

Legal regulation of activity in the field of conventional and traditional medicine: an international dimension

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Abstract—This article analyzes the content of the legal status of subjects of conventional and traditional medicine in various countries. A distinction is made between conventional and traditional medicine. The issues of legal regulation of the activities of these entities, issues of standardization of their activities are considered. Particular attention is paid to the content of the activities of the subjects, the possibility of their integration into national health systems.

Keywords—*traditional medicine, law, regulation, legislation, health care system*

I. INTRODUCTION

Since ancient times, traditional medicine has been an inseparable segment of social relations, being responsible for maintaining health, preventing, diagnosing, improving a man state in physical and mental disorders, maintaining his long active life. Each nationality has historically developed its own arsenal of treatment methods, which is inextricably linked with their traditions, religion and natural features of the region of residence [1].

In total, the world economy spends about 40 billion pounds per year per traditional medicine, which makes it the fastest growing area of medical expenses [2]. Nowadays, the services of traditional medicine are used by more than 100 million Europeans, 75 of whom are regularly using such services and the same amount prefer medical care, which includes elements of traditional medicine [3].

There are various reasons explaining why citizens use the methods of traditional medicine. A very important advantage of traditional medicine is its sufficient financial accessibility compared with treatment in medical organizations. Also one of the crucial aspects, driving the increase in number of people using the practices of traditional medicine, is the desire to lead a healthy lifestyle and use the treatment methods, which, in their opinion, are less harmful for the organism as a whole, as well as concern about the occurrence of possible adverse consequences from the use of chemical drugs. Patients use the traditional medicine if other treatments are ineffective, or if people have chronic illnesses. Nomadic people living far from medical organizations also use the traditional medicine.

This article will consider some aspects of the legal regulation of the activities of subjects of conventional and traditional medicine. Methods for solving the problems of a legal nature identified during the study will be proposed.

II. METHODS

The main methods used in this study are the general scientific dialectical method of knowledge and the special legal method, namely comparative legal.

III. RESULTS AND DISCUSSION

World Health Organization plays a very important role in the regulation of traditional medicine, including the actions on fixing and understanding the terminological apparatus.

The introduction of the General Guide to Research Methodologies and the Evaluation of Traditional Medicine, as well as the scientific literature stipulates that traditional medicine has a long history. It is a summary of the accumulated knowledge, skills and practices that are based on theories, beliefs and experiences of indigenous peoples of different cultures, regardless of whether we can explain them or not. It is used to maintain health, as well as to prevent, diagnose, improve the condition or treat physical and mental disorders [4]. These aspects are also shown in the scientific literature [5].

In the World Health Organization Strategy for Traditional Medicine for 2014-2023 there are 3 main models of using traditional medicine in different countries:

- 1) Use in countries where traditional medicine is one of the main sources of health care. The use of traditional medicine in such countries is governed by its considerable financial accessibility and the insufficient number of representatives of official medicine (for example, in Africa and some developing countries).
- 2) The use of traditional medicine due to the established cultural or historical influences (for example, in the Republic of Korea, Singapore).
- 3) The use of traditional medicine as an additional treatment. Often, this model is used in countries with a well-developed health care system (for example, in North America and in many European countries).

In some countries there is a legislative separation of healers in accordance with their specialization. For example, in the Republic of South Africa, healers are divided into predictors (those who can call ancestral spirits); herbalists (engaged in herbs); students (those who learn to be a traditional healer); traditional midwives; traditional mentors (traditional healer coaches); as well as traditional surgeons

(those who perform culture-related operations, such as circumcision) [6].

It is necessary to distinguish conventional medicine from traditional. These concepts are not identical.

Conventional medicine is a set of techniques and methods of influence on a person, which are based on a number of philosophical and religious teachings and theories. Without a philosophical concept that determines the position of a person (microcosm) in his environment (macrocosm), which can be favorable or aggressive, there can be no conventional medicine. Conventional medicine is stable, slightly changes over the centuries and even millennia (for example, traditional Chinese medicine) [7].

The importance of conventional medicine methods in treating people is confirmed, for example, by including UNESCO in the representative list of the intangible cultural heritage of mankind acupuncture and cauterization, i.e. forms of traditional Chinese medicine, which are widespread in China, as well as in the regions of Southeast Asia, Europe and America [8].

It should be noted that at present in the world as a whole, there comes an awareness of the importance of jointly resolving issues related to the use of methods of conventional and traditional medicine. So, for example, 11 states of Southeast Asia adopted the Delhi Declaration on Traditional Medicine on February 13, 2013 [9].

In a number of countries, conventional and traditional medicines are integrated into national health care systems, and therefore their costs are fully or partially covered by public or private insurance. For example, in the Republic of South Africa after the entry into force of the Law on Traditional Medical Practices, if traditional healers are registered with professional advice, employers will not be able to refuse a valid medical certificate issued by a traditional healer [6].

However, there are countries with the opposite opinion in dealing with this issue. For example, in the Russian Federation in accordance with paragraph 6 of Article 50 of the Federal Law of 21.11.2011 No. 323-FZ "On the basis of the protection of public health in the Russian Federation" traditional medicine is not included in the program of state guarantees of free medical care to citizens [10].

In accordance with p. 3.3.2 of the Strategy of the World Health Organization in the field of traditional medicine for 2014-2023, to ensure the safety and quality of traditional medicine, national health authorities must develop strategies and policies that show their specific needs for the most popular forms of traditional medicine used in their country.

The safety and efficiency of conventional and traditional medicine, as well as quality control, became important issues for both health authorities and the public [11].

As an example of inadequate medical care using the alternative medicine method, we consider the legal case related to the responsibility of the doctor for the treatment. In Western Australia, the Tribunal, which deals with violations of professional ethics, adjudged the general practice doctor to guilty of dishonest professional behavior in consultation with a ten-year-old girl with a malignant tumor. Dr. Alistair Nuttall consulted the girl with her parents in September

2009. A month earlier, she was diagnosed with a malignant liver tumor. Oncologists recommended chemotherapy, but the parents decided to refuse it and began to treat their daughter with "naturopathy" (diet and mud therapy). The girl died after 2 months. The Tribunal, in addition to other charges, admitted that Dr. Nuttall should have informed the parents about his lack of experience in treating pediatric hepatoblastoma; about the lack of data on improvement on the conclusion of ultrasound; that naturopathy cannot heal oncology. In conclusion, the Tribunal stated that the doctor had seriously violated his professional duties, giving advice on the disease, about which he did not have enough knowledge and experience in treatment. Contrary to evidence-based medicine, he inspired parents to conduct alternative treatment. As a punishment, Dr. Nuttall was reprimanded, he was suspended from practice for one year and would have to pay the expenses of the Tribunal [12].

At the same time, the question of the possible and expedient level of standardization and regulation of the activities of subjects of conventional and traditional medicine is very acute. Many researchers are of the opinion that these types of medicine cannot be standardized due to the fact that they are variable and they have intrinsic diversity, which creates particular difficulties in resolving this issue. Standardizing individual approaches to protecting the health of indigenous peoples can at the same time contribute to the exclusion, submission, and in some cases threaten the existence of various types of healing knowledge and medical practices [13].

Consider the issue of legal regulation of the activities of subjects of conventional and traditional medicine on the example of individual countries.

In Saudi Arabia, in Muslim practice, bloodletting is widely practiced as a method of healing effects - "hijama". Until recently, the implementation of the hijama in Saudi Arabia has practically not been regulated.

Currently, the National Center for Complementary and Alternative Medicine has been established to monitor the subjects of traditional medicine. In Saudi Arabia, it was decided to regulate the implementation of the hijama, including the control of practicing doctors, practice sites or centers and equipment used. According to the new rules, at the first stage (the current stage) a license to practice hijama is granted only to medical personnel (doctors, physiotherapists and nurses) and practitioners with a degree in complimentary and traditional medicine. After evaluation of the first phase, at the subsequent stages other medical professions should be included in this activity, then traditional healers. To obtain a license, you must attend a training course on hijama practice, after which written, oral and clinical exams are taken. Certain requirements are also placed on the applicant's state of health: he must not have infectious diseases, including acquired immunodeficiency syndrome and viral hepatitis. In the course of activities, only equipment approved by the Saudi Food and Drug Administration [14] can be used.

To obtain a license, people practicing this method of treatment attend a hijama practice course, and then pass written, oral and clinical exams.

In China, The law on traditional Chinese medicine came into force from 07.01.2017. According to the new law, district governments and higher authorities should establish branches of traditional Chinese medicine in state general hospitals and mother and child care centers. All practitioners in the field of traditional Chinese medicine specialists must pass the tests. Trainees and previously unlicensed professionals with significant medical experience can begin the practice only when they have the recommendations of at least two qualified specialists and they pass the appropriate tests [15].

In accordance with Art. 21 of the Law on Traditional Medical Practices of the Republic of South Africa (2007), no one person can practice as a traditional doctor if he is not registered in accordance with this Law. To register as a traditional doctor, you must submit an application, which must be accompanied by evidence that the applicant is a South African citizen, contain characterizing recommendations from persons not related to the applicant, confirm qualifications, pay the registration fee, and provide any additional information regarding the application which the Provisional Council of Traditionally Practicing Doctors of South Africa Considers as Necessary [16].

Considering the legal status of persons who have expressed a desire to engage in traditional medicine in the Russian Federation, it should be noted that in accordance with Art. 50 of the Federal Law of 21.11.2011 No. 323-FZ "On the basis of the protection of public health in the Russian Federation" the right to engage in traditional medicine obtains a citizen who has received permission issued by the executive authority of the Russian Federation in the field of health protection. The decision to issue a permit for the occupation of traditional medicine is made on the basis of a citizen application and the presentation of a medical professional non-profit organization or a citizen application and a joint presentation of a medical professional non-profit organization and medical organization. The permit gives the right to practice folk medicine in the territory of the subject of the Russian Federation, the executive authority of which issued such a permit. The person who received the permit deals with traditional medicine in the manner established by the executive authority of the Russian Federation.

Thus, the executive authorities of the constituent entities of the Russian Federation independently determine the procedure for practicing traditional medicine in their territory.

According to various estimates, about 100,000 specialists are currently engaged in traditional medicine in the Russian Federation. But in the register of the persons having permissions, units are registered [17]. Perhaps the reason for this situation is the lack of uniform rules for issuing permits for practicing traditional medicine at the federal level, which puts applicants in unequal legal position for obtaining permission to practice traditional medicine in different regions of the Russian Federation.

In the course of the study it was established that at now there are essentially different approaches to the legal regulation of the issue of the activities of subjects of conventional and traditional medicine on a global scale. At the same time, one can note the active law-making activity of states aimed at resolving the above-mentioned issues.

IV. CONCLUSION

The study of the regulation of activities in the field of conventional and traditional medicine in various countries and legal orders contributes to the study of the global interdependence of the processes occurring in this area, and also makes it possible to refine and change them if necessary. It seems that it is necessary to find a balance between the interests of the subjects of conventional and traditional medicine and the public interest, since it depends on the provision of appropriate treatment of a wide layer of the population. It also requires a single holistic mechanism through which accessibility, safety, quality, timeliness and objectivity in the functioning of conventional and traditional medicine will be realized.

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