

Criminal law regulation of traditional medicine methods of healing according to the legislation of Russia

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Abstract

It is worth noting that in modern society, traditional medicine methods are still used. In this regard, a detailed definition of the criminal-legal limits of the practical implementation of healing methods within the framework of traditional medicine should be determined not only at the level of medical rules, but also in the relevant, in our case, criminal legislation. The article describes the practical methods of healing in the framework of traditional medicine, such as herbalism, the use of mineral waters and therapeutic mud, bloodletting, folk hygiene, etc. It is also noted that healing based on folk medicine methods can be socially harmful. Accordingly, the criminal legal limits of the implementation of appropriate medical manipulations on the basis of Russian criminal legislation are considered here.

Keywords: folk medicine, herbalism, mineral waters, therapeutic mud, bloodletting, folk hygiene, healthy sleep, magic, conspiracies, criminal law, crime

Introduction

The interest in folk medicine can be explained by many factors. On the one hand, this kind of interest can be explained by a certain modern fashion to the traditions of the ancestors. On the other hand, the interest in folk medicine is due to the rather high cost of paid medical services and the inaccessibility of certain free medical services. In addition, we can say that medical services are mostly available in large settlements (usually cities of regional significance), where there is not only a developed structure of medical institutions, but also narrow specialists in medicine. Thus, it is worth noting that, despite the variety of traditional medicines and preparations offered in pharmacies, as well as the presence of many developed traditional methods of treatment, the population of a number of countries has become very attentive to folk (conventional) methods of healing. So, at the request of "folk medicine" in the search engine "Yandex" has 4 million; in the Google search engine – 947 thousand answers.

But do not forget that traditional medicine healing can be not only useful, but also socially harmful and even

dangerous to human life or health. In this regard, the issue of criminal law regulation of traditional medicine can be recognized not only as relevant, but also timely.

Materials and Methods

The main source for writing this article is the current Criminal Code of the Russian Federation, as well as materials of monographic research and journal publications.

In the course of the research, the main methods of cognition were used: problem-chronological, systemic and comparative jurisprudence. The application of the system method made it possible to integrate the achievements of various fields of knowledge (criminal law, morality, religion, psychology, medicine) into the criminal law doctrine and formulate conclusions on the problems posed in the article.

So, let's consider some **forms of healing by traditional medicine methods**, as well as **the features of criminal law regulation of the provision of medical services by these methods**.

First of all, we note that folk medicine is a collection of empirical information accumulated by the people about healing remedies, medicinal herbs and hygiene skills, as well as their practical application for the preservation of health, prevention and treatment of diseases. The authors of the concise medical encyclopedia give the following definition of folk medicine: **folk medicine is a set of empirical knowledge and practical methods transmitted by people from generation to generation, used to recognize, treat and prevent physical and mental health disorders** [1].

In turn, the legislation of Russia, in Part 1 of Article 50 of Federal Law No. 323-FZ of November 21, 2011 "On the basics of protecting the health of citizens in the Russian Federation" defines: **"Folk medicine is the methods of recovery established in the national experience, which are based on the use of knowledge, skills and practical skills to assess and restoring health. Folk medicine does not include the provision of services of an occult and magical nature, as well as the performance of religious rites"** [2].

As you can see, traditional medicine is traditionally considered in two aspects:

- 1) as some kind of knowledge about healing;
- 2) as practical methods of healing.

The practical methods of healing in the framework of folk medicine traditionally included herbalism (the use of medicines not only of plant, but also of animal or mineral origin: water, air, sun, mineral waters, therapeutic mud), the use of certain surgical techniques (extraction of foreign bodies, bloodletting) [1], folk hygiene (taking into account the influence of climate and seasons on health; body hygiene; physical exercises; proper nutrition; healthy sleep; cleanliness; moderation in food, etc.).

It is worth noting that within the framework of "herbalism" they talk about its two main sections: 1) herbalism with the use of magic, conspiracies, incantations (healers, shamans, "grandmothers"); 2) herbalism, associated with the impact on a person practically without the use of magic, only on the basis of the medicinal characteristics of a particular herb [3]. But, despite the undoubted benefits of traditional medicine in the modern world, nevertheless, as noted, one should not forget that healing based on its methods can be socially harmful. It is no accident that Soviet legislation established criminal prohibitions on practicing medicine as a profession by a person who does not have proper medical education (Article 180 of the Criminal Code of the RSFSR of 1926, Article

221 of the Criminal Code of the RSFSR of 1961).

The current Criminal Code of the Russian Federation, establishing criminal liability for illegal private medical practice or private pharmaceutical activity (Article 235 of the Criminal Code of the Russian Federation), also, in fact, defines the criminal law prohibition of traditional medicine.

Here, however, it is worth pointing out that this prohibition is not absolute. That is, in Article 180 of the Criminal Code of the RSFSR of 1926 and Article 221 of the Criminal Code of the RSFSR of 1961, the norm was formulated as a formal corpus delicti - the onset of socially dangerous consequences was not required. The norm defined in Article 235 of the Criminal Code of the Russian Federation describes the material composition, where any harm to human health (Part 1 of Article 235 of the Criminal Code of the Russian Federation) or death of a person (Part 2 of Article 235 of the Criminal Code of the Russian Federation) acts as consequences.

At the same time, it should be clarified that the one-time use of traditional medicine methods as such is not punishable, since the legislation had and has in mind the systematic use of traditional medicine methods - "healing" or "medical practice". Moreover, even the Code of Administrative Offences of the Russian Federation indicates a ban on the systematic use of traditional medicine methods – "Practicing folk medicine without obtaining a permit established by law" (Article 6.2 of the Administrative Code of the Russian Federation). In this regard, it can be assumed that the one-time use of traditional medicine methods is generally not punishable. But this is not the case. Even a one-time use of a folk remedy, if this medical service does not meet the requirements for the safety of life or health of the patient (consumer), may entail criminal liability for the crime provided for in Article 238 of the Criminal Code of the Russian Federation "Production, storage, transportation or sale of goods and products, performance of works or provision of services that do not meet safety requirements." Moreover, the analysis of the sanctions provided for in Part 1 of Article 235 and Part 1 of Article 238 of the Criminal Code of the Russian Federation, allows us to assert that the public danger of healing (systematic activity – "occupation") the methods of traditional medicine, which inadvertently caused any harm to human health, are higher in comparison with the one-time use of a folk remedy, if this medical service did not meet the requirements for the safety of the patient's life or health (and is not even associated with harm to human health). On the other hand, the one-time use of a folk remedy, if it

caused serious harm to health or death of a person by negligence, is more severely punishable in comparison with the systematic use of traditional medicine methods (healing), which entailed consequences in the form of carelessly causing death of a person. In this regard, it seems appropriate to at least equalize the sanctions provided for in Part 2 of Article 235 and Part 2 of Article 238 of the Criminal Code of the Russian Federation.

As mentioned above, the practical methods of healing in the framework of traditional medicine include herbalism (including magic, conspiracies, incantations), the use of certain surgical techniques, folk hygiene. In this regard, we will make a few clarifications.

1. The fact is that "the provision of services of an occult and magical nature, as well as the performance of religious rites" of Federal Law No. 323-FZ "On the basics of protecting the health of citizens in the Russian Federation" does not refer to folk medicine (Part 1 of Article 50). Accordingly, "magic", "conspiracies", "incantations" – "the provision of services of an occult-magical nature, as well as the performance of religious rites" – focused on the healing (treatment) of the patient, cannot be recognized as punishable at all.

2. The legislator significantly narrows the category of "folk medicine", removing from it such an important component as "folk hygiene". Indeed, defining in Part 2 of art. 50 FZ No. 323-FZ "On the basics of protecting the health of citizens in the Russian Federation" the rule according to which a citizen who has received a permit issued by the executive authority of a constituent entity of the Russian Federation in the field of protection has the right to practice folk medicine, the legislator for the improvement and restoration of health, in fact, prescribes the need to obtain a special permit to maintain hygiene body, exercise, proper nutrition, healthy sleep, moderation in food.

Results

And the last thing that should definitely be said is that the issues of traditional medicine healing and legal regulation of such activities are quite important, as evidenced by the fact that already in 1977 at the XXX session of the World Health Assembly a resolution was adopted calling on the governments of all countries to attach "due importance to the use of existing in these countries systems of traditional medicine in compliance with the rules corresponding to the installations of national health systems" [1].

References

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