



Mechanisms of Obtaining Membership of Farmer Collectives

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Received 21 September 2013; accepted 11 December 2013

Abstract

This paper puts forward the corresponding solutions and suggestions through analyzing mechanisms of obtaining membership of farmer collectives in the normative sense, and aiming at the plight of obtaining farmer collective membership.

Key words: Farmer collective; Membership; Implied-in-fact contract

HOU Debin, WANG Hai (2013). Mechanisms of Obtaining Membership of Farmer Collectives. *Cross-Cultural Communication*, 9(6), 96-98 . Available from: <http://www.cscanada.net/index.php/ccc/article/view/j.ccc.1923670020130906.3933>
DOI: <http://dx.doi.org/10.3968/j.ccc.1923670020130906.3933>

1. MECHANISMS OF OBTAINING MEMBER QUALIFICATION OF FARMER COLLECTIVES IN THE NORMATIVE SENSE

Obtaining a membership of any group, its legitimacy is from the voluntary of members in essence, therefore, obtaining a membership should be made from a potential member's application that is the logical starting point in the normative sense. If a person hopes to get a group's membership, the first way is to express the will to join the group, and the group's members follow the regulation or the majority voting result to decide whether or not to accept the person. Based on the individual freedom and the collective autonomy, such the formation is the best style for the collective's forming and decentralization. Since

collective memberships are not resources that the country has the right of allocation, the legislation can not order a collective to accept a person or cancel a membership.

After a collective receives a potential member's application, it shall follow the provisions of regulations and held a meeting to discuss this issue in accordance with the agreed procedure. Because the collective has no flesh, blood, and the ability to think, its decision actually comes from existing members' will. These members' will is in accordance with the "general will" and is represented by majority voting results. Collective existing members have the right according to the established procedures to decide whether to accept new members. Therefore, when the collective provisions of the admission of members are without restrictions, or a applicant has met the conditions required, the applicant can not be generally recognized that he is already approved to join the farmers' collective.

If a collective refuses to accept some individuals to become its members or deprive of some individuals existing membership, it may lead to obvious negative external effect, such as a collective refusing applications may be against the good custom, or has a potentially fundamental impact on the applicant's survival. When the country may pay cost to avoid death or major individual loss of interest, due to the damage of the collective behavior is not only about some individuals' interests but some social interests, the state has the right to require the collective to make some concessions, such concessions may be compulsory acceptance of these potential members, or negotiating with these potential members to make compensation agreement. The main path which lawmakers use to interfere in contract memberships is to apply mandatory contract style. For conditions of compulsory contracting, should adopt flexible provisions. If the collective is refusal to fulfill the obligation of compulsory contracting, it should allow individuals to choose the compulsory execution or compensation according to the specific circumstances, especially when

the compulsory execution can only make the collective be false obedience, asking the compensation is much easier.

2. DIFFICULTIES AND SOLUTIONS

A theory should solve difficulties in the real life. In China countryside, even if the farmer collective member qualification mechanism is established based on the normative sense, adjusting the private law in farmer collective internal legal relations must also solve a difficult problem, namely farmer collectives have existed earlier than related norms, farmer collectives have not used the corporate form of organization and there is no complete member registration system at current stage, for those individuals who are already living in such farmer collectives, how to judge whether they have obtained memberships?

2.1 Theoretical Path to Solve the Existing Problem

Once the member right system is regarded as a benefit allocation scheme, memberships will become the most important resources available for distribution. When the allocation scheme is considered that it can be designed through the detailed observation and analysis, then lawmakers will often consider that the designed allocation scheme must be according to generally accepted "justice" concept, and interfere in the legitimacy of the formation mechanism of membership. At present, the most opinions of the academic circles are closely related with the traditional thinking in China, in spite of having detailed differences:

Some scholars suggest to use permanent residence registration as the only standard to confirm the qualification of members, they said: "the account of immigration and emigration is the administrative behavior of a rule-based, well documented, detached from the interests of the members, that are used to confirm member identities of collectives with the greatest possible fairness and rationality, basically has been used in farmer collective membership disputes now" (Meng, 2006). Other scholars advocate the standards that members should have lived in the place for a long time and forms a de facto relationship of rights and obligations, or confirming the membership need the natural person using the collective land to guarantee his basic living (Wu, 2006; Han, 2005; Wei, Jiao, Luo, Zhang & Liu, 2006); and some uphold the eclectic principle, that combines the household registration with the above state of facts to determine collective memberships (Liu & Yue, 2006; Lin, 2008).

Although the Supreme People's Court considers that this issue is important, uses "beyond powers" as a reason, and gives up the judicial interpretation for farmer collective member qualification system, but the eclectic has apparently more fans in the judicial practice. Some of local courts give more refined criteria, for example,

people who are born to get local residence registrations should get the farmer collective member qualification also; people who get local residence registrations because of marriage, adoption relationship and so on should obtain the farmer collective member qualification; for national defense construction or other policy reasons, the immigrants who move into the location of the farmer collective should obtain the farmer collective member qualification; the others who move into the location of the farmer collective and more than 2/3 of the members agree to accept them as members in the farmer collective meeting, should obtain the farmer collective member qualification of the farmer collective; people who do not meet the above conditions but use the collective land as the basic living resources, also should obtain the farmers collective member qualification.

These different theories have something to be the same. They make the author remember once flourished implied-in-fact contract theory of German. The theory was proposed by German jurist Haupt in 1940s and it has developed for more than sixty years. The core idea of theory is: the principals do not need to express real will, according to facts in typical social behavior, can create the contractual relationship. Once the theory appeared, the German federal court implemented it in the Hamburg parking lot charge case. Scholars who support the theory divide implied in fact contract into three types: namely, implied in fact contracts can be based on the social contact, group relations, and social obligation. The implied-in-fact contract theory is a fundamental revolution against using traditional civil laws to alleviate problems and traditional civil laws are based on individualism legal thoughts. According to the implied-in-fact contract theory, getting rid of old ideas which can not solve the problem, we should have the courage to face reality and admit the new theory, namely in some cases, the contractual relationship can be established by the facts, and do not have to ask principals' thoughts. Despite the contrast details, the above theories in essence can be regarded as variants of implied-in-fact contract theory, whether the fact of household registration, the fact of the right and obligation relationship existing, or the fact of using the collective land as the basic living resources, all these standards are only different at using different facts. By applying implied in fact contract theory, legislation can be based on a concept of "justice", does not consider the collective will but using relevant facts as the basis, directly identifies whether or not those potential members having contractual relationships with farmer collectives.

2.2 A Method to Solve the Problem

A basic clue for solving the problem is that the mechanism of obtaining member qualification of farmer collectives should still respect each other thoughts, namely membership confirmation should be based on principals' will rather than lawmakers' simple judgment of facts.

Legislators can use “presumption” technical means, at the same time, give the presumed party the right to overturn the “presumption” through evidence, so as to judge whether or not the membership exists according to the time and the actual situation.

“Village Committee Organization Law” may ask farmer collectives to make a statute, which should at least include the following matters: (a) the name of the farmer collective; (b) all rural land owned by the farmer collective; (c) the villager committee members of the farmer collective, functional authority and election methods; (d) the farmer collective supervision committee members, functional authority and election methods; (e) convening conditions for the villagers assembly or the villagers’ representatives meeting, these meetings’ functional authority and procedures; (f) farmers collective member qualification’s obtaining and loss mechanism; (g) farmers collective member rights and obligations; (h) punishment for the members of the collective; so as to solve the problem of judging collective membership by way of agreement.

If a collective does not have statute provisions for member qualification mechanism, “Village Committee Organization Law” provides the following presumption criteria: first, those individual farmers who have already exercised farmers collective member rights in fact, such as have attended the decision-making meeting of the collective and have exercised the voting right, the right to be elected, moreover, the farmers have signed the contracted management of rural land of the collective and these farmers’ names are indicated in the contract and so on. The theoretical foundation of presumption standard: precondition for the exercise of the rights of member is a membership of the farmers’ collective, since individual farmers are agreed by the collective to exercise rights of member, they should also have default membership; second, farmers collective member’s spouse and farmers collective member’s lineal relatives and their spouses. The fundamental reason they can make farmers collective member qualification is the habit of identity in village community, villagers children of course is considered to be the village people. Especially in the system of family planning regulation, each farmer family only have 1-2 children in theory, ensuring farmers’ fairness expectation for land redistribution. Private law should confirm these collective internal rules that accumulated in the long-term practical experience of life; third, by the national immigration, defense and other policy reasons, the state places farmers in the areas of farmers collectives. Private groups interests have to compromise with public interests and it is the basic reason of these farmers getting collective membership.

For the membership standard question, such as whether registered permanent residence should be entitled

to as a presumption of the collective membership, in current practice, farmers who locate in areas of the farmers’ collectives control, really need to get the farmers’ collective enforcement authorities agreement by documents, namely, registered permanent residence can play a certain role, but a farmer collective agrees incomers living in the farmer collective controlling area and obtaining the collective membership is not identical. Therefore, household registration in the farmer collective control area can be used as a secondary presumption of obtaining membership, also need combining with other conditions, and we should not directly use registered permanent residence as a presumption of already obtaining farmer collective membership.

In addition, we can not presume individual farmers to be collective members only because these individual farmers use land owned by collectives as their basic living guarantee. According to the proper legal logic, after individual farmers becoming members of farmers collectives, farmer collectives start to have the obligation to provide basic survival public goods for them, not the other way around. And after rural land contract right circulation, individuals may enter the farmer collective areas to be engaged in agricultural production activities, these individuals do not have the village collective membership because of village habits, do not considered as members of these collectives. However, they must rely on these farmer collective farming land for a livelihood, namely the land owned collectives will provide actually guarantee for their survival, if require that farmer collectives must accept them as members, it is difficult to obtain agreement of other members, at this point, the law presumptions of farmer collectives having already accepted these potential members, apparently has no legitimacy.

REFERENCES

- Han, S. (2005). Member-group and group-member. *Science of Law*, (8), 46. (In Chinese).
- Lin, W. (2008). Defining farmers’ collective economic group membership: From the perspective of disputes upon land requisition distribution. *Journal of Hubei Administration Institute*, (3), 15-19. (In Chinese).
- Liu, J. Z., & Yue, X. M. (2006). Defining villager rights and relevant problems. *NPC Construction*, (8), 49. (In Chinese).
- Meng, Q. G. (2006). How to protect collective property according to property law? *Science of Law*, (1), 79. (In Chinese).
- Wei, W. B., Jiao, Y., Luo, J., Zhang, Y. D., & Liu, H. (2006). Discussion on villager right. *Journal of Northwest University for Nationalities (Philosophy and Social Science)*, (2), 85-86. (In Chinese).
- Wu, X. G. (2006). Group membership and membership right. *Law Science Magazine*, (2), 91-94. (In Chinese).