 155; Reichard Weigand, "Das Bussakrament," in *Handbuch des katholishen Kirchenrechts*, ed. Joseph Listl, Hubert Müller, Heribert Schmitz (Regensburg: Verlag Friedrich Pustet, 1983), 698.

The evolution of information and communication technology, of course, did not stop at the telephone. Therefore, with the emergence of new communication devices using the Internet at the turn of the 21st century, the questions returned as to whether the use of these means of communication to celebrate the sacrament of penance could be acceptable? The more so that they allow you to have a conversation, during which you can see both the face of the interlocutor. Thus, many of the objections raised by the opponents of telephone confession have been dropped.

Also these latest questions have not received a clear answer from the Magisterium of the Church. Although on February 22, 2002, a document of the Pontifical Council for Social Communications entitled "The Church and the Internet," in which you can read that "virtual reality is not a substitute for the Real Presence of Christ in the sacramental Eucharist, the sacramental reality of the sacraments and participation in worship held in a living community"[8] and "there are no sacraments on the Internet; and even religious experiences, made possible by the grace of God, are not sufficient in isolation from cooperation with other believers in the real world."[9]

However, according to some doctrine, there are no final decisions regarding the use of modern communicators to celebrate the sacrament of penance. In their opinion, this document, although it is an important voice of the Church, is, first of all, not a church law by its nature. Secondly, the possible possibility of confession via the Internet would not be any replacement for the existing forms of the sacrament of penance, but only the possibility of supplementing and extending them via the Internet in certain specific situations and under clearly defined conditions. Thirdly, the statement that "there are no sacraments on the Internet"[10] does not have to and in fact does not mean that there is no and never can be the celebration of sacraments via the Internet. Fourthly, the document itself does not settle anything definitively, but clearly opens up certain areas, encouraging "study and reflection" on the use of the Internet in the Church.

[8] Pontifical Council for Social Communications, "The Church and the Internet," https://opoka.org.pl/biblioteka/W/WR/rady_pontyfikalne/r_komunik_spol/kosciol_internet_22022002.html (published: 01.03.2002).

[9] https://opoka.org.pl/biblioteka/W/WR/rady_pontyfikalne/r_komunik_spol/kosciol_internet_22022002.html (published: 01.03.2002).

[10] Dariusz Kowalczyk, "O możliwości spowiedzi przez internet" [On the Possibility of Confession over the Internet], https://opoka.org.pl/biblioteka/T/TA/TAP/spowiedz_internetowa.html (27.05.2002).

The Sacrament of the Eucharist

The cited document of the Pontifical Council for Communications is undoubtedly also the basis for reflection on the possibility of participating in the celebration of another sacrament at a distance—the Eucharist. The first broadcast of the Holy Mass by television took place on December 25, 1948, in Paris and New York. In later years, regular transmissions of masses began in Italy, France, the United States, Cuba, Germany, Great Britain, Switzerland, and Venezuela. Nowadays, the holy mass is broadcast not only by television or radio, but also via the Internet, which we could experience massively in the last months of the coronavirus pandemic.

Although the broadcast of the Eucharist in real time, that is, the so-called *live streaming* has become an inseparable part of many social media, such as Facebook, YouTube or Instagram, and is developing at a fairly high pace, not everyone is in favor of such forms of getting closer to the Eucharist. One of the great opponents was, for example, the Archbishop of Paris, Cardinal Jean-Marie Lustiger, who, during the international conference on electronic media organized in the United States in Denver in 1998, stated that the transmission of the Holy Mass via electronic media is a blow to the very essence of the Eucharist.[11]

The church thus faces another challenge. Although the requirement to participate in the Eucharist in real time thanks to modern media is fulfilled, a whole range of other related questions arise. Can the space gathering real believers be replaced by a new space of virtual connections where the Resurrected Christ will be present? Do the words: "Where two or three are gathered in my name, I am in the midst of them" (Mt 18:19) apply to this new virtual space? Is it possible to transmit God's grace flowing from the Eucharist through the media, that is, certain spiritual goods, similar to what the popes have been doing for years, giving the city and the world, urbi et orbi, Christmas and Easter blessings? But these questions must probably be left to theologians and liturgists.

[11] Maciej Makuła, "Transmisje mszy świętych w live streamingu w internecie. Analiza możliwości, postulaty i propozycje," *Seminare* 40, nr 1 (2019): 37–49.

Conclusion

The technological revolution in the field of communication that took place at the turn of the 20th and 21st centuries is a fact. Being able to freely communicate in real time with a group of other people is not a problem. It seems, therefore, that, taking into account the spiritual well-being of the faithful, especially those who are in danger of death or as a result of great distance or isolation, they have no access to a priest and a real community of the faithful, and also the fact that the Holy See has not given an authoritative response opposing the administration of the sacraments by means of new communication tools, this form should not be excluded from the practice of the Church.

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Aspects juridiques des sacrements à distance

Résumé

L'article aborde le problème de la possibilité d'administrer le sacrement du mariage, de la pénitence et de l'eucharistie à distance, c'est-à-dire en utilisant les technologies de l'information et de la communication. Car les moyens électroniques de communication modifient non seule-

ment notre compréhension du temps et de l'espace, mais aussi l'expérience de la construction d'une communauté et du contact avec les autres. L'analyse effectuée a permis de conclure que, compte tenu du bien-être spirituel des fidèles, en particulier de ceux qui sont en danger de mort ou qui, en raison de la distance ou de l'isolement, n'ont pas accès à un prêtre et à une véritable communauté de fidèles, ainsi que du fait que le Saint-Siège n'a pas donné de réponse autoritaire s'opposant à l'administration des sacrements au moyen des nouveaux outils de communication, cette forme ne doit pas être exclue de la pratique de l'Église.

Mots-clés: sacrements, procuration, médias, radiodiffusion, télécommunication

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Aspetti Giuridici dei Sacramenti a Distanza

Sommario

L'articolo affronta il problema della possibilità di amministrare i sacramenti del matrimonio, della penitenza e dell'Eucaristia a distanza, ovvero utilizzando le tecnologie dell'informazione e della comunicazione. I mezzi di comunicazione elettronica cambiano infatti non solo la nostra comprensione del tempo e dello spazio, ma anche l'esperienza di costruzione di una comunità e di contatto con altre persone. La presente analisi ha portato alla conclusione che, tenendo conto del bene spirituale dei fedeli, in particolare di quelli che si trovano in pericolo di morte oppure a causa della grande distanza o dell'isolamento non hanno accesso al sacerdote e alla comunità reale dei fedeli, e dato il fatto che la Santa Sede non ha fornito una risposta autorevole contraria all'amministrazione dei sacramenti utilizzando nuovi strumenti di comunicazione, questa forma non deve essere esclusa dalla pratica della Chiesa.

Parole chiave: sacramenti, procura, media, broadcasting, telecomunicazioni