

Study on the Criteria for Identification of Membership in Rural Collective Economic Organizations

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Abstract

The practical experience of identification of the membership of collective economic organizations in rural areas is complex and diversified, and it is necessary to take the tendency and the system of multiple factors into full account to set the clauses of membership recognition during the process of formulation of the Law of Rural Organization of Collective Economy. The former decision-making way of the theory of causation leads to simplification of affairs, which can hardly adapt to the complexity of the social environment. The normative structure of the Dynamic System Theory has the characteristics of flexibility and softness, which can be used to properly solve the problem of the tension existing between law and practice of formulation of collective membership recognition. In combination with the experience of membership recognition of the collective economic organization in the studied region, it is concluded that it is necessary to clarify the system behind the membership and list crucial factors that influence membership recognition. On this basis, acquisition, reservation and cancellation of the membership and special population shall be taken into account.

Keywords

Collective Economic Organization, Membership, Recognition Standard, Dynamic System Theory

1. Introduction

Research on the way to satisfy the demands of the individual during the arrangement of personnels and systems caused by property-type natural resources across the spatial and temporal dimensions is a complicated and multi-dimensional problem, which can be treated with different methods of different cultures in

different periods. In the early stage of Russia, in his Reply to Bepa Ivanohna Zarsulige, Marx emphasized that it is necessary to “apply all positive outcomes created by the capitalist system to communes” (Marx, 2012b) to help Russian rural communes traverse the “Caudine Valley” of capitalism. He thought that it is necessary to attach importance to the cooperation, make full use of the positive factors of communes’ duality and stimulate communes’ vitality to develop Russian rural communes. 40 years later, in his book *Farmers’ Economic Organization*, Chayanov made a prescription to explain the development direction of Russian farmers (farms) in the context of extensive formation of independent entities of the domestic economy after the Serfdom Reform in 1861. According to his idea, a longitudinal and integrated mode of organization of domestic farms shall be established. Therefore, discussion of China’s rural reform shall be generally carried out in the framework of the current state of the country, as well as political and legal systems (Hann, 1993)¹.

At present, China’s Opinions on Collective Property Right Reform and a series of No. 1 Central Documents issued since 2017 are in line with the actual situation of contemporary reform of the collective economy and emphasize the significance of membership recognition. With the continuous support and promotion of the central government, the reform of “the property right of collective land” conducted by the former Ministry of Agriculture in 2014 underwent the reform of the household contract responsibility system, transformation from arable land to land for construction and other contents. In the subsequent Scheme of Active Development of Farmer Stock Cooperative and Reform of Farmers’ Powers and Functions in Regard to Collective Assets Stock² promulgated in combination with related documents, it was indicated that it is necessary to take the cooperative system of collective assets stock in the process of land reform as the basis, explore the specific methods to determine the identity of members of collective economic organizations in rural areas and solve the problem of unclear boundary of members of the collective economic organization. On December 26, 2016, the Central Committee of the Communist Party of China and the State Council issued, printed, and implemented Opinions on Stable Promotion of the Rural Collective Property Right Reform (hereinafter referred to as Opinions on Property Right Reform) to guide the new round of the land property right reform, establish “rural economic cooperatives” to encourage the implementation of the reform of the shareholding cooperative system and prepare for the “property right” to enter the market³. It is indicated in this

¹For example, some scholars pointed out that legality of various parties’ claim for the land ownership in the transformed society is based on a set of previously existed social relations.

²See “(I) Guarantee of Farmers’ Collective Economic Organization Members’ Rights” of “Section II Main Content” in the Scheme of Active Development of Farmer Stock Cooperative and Reform of Farmers’ Powers and Functions in Regard to Collective Assets Stock (NJF [2014] No. 13) for details. <http://www.zimaogu.org.cn/law/9002.html>

³See Steady Conduction of Property Inspection and Asset Verification of National Rural Collective Assets: Answers of the Relevant Principal of the Ministry of Agriculture and Rural Affairs for Journalists’ Questions, website of the Ministry of Agriculture and Rural Affairs of the People’s Republic of China. http://www.moa.gov.cn/xw/zwdt/202007/t20200710_6348455.htm.

document that “scientific confirmation of the membership of collective economic organizations in rural areas, protection and development of members’ legal rights and interests, etc. are determined as the important parts of the target of the collective property right reform.”⁴ Moreover, since 2017, the No. 1 Central Documents promulgated by the central government for 4 consecutive years also focus on the reform of the shareholding cooperative system of collective assets and determine the recognition of the membership of collective economic organizations as the important content of the work to deepen the reform of the collective property right⁵. In 2021, the Central Committee of the Communist Party of China and the State Council issued the document, Opinions on Comprehensive Promotion of Rural Revitalization and Acceleration of Modernization of Agriculture and Rural Areas, which requires that “the phased task of the reform of the collective property right system in rural areas shall be basically completed, and the new-type rural collective economy shall be developed and strengthened”⁶. The No. 1 Central Document issued in 2022 indicated that “it is necessary to consolidate and improve the achievements of the reform of the collective property right system in rural areas”. It is particularly important to clarify the criteria for judging the membership of collective economic organizations from jurisprudence and smooth the logical premise of the construction of the legal system of membership rights of collective economic organizations, so as to solve the Agriculture-related disputes and protect the legitimate rights and interests of farmers.

2. Practical Investigation of Membership Recognition Standards of Collective Economic Organization

2.1. General Methods

It can be found from local legislation, village regulations and farmers’ agreements, regulations of collective economic organizations and other documents of grass-root-level reforms, the content of membership recognition of collective

⁴See “(V) Reform Target” of “Section II General Requirement” in the Opinions on Collective Property Right Reform for details. https://www.gov.cn/zhengce/2016-12/29/content_5154592.htm.

⁵In the document of Some Opinions on Deeply Promotion of the Supply-side Structural Reform of Agriculture and Acceleration of Cultivation of New Driving Forces of Rural and Agricultural Development issued by the Central Committee of the Communist Party of China and the State Council on February 5, 2017, There is a sentence “30. Deepening the Reform of Rural Collective Property Right” in “Section VI Intensify the Rural Reform and Stimulate the Internal Developmental Power of Rural Areas”. The content “(III) Deeply Promotion of the Reform of the Rural Collective Property Right System” of “Section IX Promote Innovation of Systems and Mechanisms and Strengthen Institutional Supply of Rural Revitalization” is included in the Opinions on Implementation of the Rural Revitalization Strategy issued by the Central Committee of the Communist Party of China and the State Council on February 4, 2018. The content “(III) Deeply Promotion of the Reform of the Rural Collective Property Right System” of “Section V Comprehensively Deepen Rural Reform and Stimulate the Development Vitality of Rural Areas” is included in the Opinions on the Persistence of Properly Doing the Work of Three Rural Issues and Putting the Development of Agriculture and Rural Areas in the Prior Place issued by the Central Committee of the Communist Party of China and the State Council on February 19, 2019. The content “(XXVII) Grasp the Key Point of Rural Reform” of “Section V Strengthen Supporting Measures of Weak Link Improvement of Rural Areas” is included in the Opinions on Grasping Key Point of Three Rural Issues to Ensure Timely Realization of the Overall Well-off” issued by the Central Committee of the Communist Party of China and the State Council on February 5, 2020. https://www.gov.cn/zhengce/2020-02/05/content_5474884.htm.

⁶The Central Committee of the Communist Party of China and the State Council: Opinions on Comprehensive Promotion of Rural Revitalization and Acceleration of Modernization of Agriculture and Rural Areas, issued on the “Website of the Central People’s Government of the People’s Republic of China”, http://www.gov.cn/zhengce/2021-02/21/content_5588098.htm.

economic organizations in rural areas can be roughly divided into the three cases of acquisition, reservation and cancellation of the membership.

1) Judgment standards of acquisition of the membership of collective economic organizations

Methods to acquire the membership of collective economic organizations consist of general standards and supplementary standards. Taking Zhejiang as an example, the factors of “household registration + special identity” are adopted as the general standards. “Obligation performance + vote in the meeting of members (representatives) of the organization” are adopted as general standards⁷. Some pilot regions also have varied methods in practice. For example, the Gaotangling Subdistrict Community of the Wangcheng District, Changsha, divides acquisition of the membership of the collective economic organization into three types: initial acquisition, policy-dominated resettlement acquisition and acquisition through application. Standards of “household registration + rights of land contracting and operation + performance of related obligations” are adopted to determine the case of initial acquisition. Five categories are classified in accordance with different cases to distinguish acquisition through application, which are new-born acquisition, relative-seeking acquisition, marriage acquisition, adoption acquisition and other ways of acquisition⁸. The Beihu District of Binzhou clarifies six cases of acquisition of the membership of collective economic organizations, including original acquisition, acquisition based on a legal marital relation, acquisition based on a relation of adoption, acquisition due to remarriage of a parent, acquisition due to national defense construction or other policy-related reasons, and acquisition through negotiation⁹.

2) Judgment standards of reservation of the membership of collective economic organizations

In regard of this aspect, even though the methods adopted in different places vary, they basically clarify “soldiers in active service and non-commissioned officers, full-time students of universities and secondary vocational schools, and people serving sentences” as the personnels whose membership in collective economic organizations shall be reserved. Some places also regulate that the person who “performs the obligations specified in the regulation of the organization and is approved through the vote of the commune members’ (representatives) meeting”¹⁰ can also reserve the membership of the organization. Some places also formulate clear provisions for recognition of the membership of the

⁷See Clause 1 of Article 18 in the Regulations of Rural Collective Asset Management of Jiangsu Province (2018) for details.

http://nynct.jiangsu.gov.cn/art/2018/6/12/art_51437_7676729.html.

⁸See “(I) Initial Acquisition” of “Section III Membership Acquisition in the Guiding Opinions on Rural Collective Economic Organization Membership Recognition Printed and Issued by the Subdistrict Office of Gaotangling of the Wangcheng District, Changsha, for details. “(I) Apply for Acquisition” of “Section III Membership Acquisition in the Guiding Opinions on Rural Collective Economic Organization Membership Recognition Printed and Issued by the Subdistrict Office of Gaotangling of the Wangcheng District, Changsha.

http://www.wangcheng.gov.cn/xxgk_343/gdwxxgk/jzxxgk/jd/gtljd/tzgg_6192/201909/t20190902_5144344.html.

⁹See “Section III Several Cases of Rural Collective Economic Organization Membership Acquisition” in the Guiding Opinions on Rural Collective Economic Organization Membership Recognition of Beihu District (Trial Implementation) (2019) for details.

¹⁰See Article 19 in the Regulations of Rural Economic Cooperatives of Zhejiang Province (2020) for details.

https://zjnews.zjol.com.cn/zjnews/zjxw/202008/t20200812_12214611.shtml.

personnels who are determined as the special group, including females who get married to people outside the local place, divorced/widowed women, compulsory servicemen, full-time students of universities and secondary vocational schools, registered people without actual residence and people collect money to buy urban household registration” through judicial practice¹¹.

3) Judgment standards of cancellation of the membership of collective economic organizations

In terms of the pilot zones of the collective property right system reform, most regions tend to take death, voluntary waiver, acquisition of the membership of another collective economic organization, fostered by financial funds, registered people without actual residence, regular employees or retired employees of state-owned enterprises, legal dissolution of the collective economic organization, etc. as standards to recognize cancellation of the membership of collective economic organizations¹².

2.2. Review Condition of Membership Recognition of the Collective Economic Organization in the Studied Region

The studied place is selected as part of rural areas of Hebei, which was influenced by China’s collective property right reform of rural areas in recent years in terms of the layout of the region. As of January 2023, totally 49,070 villages (organizations) in the province have carried out the reform and completed the tasks of the reform, with nearly 75% of villages with the annual operational income of more than 50,000 yuan, and 99.96% of villages that founded collective economic organizations. The number of new domestic farms, farmers’ cooperatives and agricultural trusteeship organizations are 8000, 1000 and 3000 respectively¹³. **Table 1** shown as follows includes the statistics of the standards of collective economic organization membership recognition, which was conducted by the author during the process of research on the new round of the land property right reform carried out in Hebei.

¹¹See “Sentence 1 Membership Recognition of Several Special Subjects” of “Section II Rural Collective Economic Organization Membership Recognition in the Cases Related to Land Compensation, Resettlement Expense Payment and Allocation, and Land Contracting in the Guiding Opinions on Settlement of Rural Land Disputes of the Superior People’s Court of Anhui Province for details. <https://www.055110.com/zd/6/108.html>.

¹²For example, the Kaizha Town of Wenshui County, Shanxi, defines the cases of “death, acquisition of the membership of another collective economic organization, personnels fostered by financial funds, regular employees or retired employees of state-owned enterprises, registered people without actual residence and voluntary waiver” as the cases of cancellation of the membership of collective economic organizations. Yingze District of Taiyuan City defines the cases of “death (household registration cancellation), acquisition of the membership of another rural collective economic organization, people changing the rural registration to non-rural registration (only applicable to permanent staffs of national organizations + urban social security system) and voluntary waiver” as the cases of cancellation of the membership of rural collective economic organizations.

See “Section V Cancellation of the Membership of Rural Collective Economic Organizations” in the Guiding Opinions on Rural Collective Economic Organization Membership Recognition of Yingze District of Taiyuan City (YZBF [2019] No. 32) for details. https://www.sohu.com/a/327251059_120209955.

¹³See publicized minutes of the Hebei Agricultural Department’s meeting to summarize the property right system reform in 2023 for detailed data.

Table 1. Standards of collective economic organization membership recognition during the land property right reform.

Studied counties (Districts, villages)	Setting experience of standards of collective economic organization membership recognition
Handan City Guantao County Feixiang District	1. The mode of “1 + X” is adopted for membership recognition, namely household registration + (actual rural life, contracted land owned, contributions and historical reasons). 2. The proportion of added qualifications or the number of added members of the collective economic organization shall be discussed and decided by villagers or the congress democratically. The mode of “1 + X” is adopted for membership recognition, namely household registration + (actual rural life, contracted land owned, contributions, etc.).
Tangshan City Hangu Precinct	1. Principle + specific case. 2. Respect the history and integrate reality on the basis of the consideration of the relations of household registration and land contract. 3. Specific case: Farmers who have the household registration of their own village and obtain the right of land contracting and operation in their own village and derivative agricultural populations shall be guaranteed. The people changing the rural registration to non-rural registration and village’s collective economic organization members’ children who have the household registration of their own village and study in universities and junior colleges shall be guaranteed. Compulsory servicemen, non-commissioned officers conforming to national regulations and people serving sentences, who have the right of land contracting and operation in their own village shall be guaranteed. Other personnels recognized by cadres, party members and villagers’ congress of the village shall be guaranteed.
Chengde City Shuangluan District Baoding City Wangdu County	1. The region formulates and promulgates Provisional Managerial Measures of Collective Economic Organizations of Villages and establishes different types of collective economic cooperatives. 2. General standards and supplementary standards are adopted. The setting types of supplementary standards are discussed and decided by members’ congress in accordance with household registration, and supplementary standards in regard to contributions and other reasons are set based on the differences between the village’s actual situation and reality. 1. The region determines the membership based on the requirements of following the legal condition and household registration relation, respecting the history, taking the actual condition into account and relaxing restrictions, and considers various factors, such as the relationship of land contracting, interest relationships of collective economic organizations, etc. 2. It also clarifies the time nodes of membership registration and valid period of the service time, and imposes basic limitation of the conditions of members of collective economic organizations. 3. It sticks to the principle of law going first and followed by people’s opinions. Taking villages as units and household registration as the basis, the region conducts classified registration and requires the “two committees” of the village to review the qualification for the first time. The result will be submitted to the villagers’ congress for discussion, and it will be publicized after being approved. Any objections will be discussed and decided by the villagers’ congress. For cases of marriage-caused relocation, double identities, registered people without actual residence and other personnels, it is necessary to follow laws and regulations, discuss collectively, settle the cases one by one and determine through democratic votes. 4. It sticks to the principle of standard procedures and recognition of the mass. The principle of “three matters to be determined, discussed and disclosed”. “Three matters to be determined” refer to determination of principles, conditions and methods. “Three matters to be discussed” refer to discussion and evaluation of the villages’ committee, discussion and approval of the party branch and the villagers’ congress. “Three matters to be disclosed” refer to the disclosure to all villagers of the village, disclosure of the result of discussion and evaluation and disclosure of the decision result. Putting people first and considering fairness at the same time are carried forward to confirm the cases of outgoing populations, household registration alteration, double identities

Continued

and other special personnels as members of collective economic organizations as far as possible to ensure normal production and life and prevent immediate interests of the minority from being damaged by most people.

- Cangzhou City** Renqiu City
1. The region carries out all-round statistics of the registered populations and non-registered populations, which have a close relationship with the collective economic organization, and conducts detailed classification of registered populations and non-registered populations in accordance with indicators of household registration, relationships of production and life, performance of villagers' obligations, etc. It also follows the principle of "law going first, followed by regulations and then people's opinions" to carry out member confirmation.
 2. General standards and supplementary standards are adopted, and the setting types of supplementary standards are discussed and decided by members' congress democratically.
 3. Take household registration as the main focus, the standards are set in accordance with the mode of "1 + X", and "personalized policies for each village" are adopted based on each village's actual condition.
- Shijiazhuang City**
1. The standard setting fully respects the custom of allocation of the village and is discussed and decided by the villagers' congress democratically.
 2. Fixed time nodes are adopted as the supplementary setting standards. For example, Dongyin Village of Luancheng District leaves the time of household registration alteration for the villagers when determining the base date, which is finally determined as July 30, 2015.
 3. Contributions and other factors are taken into account during the specific process of setting supplementary standards. However, there are also exceptions. For example, the 4 people with special conditions in the Goubei Village of Xingtang County, including two people who work in the Yangquan Coal Mine, are not determined as members of the collective economic organization. The two people submitted their incomes to the village during the period of 1956-1958 and became formal workers in 1959. Although they keep living in the village, they don't meet the standard of the household registration factor. The rest two people are teachers employed by a private school of the village, and they stopped enjoying the qualification as the members of the village's collective economic organization since their identities transformed to teachers of the public school. However, the mass who once made contributions to the collectivity, talents of rural revitalization, etc. are highlighted during the process of collective organization membership recognition. For example, under the leadership of Zhang Furen, the village branch secretary of Shoudong Village, the "Grain Painting Town", the village's business assets reached 27.2637 million yuan. However, Zhang's identity transformed as a civil servant of the town in 2017, and he shall not be recognized as the member of the collective organization pursuant to regulations. At last, Zhang was recognized as the village branch secretary, which belongs to collective members, through the vote participated by all villagers.
 4. Membership recognition of special groups: 1) Identities of females who get married to people outside the local place and their children are clarified. The daughters of the household with both sons and daughters are allowed to participate in the allocation, but her spouses and children shall not participate in the allocation out of the identity of the villagers and fairness. The daughters of the household with daughters and without son, who operate the home, and their husbands and children can participate in the allocation, and other married daughters may participate in the allocation by themselves. Except for the daughter who operates the home, other ordinary daughters can enjoy rationed shares by themselves, and the spouses and children whose household registration is not in the village shall be excluded. 2) Identities of children immigrated due to the marriage are clarified. Taking the Dongyin Village of Luancheng District, Shijiazhuang as an example, 4 people immigrated to the village due to the marriage. Two people of them were young when their mothers remarried and moved to the Dongyin Village, and the other two people were nearly 30 years old when they moved to the village. In consideration of the villagers' duty to foster underage stepchildren, the people taken into the village due to remarriages, who are under the age of 18 are recognized as the members, and the people taken into the village due to remarriages, who are over 18 years old are excluded.

Different from the exclusion of the “population to be transformed” and “women who get married to non-native people and their children” during the compensation for land acquisition and collective dividend allocation in previous years, this time of collective economic organization membership recognition of the village thinks highly of right guarantee of women and their children, as well as special groups. The No. 1 Central Document issued in 2019 specially clarified that the legitimate rights and interests of marry-out women and other special groups shall be determined as the crucial content of collective economic organization membership recognition work in rural areas¹⁴. Some regions also take identity recognition of marry-out women and their children, as well as children moving in due to marriages. However, there is no consensus reached on the specific types of special groups of farmers in the fields of both theory and practice at present, and their identities are not clarified. In terms of details of collective economic organization membership recognition of Hebei, related parties basically respect regulations and agreements of the village and villagers, and let villagers’ meeting or villagers’ congress determine, publicity and other procedures of villager self-governance¹⁵ (Jiang, 2017) discuss and determine.

On the whole, based on the comprehensive property inspection and asset verification and in accordance with laws and regulations¹⁶, related parties in Hebei abide by the principle of respecting the history, referring to reality, pursuing normative procedures and accreditation of the mass, basically take the information of household registration kept by public security bureaus as the basis, and take the land contract relation in rural areas, contributions accumulated by collectivity and other factors into account (Ding, 2020). However, most villages and towns have no serious problems in terms of the culture, custom, habit, etc., while they fail to standardize the situations of acquisition, reservation and cancellation of the membership, and they have no Provisional Managerial Measures of Collective Economic Organizations of Villages and Law of Collective Economic Organizations of Rural Areas as blueprints of actual practice in the process of membership recognition and authoritative and unified guiding opinions. Standards of the actual rural life, ownership of contracted land, contribution and other factors are not unified during the process of formulation. Furthermore,

¹⁴In “(III) Deeply Promotion of the Reform of the Rural Collective Property Right System” of “Section V Comprehensively Deepen Rural Reform and Stimulate the Development Vitality of Rural Areas” included in the Opinions on the Persistence of Properly Doing the Work of Three Rural Issues and Putting the Development of Agriculture and Rural Areas in the Prior Place promulgated by the Central Committee of the Communist Party of China and the State Council on February 19, 2019. https://www.gov.cn/zhengce/2019-02/19/content_5366917.htm.

¹⁵Although the concept of villager autonomy is different from member autonomy in terms of the legal logic, the geographical scopes mentioned by two terms basically overlap. The homogeneity and closure of traditional communities make identity recognition of villages and members follow the natural path, which is different from the constructive path of legal discrimination of identities, leading to the confusion of villager autonomy and member autonomy from the perspective of the fact.

¹⁶Relatively common legal provisions for citing include Organization Law of Villager Committee, Organization Law of Villager Committee, Organization Law of Villager Committee, Law of Woman Right and Interest Guarantee, Supreme People’s Court’s Interpretation of Applicable Law to Hear Cases Related to Rural Land Contracting Disputes, Civil Code, etc.

regulations, documents, judicial adjudications and rural regulations and agreements related to identity recognition, which are publicized in Hebei and other places, are also different. Moreover, these actions lack a rigorous foundation of legal principles, and have no consensus reached in the academic circle. Some scholars think that household registration is also a basic factor to determine the membership (He, 2021), while some scholars point out that it is necessary to take social security as the compulsory and material standard (Xu & Fan, 2020), or take property investment as the standard of recognition (Liu, 2019). The circumstance in which no unified standard of collective economic organization membership recognition is formed and no law that clearly list all cases and standards to give the membership is applicable to the whole country. Considering that the current practices carried out in various pilot areas are different, and there is a considerable difference of standards of recognition, any disputes incurred in this case will lead to different judgments for the same case. It carries foreshadow of difficulties of grassroots governance due to many contradictions and unfair conditions caused by collective autonomy of villages in the future. Therefore, new ideas to solve the problem are required. Besides, it is extremely important for settlement of agriculture-related disputes and protection of farmers' legal rights and interests to clarify the standards to determine the membership of the collective economic organization in terms of the legal principle, make clear the logical premises of the structure of the legal system of the collective economic organization members' rights.

2.3. The Problems Existing in the Identification of Collective Membership

Although various laws and regulations have been passed since 1978 governing rural collective economic organizations, such as the Land Management Law, the Rural Land Contract Law, and the newly enacted Civil Code of the People's Republic of China, none of these laws provide specific guidance on how to determine collective membership. The Minute of the 8th National Conference of Court Civil and Commercial Case Judgement (Civil Part) (F [2016] No. 399)¹⁷ publicized on November 21, 2016 takes the standard of comprehensive evaluation of membership recognition. While a judicial interpretation known as the "Minutes" was issued on this matter, it is not legally binding and only serves as a reference. Moreover, the factors considered in the "Minutes" are too complex, leaving judges with too much discretion. Therefore, the "Minutes" has had little practical impact to date.

1) Using "agricultural household registration" as the sole criterion for determining membership status no longer meets the needs of current reality

In response to the inadequate supply of legal rules, local governments, village regulations, and judicial decisions have been used to regulate this issue. The fac-

¹⁷The Article 23 of the minute stipulates: "When hearing the disputes of land-based compensation allocation, the production and living condition of the parties, status of household registration, rural lands' function of basic living guarantee for farmers, etc. within the framework of current laws shall be comprehensively taken into account to identify relevant subjects of rights."

tors that need to be considered when identifying collective membership vary greatly in different regions, including factors such as “household registration” “fulfillment of obligations” “actual production and living” and “land contract operating rights”. The emphasis on these factors differs from region to region, leading to practical problems such as difficulty representing individual wills, lack of registration systems, and the disadvantages of “specific identities.” Take the “agricultural household registration system” as an example. In the era of the planned economy in China, the country allocates means of production or employment opportunities for citizens based on the classification of “agricultural household registration and non-agricultural household registration”. With their “agricultural household registration”, rural households can be allocated with cultivated lands and homesteads. “Agricultural household registration” is the core condition to determine the membership of collective economic organizations in rural areas, and it is reasonable that household registration is taken as the component of the membership. However, under the general background of implementation of urban-rural integration and rural revitalization, farmers are unable to enjoy the treatments of welfare-oriented public housing distribution and employment arranged by the government, which were once obtained by urban residents. Keeping taking “household registration” as the single condition of membership recognition is apparently out of date. Legislative bodies also start to change the measure of collective means of production distribution based on “household registration”. For example, the Article 27 of the newly amended Rural Land Contract Law¹⁸ specifies principles to handle contracted lands of farmers who settle down in cities. However, laws still fail to give clear answers about whether farmers who settle down in cities can maintain the membership of collective economic organizations or not, as well as the case in which urban residents have to settle down in rural areas to live on agricultural production and become members of collective economic organizations again, etc. However, to view from the administrative ruling in writing of the Supreme People’s Court of the People’s Republic of China, household registration of immigration is not regarded as a decisive factor to acquire the membership of rural collective organizations¹⁹.

2) Standards of membership recognition determined by village regulations and farmers’ agreements have limitations

Memberships of rural collective economic organizations in some areas are generally and directly confirmed by rural collective economic organization or villages’ committee pursuant to village regulations and farmers’ agreements²⁰. As

¹⁸The policy of encouraging farmers to voluntarily return the contracted land within the contract period in a paid form and prohibition of land contractual operation right returning as conditions of farmers’ settlement in cities.

¹⁹Jin Xinyi, Resource Administration Management of the People’s Government of the Wangcheng District, Changsha City, Hunan Province: Administrative Ruling of Retrial and Adjudication Supervision of Others (Resources) ([2021] ZGFXS No. 2117).

²⁰Village regulations and farmers’ agreements refer to affairs discussed and determined by villager representatives, or determined by articles of villager self-governance, village regulations and farmers’ agreements as specified by the Article XX of the Organization Law of Villager Committee of the People’s Republic of China. Since rural collective economic organizations and villager committees in most rural areas of China are integrated as one, villager committees often exert the collective ownership in practice.

the concentrated reflection of collective wills of internal members, village regulations and farmers' agreements are representative products of the mutual integration of self-government, rule of law and rule of virtue of villages. As important boosters of rural governance perfection, they play crucial roles in multiple fields. However, since that distributed benefits of each member depend on the total number of members to a great extent, when there are interest-related disputes between members of rural collective organizations, "the community of shared interests" always cancel the parties' memberships in the form of village regulations and farmers' agreements to achieve the goal of internal member interest maximization. In this regard, there are significant limitations of memberships determined by village regulations and farmers' agreements.

3) Standards of judicial practice are inconsistent, and judges have an excessively great discretionary power.

Due to the absence of legislation, there is a large space for courts to judge the collective membership recognition at courts' own discretion. When courts refuse to accept²¹ the case based on the reason that issues of memberships belong to the category of members' self-government, which shall not be included in the scope of courts' acceptance, the public power can't satisfy farmers' strong aspiration to exert their rights. Even if the membership-related issues are included in the judicial process and courts' judgment standards, there are still manifest differences of factors to be specifically considered by different courts²².

Therefore, overall, the determination of collective membership standards in China has long been lacking unified legal regulations, and judges have had excessive discretion in deciding whether to accept and which standards to adopt after accepting the cases. This is detrimental to the stability of the parties' expectations of the court's decisions.

3. Transformation of the Dynamic System Theory as the Legislative Paradigm

The modern economic order and social relationship become even more complicated, and legal implementation of planned intervention and control for the so-

²¹For example, Civil Ruling Paper on the Dispute of Collective Economic Organization Member Rights and Interests Infringed by Xu Jie and the Joint-stock Economic Cooperative of Nanshan Village ([2022] L02MZ No. 7020), Civil Ruling Paper on the Dispute of Contracted Land Levy Compensation Distribution of Liu Ling ([2015] LMLZZ No. 00004), Civil Ruling Paper on the Second Instance of the Dispute of Rural Land Contracting Contract Entered between Li Jimei and Huo Ying, Huo Jing, Huo Jian and Li Huiqiong ([2016] MXZ No. 3562), Civil Ruling Paper on the Second Instance of the Dispute of Liu Jianguang and the Rural Land Contracting Contract ([2016] J02MZ No. 2114), etc.

²²In case of the Civil Judgment on the Dispute of Collective Economic Organization Member Rights and Interests Infringed by Sun Wenjuan and the Neighborhood Committee of the Chenggu Community ([2022] S05MZ No. 2480), the court adopted the standard of "household registration + fixed production and living". In the Civil Judgment of the 5th Intermediate People's Court of Chongqing ([2013] YWZFMZZ No. 2976) and the Judgment of Chen Changshou's Appeal to Hear Collective Economic Organization Member Rights and Interests Infringed by the 15 Collective of the Dayan Village, Jinfeng Townm Jiulongpo District ([2013] YWZFMZZ No. 2976), the 5th Intermediate People's Court of Chongqing adopted the recognition standard of "household registration + land contracting operation right".

cial system becomes even harder. Roscoe Pound, an American jurist indicated, “the increase of opportunities of interpersonal contact also increases conflict points and overlapping points of their interests. The result is more and more laws and administrative regulations required by the society, which keeps making the process for jurists to understand and get familiar with the whole set of laws based on the second meaning of the word, and governance of law has become the downpour of law. Such as situation has been a severe problem of law implementation” (Pound, 1984). The determination of membership status involves the immediate interests of the parties involved in collective membership. However, the current difficulty lies in the confusion surrounding the criteria for determining membership in practice, leading to significant differences in court rulings, thus failing to achieve social stability and the maintenance of judicial authority. In this regard, this article attempts to propose suggestions by introducing the dynamic systems theory to construct a framework for determining membership status, including the selection of factors for identifying collective membership, the prioritization of weights, and the feasibility of membership determination criteria.

Due to the high degree of complexity and uncertainty of the modern society, planning-based intervention and regulation of law for the social system become even harder. Originating from Austria, the Dynamic System Theory²³ emphasizes the joint action of multiple factors and elements in a specific field and adopt the legislative model of “factor-effect” to replace the “element-effect” structure, that is, to list the factors affecting the confirmation of membership and rank them according to their importance. By refining present the dynamic logical relationship between various factors and legal effects, as well as the influence through the clarification of multiple factors, thus realizing legalization of laws and regulations. It is consistent with formal characteristics considered by tendencies and systems of multiple factors, including “household registration” “actual residence” “ownership of the contracted land” “performance of villagers’ obligations”, etc., which are required by membership recognition of collective economic organizations in rural areas. The Dynamic System Theory is applied in multiple places of the Edition of the Right of Personality of China (Wang, 2020)²⁴. On this basis, it is necessary to comprehensively use the methods as mentioned in the Dynamic System Theory to classify the factors of membership recognition on the basis of the exploration of the institutional logic of collective economic organization membership recognition, and finally implement the feasible scheme in terms of legislative presentation. Undoubtedly, no method can achieve perfection. The introduction of dynamic systems theory in the construction process of criteria for identifying members of collective economic or-

²³The Dynamic System Theory is a legislative theory put forward by Wilburg, an Austrian jurist. Although it has only been applied and developed for more than half a century, it has had an extensive influence on legislation of multiple countries in the world, especially the region of the European Union.

²⁴For example, Article CMXCVIII of the Civil Code. Similarly.

ganizations may not be the best approach. However, as a legal method, dynamic systems theory can provide innovative references for legislation and even judicial rulings regarding collective economic organizations in China.

3.1. The Institutional Logic Established by Standards of Collective Economic Organization Membership Recognition

1) A group autonomy logic

It can be confirmed that the standards of collective economic organization membership recognition in rural areas shall be based on the respect to rural collective autonomy to carry out legalization. On the one hand, different from the villagers' committee, the collective economic organization of the village as a special corporate body is a private subject with the nature offered by the Civil Code of the People's Republic of China (Zhang, 2021). Opinions of Property Right Reform, Comprehensive Implementation Scheme to Deepen the Rural Reform, etc. vest certain rights of autonomy for collective economic organizations to decide whether to accept the applicant as a member or not (Gao, 2020). In accordance with the basic principles of modern group autonomy, the group definitely has the right to determine the membership of the member as one part of the rural collective economic organization, which shall be the due connotation of the corporate body under the principle of autonomy. On the other hand, to respect democratic consultation of the village collective shall take Opinions on Collective Property Right Reform and policy requirements related to the promotion of the collective property right reform of the country as blueprints and implement them, promptly summarize the actual need based on the experience of pilot areas and promulgate local laws, regulations, instructive documents at proper time. China's Opinions on Collective Property Right Reform requires that it is necessary to attach importance to the country's will and emphasize collective autonomy²⁵. Therefore, the results obtained through democratic consultation in the congress of the collective members of the village when discussing the problems of acquisition, reservation and cancellation of the membership of the collective economic organization. Authorities from the village level to town level and city level shall promptly summarize the standards of collective economic organization membership recognition, which cause few disputes in practice and are relatively mature, effective and applicable to most cases. However, it is suggested that the unified standards of recognition shall not be applied in the regions with great differences of cultures, customs and habits. It is necessary to respect the result obtained through democratic consultation of the local village

²⁵For example, "(X) Rural Collective Economic Organization Membership Recognition" of "Section IV Carry out the Property Right System Reform of Collective Business Assets from Points to Surfaces" in the Opinions on Collective Property Right Reform indicates that "the concrete procedures, standards and management measures of rural collective economic organization membership recognition shall be carried out on the basis of the respect to democratic consultation of the mass". "Membership recognition shall be agreed by most people, and immediate interests of the minority shall be prevented from being damaged by most people. In addition, women's legitimate rights and interests shall be actually protected", etc.

and determine standards through the congress of collective economic organization members of the village.

2) Property right logic

The formation of collective economic organizations in rural areas takes lands and other main means of production as bases. In accordance with the theory of modern organization law, the organization, as a special corporate body, has apparent property of capital interrelation. Farmers' identity as commune members of the collective economic organization originates from the process of "investment of lands in the commune", and lands are original capitals obtained by the collective economic organization. As the members of the organization, farmers enjoy the property right of the group, and the membership depends on farmers' contributions to the group's property. In this way, the membership closely correlates the property right relation. In principle, only the personnels who share a property relationship with the collective and make contributions to the economic accumulation of the collective can be confirmed as the members of the collective economic organization (Huang & Wang, 2016).

3) A social security logic

On the one hand, the essential attribute of China's collective ownership lies in the equal right of collective members and guarantee of farmers' living condition. As the basis of China's socialist economic system, the socialist public ownership of the means of production is clarified in the Constitution, and "the collective ownership of rural land" mentioned in the Civil Code stands for legislative presentation of the basic constitutional economic system at the level of fundamental law. Marx thought that the public ownership of the means of production is the basis of establishment of the cooperative, and pointed out that only the cooperation based on the public ownership of land in rural areas has progressive significance of the society. He indicated that "concentration of the means of production is the national-level foundation of the society formed by various unities and free and equal producers who will consciously engage in social labor in accordance with a common and reasonable plan" (Marx, 2012a). "Giving united agricultural laborers the land can be deemed as the society that is only dominated by one class of producers." (Marx, 1964) Under the premise of such reliance of the path, the presentation of the system of rules to judge the membership of China's collective economic organizations shall be controlled and checked by this political principle. Integration of factors of the market economy shall continue to stick to the core status and bottom-Line thinking of the collective ownership. On the other hand, multiple times of adjustment of China's land system are based on demand equilibrium of agricultural production and economic development, and involve strict regulation measures for the purpose of land application regardless of the current period or a long term in the future. Although the pressure of realization of economic values in a more efficient form under the background of the market economy is faced, the principal function of villages is to ensure food security of the country. Therefore, while participating the market

economy, collective economic organizations in rural areas must consolidate and maintain the basic shares of agriculture and guarantee food security of the country.

It can be learnt from this that collective economic organization membership recognition shall ensure that the contracting rural households in the organization can acquire and enjoy rights with both the attribute of properties and the attribute of safeguards (Gao, 2019). The relation between the country, collective and membership of collective economic organizations, which is generated on the basis of lands, refers to a political relation, rather than a simple market or economic relation. Farmers obtain the basic guarantee of life through working on the land owned by the collective, and the country wins stability and development and moves ahead towards the common prosperity on this basis (Liu, 2016). The identity of collective members indicates that members can obtain rights and interests of basic guarantee of life as far as the rural land is concerned. Therefore, the group that lives in the village for a long period and has no chance to enjoy the basic social security of towns shall be the fundamental basis to acquire the membership of collective economic organizations.

3.2. Selection of Membership Recognition Factors

First of all, basic guarantee of life should be taken as the top concern. Any individual who has no chance to enjoy the social security covered by the regional system of cities and villages should have the chance to take the collective land as his/her final guarantee of life. Therefore, “whether the person takes the collective land as his/her basic guarantee of life” shall be taken as the principal factor to recognize the membership of collective economic organizations. However, it is worth noting that the land that are taken as the guarantee of employment or pension by farmers is merely a kind of supplement of social security in the current stage (which is not social welfare or guarantee on the level of public law) (Gao, 2014). In the future, such a mode will be gradually eliminated with the promotion and completion of integration of rural and urban social security. Therefore, it is not advisable to deny the collective economic organization membership of farmers who handle urban social security.

Secondly, it is necessary to take the factors of “special identities”, including the blood relationship, birth, marriage, geographical relationship, relationship of adoption, etc. as important factors of collective membership recognition. During the process of collective membership recognition, it is necessary to fully respect and consider the universal understandings and simple emotions formed by the collective of the village based on common agreements, and respect customs and conventions formed in the village in a long run. It is also in line with the contract operation that takes the rural household as the unit, as well as collective member autonomy in China’s household contract responsibility system with remuneration linked to output, and it even observes the principles of “referring to reality” and “accreditation of the mass” proposed by the central government on the issue of collective membership recognition. Although it is not strange to

see farmers who enter the city to work, most of them still have no long-term and stable relationship of production and living, and they should still be recognized as members of collective economic organizations. However, it can be seen from the result of the current investigation that some places also implement static management with a fixed membership, such as the setting of the base date.

At last, “household registration” becomes the main basis of identity recognition in practice, because it is the carrier for public security organizations to manage the local population, with clearness and publicity. For example, modes of “household registration + age”, “household registration + specific identity”, “household registration + specific identity + contribution and obligation performance”, etc. are adopted. Therefore, it is available to keep the factor of “household registration” and integrate the factors of “special identities” to set the general standards of initial acquisition of the membership in terms of recognition of acquisition of the collective economic organization membership.

3.3. Feasible Idea of Membership Recognition Standards

In accordance with the requirement for the feature of flexibility, which is required by the Dynamic System Theory, factors that determine the membership of collective economic organizations shall show an open and developmental state in terms of quantity. Except for dynamic consideration of the importance of various factors, the connection between expansibility, variability and expansivity presented in the context of the continuously changing relationship between industry and agriculture shall be established.

Firstly, the principle of initial acquisition of the membership of the collective economic organization shall be set, that is, to recognize members of the original people’s commune, production brigade and production team based on factors of “household registration” + “special identity. The person whose household registration is maintained in the place where the collective economic organization is located should be regarded as the member of the organization. In addition, to promote the development of the new-type rural collective economy and attract and reserve more talents required by rural revitalization, the relatively mature membership standards widely adopted in practice can be solidified to form the way of legal membership. This means the applicants who meet the legal conditions and standards are entitled to obtain rural collective economic organization membership. For example, the person who changes his/her residence registration and keeps it in the collective economic organization due to the needs of national construction or policies can be recognized as the acquisition of the collective membership. what’s more, It may also establish a means of obtaining membership upon application, it means that, in accordance with the regulations of the collective economic organization, over two thirds of members of the collective economic organization shall approve the application made by the personnel coming from another collective economic organization of a rural area after he/she voluntarily submits the application in written form, and blank clauses to

be supplemented can be handled through local legislation. Secondly, in consideration of the collective's demand for guarantees, it is necessary to make recognition standards of the membership reservation of the following personnels be detailed: The soldiers in active service and non-commissioned officers who conform to relevant regulations of the country, with the original household registration of the collective economic organization; Full-time students of universities and secondary vocational schools, with the original household registration of the collective economic organization; The missing personnels that cannot be found for a long time, with the household registration being cancelled; The personnels serving sentences or being restricted in terms of personal freedom pursuant to law (personnels of community correction and personnels released after serving the full term of a sentence); The personnels moving to cities and towns due to employment and businesses and living and engaging in production in the place other than the one where the rural collective economic organization is located, who haven't voluntarily waived their rights and obligations as the members. Thirdly, it is necessary to set the standards of cancellation of the membership on the basis of the full respect to the members' will, ensure that both "simultaneous occupation" and "simultaneous cancellation" can be avoided, and exclude registered people without actual residence. Although these people's household registration is kept in the collective economic organization, they don't engage in production or live in the organization, and they don't rely on the land and homestead owned by the collective economic organization and take these factors as the basic guarantee of life. Finally, it is necessary to clarify the content and range of special farmers, including people serving sentences or in active service, women and men who get married to native people, people who lose spouses, retired people with job titles, full-time students and people who return to the hometown to spend the rest life, and carry out detailing of standards of qualification recognition of the several groups of people with concentrated disputes one by one on the basis of their basic subsistence, specific identities, household registration and other important factors.

4. Conclusion

The legislation of rural collective economic organization has been started, but at present, from the investigation experience in the pilot areas, there is no unified standard for judging the membership acquisition, retention and loss of membership of rural collective economic organizations. The difficulty in the process of legislation lies, in the fact that, how to design the normative expression to realize the coordination of differences between regions and respond to the diverse demands of different groups. Under the paradigm of traditional law, the legislative model of "factor-effect" is unable to resolve the contradiction between the generality of law and the diversification of practice in various places. In practice, it is not appropriate to identify the membership of collective economic organizations only by single elements such as "household registration", "actual

residence”, “ownership of the contracted land”, “performance of villagers’ obligations”, etc., In this regard, in the legislative process of rural collective economic organizations, we should introduce the paradigm of Dynamic System Theory, that is, adopt the legislative model of “factor-effect” to replace the “element-effect” structure, by enumerating, refine and summarize many factor contained in legal norms, and then judge the legal effect according to the degree of influence of factor, and sort them according to their importance. The normative structure mode of “effect” reserves a large margin of discretion for the subordinate law and local practice, and all localities can further adapt and refine the rules for membership identification according to the actual situation in local rural areas.

The design of the legal system of membership of collective economic organizations needs to confirm the background logic of respecting a group autonomy logic, a property rights logic and a social security logic. As far as the design of rules is concerned, the emphasis should be placed on the acquisition, retention and loss of membership. The institutional background of initial acquisition is based on the logic of respecting the village collective autonomy, that is, Under the premise of Legal personality, the membership acquisition rules of collective economic organizations should respect the village collective decision; In addition, due consideration should be given to the talent pool in rural areas and the requirements of the dual system of urban-rural dual system in China at this stage, so as to ensure that the farmers of this collective economic organization can obtain and enjoy the rights with both property attributes and social security attributes, that is, from the logic of property rights and social security, so other types of organization membership acquisition methods should be expanded, including legal acquisition methods and application acquisition methods. In addition, it is necessary to set corresponding rules for special groups such as marrying wives, recruited husbands, full-time students, etc. Generally speaking, all the above are the contents that need to be considered in the process of perfecting the legislation of members of collective economic organizations. Perfecting the legislation of members of collective economic organizations is the consolidation of the achievements of collective property rights reform. In order to explore and achieve better legislative effects and build consensus, it is necessary to respect rural collective property rights and follow the basic laws of economics and law, and innovate the thinking of legislative norms.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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