

The principal practical difficulty arises when a priest who enjoys the faculty of hearing confessions habitually *only* by virtue of a grant from an ordinary of a diocese where he is not domiciled is called upon to minister outside of that diocese. That is to say, the priest in question is neither in possession of a canonical office to which this faculty is attached by law, nor is he incardinated there, nor is he attached to a canonically erected house there. Outside of cases involving the danger of death (c. 976), such a priest absolves validly and licitly *only within the jurisdiction of the ordinary who granted the faculty*. Such a situation can be remedied, however, by asking an ordinary of the place of domicile also to grant the faculty of hearing confessions habitually.⁶ Lacking such a grant—as tedious as it may seem—the priest must obtain an additional faculty of hearing confessions from an ordinary of each diocese to which he is sent to minister.

What happens, then, when a priest who erroneously thinks he enjoys the *ubique* faculty attempts to absolve a penitent outside of his proper jurisdiction? While obviously not applicable to all situations, in cases of common error or positive and probable doubt *de iure* or *de facto*, the Church herself supplies the necessary faculty (c. 144).⁷

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⁶ See Pontifical Commission *Ecclesia Dei*, private letter concerning the faculty of hearing confessions *ubique terrarum*, Prot. No. 153/2009, 6 May 2010.

⁷ While a treatment of common error is beyond the scope of this opinion, see John M. Huels, "The Supply of the Faculty to Confirm in Common Error," *Studia canonica* 40 (2006): pp. 299-301, 327-328. For a consideration of the case where a priest knowingly provokes common error, see *ibid.*, pp. 342-343.

CANON 1336, 1369, AND 1399

RIGHT OF THE BISHOP TO IMPOSE A PENALTY BY EXTRAJUDICIAL DECREE

For offences such as maligning the pope, or for child safeguarding reasons, can a bishop stop lay members of the faithful from attending mass in a particular community and insist they attend another mass?

OPINION

A member of an ethnic community produced a mockumentary loaded on YouTube arguing that the world is controlled by corporates who use things like religion to control people. In the video the pope is described as one of the world's richest men who does not care about the poor.

The ethnic community were offended, and described the member as a spy. They vehemently opposed the member and his wife coming to their ethnic community mass. They asked the bishop to force them to attend mass elsewhere.

Canon 1369 states:

A person who in a public show or speech, in published writing, or in other uses of the instruments of social communication utters blasphemy, gravely injures good morals, expresses insults, or excites hatred or contempt against religion or the Church is to be punished with a just penalty.

The member of the ethnic community refused to remove his mockumentary from YouTube and submitted it for an award in an international competition. He gave interviews in the secular media justifying what he had done.

Canon 1336 states:

§1. In addition to other penalties which the law may have established, the following are expiatory penalties which can affect an offender either perpetually, for a prescribed time, or for an indeterminate time:

No. 1. a prohibition or an order concerning residence in a certain place or territory;

No. 2. privation of a power, office, function, right, privilege, faculty, favor, title, or insignia, even merely honorary;

No. 3. a prohibition against exercising those things listed under n. 2, or a prohibition against exercising them in a certain place or outside a certain place; these prohibitions are never under pain of nullity;

The Congresso of the Signatura decreed in a parallel case involving a disruptive parishioner that a bishop can impose lawfully a penal decree on a lay member of Christ's faithful. A bishop had given a penal precept to a parishioner who was disturbing liturgical celebrations in a parish and she had appealed the decision to the Apostolic Signatura.

Canon 1371 states:

The following are to be punished with a just penalty:

No. 1. in addition to the case mentioned in canon 1364 §1, a person who teaches a doctrine condemned by the Roman Pontiff or an ecumenical council or who obstinately rejects the doctrine mentioned in canon 750, §2 or in canon 752 and who does not retract after having been admonished by the Apostolic See or an ordinary;

No. 2. a person who otherwise does not obey a legitimate precept or prohibition of the Apostolic See, an ordinary, or a superior and who persists in disobedience after a warning.

The Congresso of the Apostolic Signatura decreed 30 October 1990:

That according to the norm of canon 1371 no 2, one who does not comply with a legitimately prescribing ordinary or who obstinately persists in disobedience after a warning can be punished with a just penalty;

That, taking canon 1358 §1 together with 1336 §1, penalties imposed for a predetermined time are to be considered expiatory;

That the prohibition to enter a certain church or to participate in liturgical celebration is an expiatory penalty to be joined to those which are articulated in canon 1336 §1, no. 3.

Admitting that the same penalty is aptly called by the name taken from the law itself, namely a prohibition (prohibition), while nothing

forbids it from being called, although less precisely, the equivalent of an "interdict" (*interdictum*).

When a bishop is imposing a penalty by extrajudicial decree, he must weigh the matter, including proofs and arguments, with two assessors.

Canon 1720. If the ordinary thinks that the matter must proceed by way of extrajudicial decree:

No. 1. he is to inform the accused of the accusation and the proofs, giving an opportunity for self-defense, unless the accused neglected to appear after being properly summoned;

No. 2. he is to weigh carefully all the proofs and arguments with two assessors;

No. 3. if the delict is certainly established and a criminal action is not extinguished, he is to issue a decree according to the norm of canons 1342-1350, setting forth the reasons in law and in fact at least briefly.

The chaplain and the ethnic community did not want disturbances or upset at the ethnic community celebrations of the Eucharist caused by the presence of the member who had maligned the pope. Therefore, the diocesan bishop, following correct procedures, can prohibit participation in divine worship at that particular ethnic community mass according to the norms of canon 1336, §1, no. 3 by issuing an extrajudicial decree for a just cause (canon 1720). The bishop could instruct the member to attend Sunday mass at another ethnic community or parish mass.

In the second case, a lay member of the faithful has been convicted in a civil court of the crime of sexual abuse of a minor. After he came out of prison, parents objected to him being at a mass where there were many children present. Sexual abuse by a layperson was not specifically legislated as a crime according to the 1983 Code. However, canon 1399 encompasses the case because it includes the external violation of a divine law including the sixth commandment.

Canon 1399. In addition to the cases established here or in other laws, the external violation of a divine or canonical law can be punished by a just penalty only when the special gravity of the violation demands punishment and there is an urgent need to prevent or repair scandals.

Again the bishop can proceed by using an extrajudicial decree, following correct procedures, weighing the matter, including proofs and arguments, with two assessors.

Consequently, a bishop could prohibit the lay member of the faithful from attending Sunday mass where many children are present. The bishop could require him to attend mass at a religious community early in the morning when children would only be in the congregation on rare occasions.

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The Canon Law Society of America (CLSA) publishes annually *Roman Replies and CLSA Advisory Opinions* for canonists and those seeking a clearer understanding of the *praxis legis* of the Catholic Church. The combination of these two services, begun in 1984, continues to serve as useful resources for those involved in the application of canonical discipline.

The compilation of materials for *Roman Replies 2019* was guided by Sister Sharon A. Euart, RSM, Chair of the CLSA Publications Advisory Board. The collection of entries in this issue, when viewed in conjunction with previous volumes, assists the reader both in understanding recent developments in the law and in identifying current trends in the praxis of the Roman Curia.

The selection, editing, and assembly of opinions for *CLSA Advisory Opinions 2019* were provided by Reverend Patrick Cooney, OSB, and Monsignor Michael A. Souckar. The topics addressed in the opinions reflect a variety of canonical issues and demonstrate the scope of canonical expertise and reflection by members of the Society. Editorial assistance was provided by the CLSA Administrative Office.

Roman Replies and CLSA Advisory Opinions that are out-of-print are available electronically on the CLSA website (www.clsa.org). As an additional resource, the CLSA Advisory Opinion Online Index includes all published opinions, grouped by canon number on the CLSA website.

The CLSA provides this series as a professional resource. Care should be taken in considering the relative weight of the materials found in this publication. The principles for canonical interpretation (*CIC* cc. 16-19 and *CCEO* cc. 1498-1501) serve as guides in considering the contents of this volume.

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