

Research on Judicial application of Village Regulations and Civil Covenants in Civil Disputes

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Abstract: With the promotion of the rural revitalization strategy and the transformation of rural society, the number of cases involving civil disputes of village regulations and civil agreements is increasing. Due to the lack of relevant judicial rules, courts are faced with judicial dilemmas such as unclear scope of accepting cases, different standards of legality review, and ambiguous identification of membership of collective economic organizations. Based on 386 judicial precedents related to village regulations and civil covenants in civil disputes, data analysis and countermeasures are carried out. By clarifying the scope of cases accepted by the court, the subject and standard of legality review, and the standard of collective economic organization membership identification, the rules provide countermeasures for the judicial organs to resolve the civil disputes of village regulations and civil agreements, so as to protect the legitimate rights and interests of villagers.

Keywords: Village rules and regulations, Civil disputes, Written judgment, Judicial application.

1. Judicial Application of Village Rules and Regulations

1.1. Case Selection Description

With "Village regulations and people's agreement" as the key word, a full-text search was conducted in the databases of "China Court Documents Network" and "Jufa Case" to remove the repetitive judgment documents and select representative civil cases tried by the Supreme Court and high court. A total of 386 judgment documents (from 2012 to 2021) were obtained. The 386 documents mentioned above were sorted out: 1 judgment of first instance; There were 7 judgments of the second instance, of which 2 were upheld; There were 44 judgments for retrial and 335 rulings for retrial, among which 53 were upheld (13.9%), 52 were revoked/changed (13.7%), 49 were arraignment/order hearing/remanding (12.9%), and 212 applications for retrial were rejected (55.9%).

1.2. Basic Case Information

1.2.1. Case Province

Among the 386 documents, 52 cases were from Beijing, accounting for 13.5%. Guangdong Province and Fujian Province followed, with 40 and 39 cases, respectively, accounting for 10.4% and 10.1%; 30 in Shaanxi province; Accounted for 7.7%; Zhejiang province 27 cases, accounting for 6.9%; Heilongjiang province 24 cases, accounting for 6.2%; Guangxi Zhuang Autonomous Region 21 cases, accounting for 5.4%; Liaoning province 20 cases, accounting for 5.2%; The number of cases in Shandong, Hunan, Henan and Sichuan ranged from 14 to 18, accounting for about 4% in each province. 6 cases in Jilin Province and Gansu Province, accounting for 1.6%; 4 in Chongqing; 3 in Jiangxi province; There were 2 cases in Anhui, Shaanxi, Guizhou and Xinjiang; There was 1 case in Tianjin, Hubei, Qinghai and Yunnan. No documents were found in other provinces.

Table 1. Geographical distribution of disputes

Reional	Beijing	Guangdong	Fujian	Shaanxi	Zhejiang	heilongjiag	gauangxi
Instrument (copy)	52 (13.5%)	40 (10.4%)	39(10.2%)	30(7.7%)	27(6.9%)	24(6.2%)	21(5.4%)
Reional	Hunan	Henan	Sichuan	Jilin	Gansu	Chongqing	Jiangxi
Instrument (copy)	17(4.4%)	15(3.9%)	14(3.6%)	6(1.6%)	6(1.6%)	4(0.1%)	3(0.07%)

By comparing the geographical distribution of cases with the corresponding economic development and the number of administrative villages, it is found that the geographical distribution of cases is positively correlated with GDP ranking, but not strongly correlated with the number of administrative villages. (1) The relationship between the number of cases in each region and economic development. Taking China's GDP in 2020 as a reference, the correlation analysis with the number of documents of the above-mentioned provinces and cities shows that Beijing, which has the highest sample proportion, ranks first among the four municipalities, while Chongqing and Tianjin have the same sample proportion with the GDP ranking of the

municipalities. Guangdong Province, with the second largest sample, ranked first in China in terms of GDP in 2020. Fujian Province, Shaanxi Province and Zhejiang Province, which had a large number of cases, also ranked first in GDP ranking, ranking 8th, 14th and 4th respectively. Shandong, Hunan, Henan and Sichuan provinces with a similar number of cases also had similar GDP rankings, ranking 3rd, 9th, 5th and 6th respectively. In general, Guangdong, Zhejiang, Fujian, Beijing and Shandong, the five provinces with the highest GDP, had a large number of civil dispute cases about village rules and civil agreements. Although the strict degree of the implementation of the system of court documents publication varies from place to place, the GDP ranking and the number

of documents are positively correlated, and the number of cases is also higher in areas with good economic development.(2) The relationship between the number of cases in each region and the number of administrative villages.According to the "Statistics on the number of administrative villages in China in 2019", we can find that Shandong and Sichuan, which ranked first and third in the number of administrative villages, ranked ninth and twelfth in the number of cases, while Hebei, which ranked second in the number of administrative villages, did not find any related cases.Meanwhile, the Xinjiang Uygur Autonomous Region, which has the second-lowest number of administrative villages, had two cases.This shows from the side that there is no direct relationship between the number of cases in each region and the number of administrative villages.

1.2.2. Case Area

According to the preliminary analysis, the 386 judgment documents as samples can be divided into four categories in terms of disputes: first, there are 218 disputes concerning the rights and interests of members of collective economic organizations, accounting for 56.4%, which is the type of civil disputes with the largest number and the largest proportion.Second, land contract and management rights disputes, a total of 82, accounting for 21.2%.The above two types of disputes are mainly caused by the exclusion of village rules and agreements and the non-recognition of villagers' collective membership of the collective economic income distribution, land expropriation compensation fees caused by the litigation, in recent years more litigation "married woman" identity qualification cases are the typical representative.Third, contract disputes, a total of 30 articles, accounting for 7.5%.It mainly includes rural land contract disputes (15 cases) and housing demolition compensation contract disputes (11 cases). The main disputes in this kind of cases are whether the amount of compensation determined in the contract and the effectiveness of the contract are effective.Fourth, tort liability disputes, a total of 8, accounting for 0.2%.The main focus of such cases is whether the village rules and regulations violate the national law and whether they infringe the legitimate rights and interests of villagers.

1.3. Structure of Party Types

1.3.1. Type Structure of Villagers

Second, "married women" and their children, 44 cases, accounting for 11.3%;Third, 30 cases (7.8%) were divorced or their spouses died;Fourth, the members who did not contract the collective land, 36 cases, accounting for 9.3%;Fifth, son-in-law and their children, 22 cases, accounting for 5.6%;Sixth, 20 cases, accounting for 5.2%;Seventh, the number of new population due to marriage, 17 cases, accounting for 4.4%;Eighth, the only child family 11 cases, accounting for 2.8%;It can be seen that among the parties involved in civil disputes involving village rules and regulations, villagers from other places who move into the village are the main types.Combined with the analysis about the relation between GDP ranking with the case number is not hard to find people tend to flow to good economic development regions, for the people in the region, the influx of migrants in contributing to the economic development of the region will also share the collective interests, concrete embodiment in rural areas to enjoy the village collective income, land expropriation compensation, etc.There are rights and obligations of interaction, there will be disputes related to it.In the above type structure of villagers, influenced

by the traditional thinking of "men are inferior to women" and "sons are preferred to daughters", the dispute types of "married women" are relatively special, and the academic community pays great attention to the protection of the rights and interests of "married women".The author searched and analyzed 386 documents with "married women" and "married women" as the key words. According to the different identities and household registration, they can be divided into four categories: first, the household registration moved out after the marriage (6 cases);Second, marriage into the household registration followed by migration (12 cases);Third, married out of the hukou did not move out (7 cases);Fourth, divorce or spouse death after marriage (19 cases);The analysis shows that the disputes in such cases mainly originate from the distribution of land compensation fees, and the focus of the cases is on the determination of collective membership, and there are a lot of cases with different judgments:For the "WaiJia female" dispute, some resolution of the meeting at which the court said the villagers to democratic decision, based on the villager autonomy will not be accepted, and some courts choose to physical examination of village, to marry "female" the qualification cognizance of the members, some courts think belong to the collective economic organization members, enjoy the initiative, some courts that do not belong to the collective economic organization members,Without the right of distribution, the inconsistency of adjudication results is mainly caused by the uncertain scope of accepting cases by the court and the fuzzy identification standard of collective members.

1.3.2. Village Collective Type Structure

The types of village collectives can be divided into five categories: first, villagers committee and residents committee (175 cases), accounting for 49.7%;Second, 117 cases (30.3%) were villagers' groups;Third, 58 (stock) economic cooperatives, accounting for 15.5%;Fourth, 17 residents' committees, accounting for 4.4%;Fifth, production cooperatives accounted for 0.7% in 3 cases;It can be seen from the above data that the cases of villagers' groups as litigants are closer to those of villagers' committees, which is also in line with the overall trend of the sinking of autonomous units as the reform of contemporary rural governance.

The Organic Law of Village Committees only stipulates that villagers' meetings and village representative meetings have the right to formulate village rules and agreements, but does not stipulate other policy-making organs.But most of the cases of village committee, village group is the main litigants, the emergence of this phenomenon for two reasons: one is the Supreme People's Court on the trial involved issues of rural land contract dispute case applicable law explanation "(hereinafter referred to as" the supreme law interpretation ") has been clear about the village committee, village group has the power to develop the collective land compensation scheme. When "land expropriation compensation fee" and "land compensation fee" were used as the key words in the search of 386 documents, 311 articles were found, accounting for 80.6%, which basically coincided with the data of village committees and villager groups (80% in total) in the above village collective types.Second, the "Organic Law of Village Committees" authorized villagers' groups to operate and manage land and other property in the collective. The operation and management plan could be discussed and decided in the villagers' groups. In practice, it was also found

that the village committees and village groups usually formulated village rules and agreements first and then sought approval from the collective. Although the reasons for such cases and disputes are different, the main dispute focus is the same: the confirmation of the membership of the rural collective economic organization.

1.4. Summary

With the acceleration of urbanization, rural society is gradually disintegrating and rural social classes are differentiated. Villagers pay more attention to the actual economic interests. Most of the cases in the search are located in areas with better economic development, which also verifies the above phenomenon. Through the overall analysis of the retrieved cases, it is found that the concept of self-management of the village collective and the concept of safeguarding the vital interests of the villagers gradually produce friction during the disintegration of the traditional rural order. Nowadays, the rural society has changed from "the concept of litigation is still very firmly retained in the majority of the people, so that modern justice can not be carried out" to the villagers take the village collective as the object of litigation, with the village rules and regulations as the core of litigation, and actively express their own rights and interests to the court. Before the new and stable rural order is established, how the court takes the village rules and regulations as the basis for judgment and accurately applies the judgment rules plays a pivotal role in safeguarding the vital interests of the villagers and promoting the effective development of the rural revitalization strategy.

2. Judicial Application Dilemma in Civil Disputes of Village Regulations and People's Agreements

2.1. Litigability Dilemma in Civil Disputes of Village Regulations and Civil Covenants

2.1.1. It Is Actionable

As the last barrier of rights protection, the judiciary should be able to resort to the law to seek relief when the parties have disputes. There are mainly two modes for the court to accept the civil disputes of village regulations and civil agreements. The first one is that the villagers and the village collective organization are equal subjects and should be able to solve them through judicial channels. In a case, the court should first look at whether it is a civil dispute and then whether it is an equal subject. If both are within the scope of court acceptance. Although the village collective village in quotes, emphasizes the controversial item falls within the scope of villagers' autonomy, but the court often indicted the civil procedure law only provided conditions, accepts the village didn't rule out the civil disputes, and the villagers committee to villager autonomy in the constraint and gives the villagers cancellation right as a magistrate reason for acceptance. The second is to judge the nature of the dispute and then accept it in accordance with relevant laws. For example, if the Civil Code grants the right of judicial relief to villagers whose rights and interests have been infringed, the court should also accept and review the dispute without the review and correction by the grassroots government.

2.1.2. It Is Not Actionable

The court held that the civil disputes of village regulations and civil covenants were not actionable for two core reasons.

The first was "villagers' autonomy", and the second was "government review should be a pre-procedure". Based on these two core reasons, two viewpoints are derived. The first one is to judge whether the matter involved is a matter of villagers' autonomy. If it is, the application will be rejected on the ground that villagers' autonomy is not authorized by law and the people's court can intervene and adjust it. Main mode is: first of all determine whether belongs to the village collective internal autonomous management matters, if so, the court said conference should be determined by the villagers, village representative democracy, a resolution of enrollment results in violation of laws and regulations, national policy, should be corrected by the people's government at the grassroots level examination, the court did not have the right to accept, in order to do not belong to the people's court accepts the civil lawsuit dismissed the scope of application. The second is not to judge whether the matters involved belong to the scope of autonomy, but to invoke the provisions of Article 27 of the Organic Law of the village Committee on government review, that without the government review to determine, not litigable. Such as: "Because of the failure to apply for review to the competent organ of the village committee in accordance with the law...Therefore, the grounds for applying for a retrial cannot be established."

2.2. Dilemma in Examining the Legality of Village Regulations and Civil Covenants

2.2.1. The Subject of Review Is Unclear

The LEGAL POSITIONING OF THE VILLAGERS 'SELF-GOVERNMENT ORGANIZATION IS FUZZY AND THE LEGAL RELATIONSHIP BETWEEN THE VILLAGERS' SELF-GOVERNMENT ORGANIZATION AND THE VILLAGERS IS DIFFERENT. Some judges think that the court has no right to adjudicate the civil disputes of village rules and regulations, so they rule to reject the application, while some judges think that the village rules and regulations can be judicial review. In the first and second instance, the court held that it did not have the right to review. Such disputes should be ordered to correct by the township government, so it ruled to reject the request of the parties concerned. The parties refused to accept the application for retrial, retrial, the high court held that the village rules and regulations on the ground of the infringement of their allocation rights to bring a lawsuit, should be accepted, so the first and second instance revoked.

2.2.2. Inconsistent Review Standards

In terms of the legality standards for reviewing village regulations and civil covenants, different courts have various standards, and even the same court has inconsistent standards. The reason is that the courts have different emphases in examining the legality of the village regulations and covenant. One is to focus on the review of the agreed procedures of the village regulations, namely procedural review; Second, it focuses on examining whether the content of the village regulations and people's agreement violates the state law, namely, substantive review. If the plaintiff believes that the provisions of the village regulations and people's agreement related to the income distribution scheme violate the Land Contracting Law, and requests to confirm the invalidity, the first and second instance courts both believe that the procedures formulated by the content of the village regulations and people's agreement comply with the legal provisions, so they rule to reject the lawsuit request. However, the retrial court cited the second paragraph of Article 27 of the

Organic Law of the Villagers Committee, affirming that the above scheme does not violate the procedure of democratic negotiation, but because the content damages the property rights of the plaintiff, the villagers' right to claim compensation for land expropriation should not be denied just because it conforms to the procedure of democratic negotiation.

Specifically, the court pays more attention to whether the number of signatures on the village rules and people's agreement conforms to the legal provisions when reviewing the legitimacy of the procedure, and ignores the review of the main body of the formulation. The Organic Law of the Village Committee authorizes the villagers' meeting and the villagers' representative meeting to formulate the village regulations and the villagers' agreement. However, in practice, some villagers' groups formulate the "group agreement" to bind the villagers. During the trial, the court only examines whether the number of signatures of the "group agreement" conforms to the provisions of the "village agreement", but does not examine whether the enacting subject is legal. When examining the legality of the content of the villagers' covenant, the same case and different judgments have also occurred because of the different examination standards. For example, village regulations exclude the right of distribution enjoyed by "married women". Some courts think that this is the scope of villagers' autonomy and the provisions are valid, while some courts think that the provisions of the villagers' covenant violate the national law and the provisions are invalid.

2.3. Difficulty in Identifying Membership of Rural Collective Economic Organizations

2.3.1. Refuse to Identify Collective Membership

There are two main reasons for the court to refuse to recognize collective membership: first, the subject of the collective membership determination is not the court. Some courts think that the main body should be the grass-roots government, such as "the plaintiff believes that the station community four groups do not recognize the membership of its collective economic organization..., should apply to the township, town people's government for settlement." Some courts hold that the identification of collective membership falls within the scope of villagers' autonomy. For example, "In the form of convening the village people's congress, the Changsheng Brigade..., that Ma Xiaofu does not enjoy the membership of the village collective economic organization, is not prohibited by the current law, the people's court should respect and confirm." Second, the dispute over collective membership does not fall within the scope of civil action. If the villagers committee excludes the villagers in the distribution of compensation fees for road widening, and the distribution qualification is not recognized, the two sides have a dispute on whether the membership of the collective organization, the court believes that the dispute is not within the scope of civil action accepted by the people's court.

2.3.2. Different Recognition Standards

The court has two main modes of determining membership: single standard and compound standard. (1) Single standard, that is, membership is determined by reference to only one element, such as whether contracted land is obtained, the result of collective resolution, and whether land is only used as the economic pillar. In practice, few courts take a single standard as the adjudication reason for determining the membership of collective organizations, and more courts use

composite standards. (2) Compound standard refers to the comprehensive determination of membership by referring to various factors, including formal and substantive elements. In the retrieved cases, there are mainly five kinds of composite criteria. The first is household registration + permanent population + fixed production and living relationship; The second type: household registration + fixed production and living relationship + land as the basic economic pillar; Third: household registration + land as the basic economic income; The fourth type: permanent population + fixed production and living relationship + land as the basic economic income; Fifth: according to the specific provisions of the implementation of the "land contract Law" in each province. The above five standards for determining collective membership all adopt "household registration" as the basic reference standard, which also shows that "household registration" factor plays a decisive role in the process of determining collective membership by the court. However, the diversification of standards will inevitably lead to the diversification of adjudication results, which is extremely unfavorable to the settlement of disputes between villagers and village collectives, the maintenance of villagers' autonomy and the stability of rural society.

In addition, there is unknown whether the specification can be incorporated into the scope of village regulations, village regulations on the validity of the provisions of the fines, the village team to make the resolution of the village committee should be responsible for, the villagers of village how to bear the burden of proof of invalid, although in retrieval cases of small don't have universality, but controversy still exists in the judicial practice.

3. Strategies to Deal with The Dilemma of Judicial Application in Civil Disputes of Village Rules and Regulations

3.1. The Court Has the Right to Accept Civil Disputes Over Village Rules and Covenant

Through the above analysis, it is not difficult to find that the court, citing "villagers' autonomy" and "government review should be a pre-procedure", excluded the civil disputes of village regulations and civil agreements from the scope of accepting cases, or refused to accept them before government review, which has no legal basis and does not assume its due responsibilities.

To be specific, first, the most important function of the court is to solve various disputes. The notice of the Supreme People's Court on the Reform of the People's Court's Filing and Registration System requires that "every case must be established and every lawsuit must be handled", and the court's case acceptance system should be reformed to change the filing and examination system into filing and registration system, so as to protect the human rights involved and solve the problem of "difficult filing". Second, "litigability" is an essential element of the operation of law and the most authoritative symbol of the judgment of legal disputes. In other words, if the civil dispute involving village rules and regulations is not actionable, it has no relationship with the judiciary, the village rules and regulations will lose the basis for operation, and the subject of the dispute will lose the most authoritative and fair guarantee. Third, the Civil Code stipulates that civil law adjusts the personal and property

relationship between equal subjects. It is interpreted from another perspective that whether a dispute is actionable depends on whether the nature of the dispute is within the scope of personal and property relations adjusted by law. From the above dispute case and the facts of the case, we can know that the disputed matters involved are indeed in the category of legal adjustment, so they are actionable. Fourth, case search and practice, the vast majority of the civil case dispute involving village regulations, the case involved the cause of the civil lawsuit main body is the result of the "village autonomy" is disputed, although the law court case scope, but a special public institutions, resolve the disputes and finally a kind of right relief way, If the appeal of such disputes is not accepted, it will lead to the escalation of contradictions, which is not conducive to the villagers' autonomy. Therefore, the court's refusal to accept civil disputes involving village regulations and civil covenants has no legal basis and practical basis.

3.2. Clarify the Court's Review of The Legality of Village Regulations and People's Covenants

3.2.1. The Court Has the Right to Review the Legality of The Village Regulations

The court shall examine the legality of the village rules and regulations, that is, whether the subject, procedure and content of the formulation of the village rules and regulations violate the law. It is the premise that the court has the right to review the legitimacy of the village rules and regulations, and the key point is the standard of the court to review the village rules and regulations. The "organic law of village committee provides the village regulations should be made by the people's government shall be ordered to correct, but did not rule out court of right to review the legality of the village regulations and villagers shall have the right to apply to the court for cancellation of village, cancel the appeal in the courts, review the legality of village regulations is to judge whether the inevitable path to infringing on lawful rights and interests of the villagers, The court cannot refuse to review only on the grounds that it does not have the right to review.

3.2.2. The Path for The Court to Review the Legality of Village Regulations

Considering the relevant provisions of Chinese laws, the administrative costs of township and town governments, and the legal examination ability of local people's government examiners, the author believes that in the civil dispute litigation of village rules and covenant, the court should take the initiative to examine the legality of village rules and covenant, and focus on examining whether its content is legal. Specifically, in civil disputes involving village rules and regulations, whether the parties apply to review the legality of village rules and regulations or not, the court should take the initiative to review and treat the legality of the content of village rules and regulations with prudence. The reasons are as follows:

First, review the legality of the law of village is main body of the local people's government, the review form is for the record, and in this process, the local people's governments may become a mere formality or for legal review ability is insufficient, often only village review procedures for legal or not, for content is legal not to review the effect.

Second, villagers have weak awareness of the rule of law and lack of self-service consciousness. In litigation, they are

unable to truly realize the role of village regulations in judicial practice, and it is difficult to safeguard their legitimate rights and interests.

Third, due to the different angles and demands of litigation, the parties will apply for civil litigation and administrative litigation, and the proportion of second trial and retrial is very high. If the court takes the initiative to review the legality of village regulations and civil agreements at the beginning of the litigation and puts forward suggestions to the local administrative organs, the waste of judicial resources can be effectively avoided.

The village rules and regulations belong to the nature of a contract. When the court examines whether the content of the village rules and regulations is legal, it can regard the village rules and regulations as a contract or contract. It should first confirm whether the village rules and regulations are established, and then judge whether they are valid. The former belongs to the judgment of objective fact, while the latter belongs to the judgment of legal value. The court should follow the standard of combining the judgment of objective fact and the judgment of legal value to examine the legitimacy of the village regulations.

The objective fact judgment requires the court to examine whether the scope is limited to the making subject and the making procedure of the village rules and regulations. Specifically, the requirements for the establishment of the village rules and regulations should include: (1) the making organ has the right to make the village rules and regulations; (2) the formulation of village rules and regulations should be the expression of villagers' will; (3) the number of participants in the formulation of village regulations meets the requirements; (4) the results of the resolution of the formulation of village regulations meet the requirements of the number of participants. Among them, the "making organ" should comply with the relevant provisions of the "Organic Law of the Village Committee". If it involves the distribution of compensation fees for expropriation of land, the villagers' group can also be the making organ according to the Interpretation of the Supreme Law. "Villagers' expression of will" that is, villagers participating in the resolution should be qualified. The number of participants required for "making the decision" varies with the organs making the decision. According to the requirements of relevant laws, decisions made by the villagers' meeting, the villagers' representative meeting and the village group meeting should be passed by a majority vote of the villagers present. The above four requirements must be met at the same time for the village regulations and people's agreement to be established. If any of the requirements is not met, the court shall hold that the village regulations and people's agreement is not established.

In the judgment of legal value, the court is required to review whether the content of the village regulations is legal. Specifically, the effective requirements of the village regulations should include: (1) the enacting subject has the right to participate in the voting; (2) the enacting subject's intention is true; (3) does not violate the mandatory provisions of laws and regulations; (4) does not violate public order and good customs. Among them, "the enacting subject has the right" refers to the voting subject defined in Articles 21 and 25 of the Organic Law of Village Committees, as well as the subject authorized by the Supreme Law on Trial and Interpretation. "Expression of true intention" refers to the situation in the process of examining whether there is a major

misunderstanding, fraud, coercion, unfair treatment and other situations against the true intention. In such cases, the villagers have the right to apply for revocation. "Mandatory provisions of laws and regulations" refers to the review of whether village rules and covenants are illegal. According to the relevant provisions of the Organic Law of the Village Committee, the "laws and regulations" here specifically include the Constitution, laws, regulations and national policies. The "mandatory provisions" here specifically include "should be" and "forbidden to", that is, must take a certain behavior and prohibit the adoption of a certain behavior of two mandatory norms. If it involves the protection of the rights and interests of "married women", examine whether the provisions of village rules and regulations on "married women" violate the Constitution, the Law on the Protection of Women's Rights and Interests, and local laws and regulations. In the review of legality, if the court finds that the village regulations do not meet any of the above requirements, the village regulations shall be deemed invalid.

3.3. Criteria for the Membership of Rural Collective Economic Organizations Determined by The Court

3.3.1. The Court Found the Membership to Be Legitimate and Reasonable

First, the court found that the membership of rural collective organizations has legal support. The Constitution fundamentally stipulates that illegal acts must be investigated; The Organic Law of the Village Committee restricts and restrains the self-governance of villagers by conforming to the Constitution, laws, regulations and state policies. The Rural Land Contract Law and the Law on the Protection of Women's Rights and Interests emphasize the equal rights of men and women and focus on the protection of women's rights and interests in rural areas. The Research Office of the Supreme People's Court has recognized disputes over income distribution between rural collective economic organizations and their members as disputes between equal subjects, and the courts shall accept them. The laws, regulations and policies did not directly on collective organization membership to determine the referee rules, but in the judicial relief, only to solve the problem of the collective members qualification, to promote the subsequent other disputes, if the court rules only because such problem fuzzy choose escape, is to choose to ignore the laws and regulations. Secondly, in practice, the membership of collective organizations of villagers is directly related to the vital interests of villagers, such as collective welfare and the distribution of compensation for land expropriation and other rights and interests, covering all aspects of villagers' lives. However, the self-interest of villager autonomy often leads to the deviation of villager autonomy from the track of rule of law. The characteristics of judicial relief review determine that it is the most effective way to restrict the self-interest of villager autonomy.

3.3.2. Criteria for Determining Membership by The Court

The identification rules of rural collective membership in the village regulations can be divided into two categories. The first category is the acceptance rules, that is, the identification rules of what conditions can be achieved to become the membership of the collective. If some village regulations stipulate that the membership of the collective can be

obtained after the majority consent of the villagers' meeting or the villagers' representative meeting. The second category is the exclusion rule, that is, what conditions can be deprived of the collective membership of the identification rules, such as a woman married in the collective did not obtain contracted land can be deprived of their collective membership. Based on the principle of "villager autonomy" and the principle of "protection of legitimate rights and interests", the two rules should be treated differently in the judgment.

First, for the "admission rule," the court should recognize its effect. The villagers' autonomy is implemented in the rural areas of China, and accepting new members to join the collective economic organization, objectively, the interests of the existing collective members will be lost, but this rule is the result of democratic resolution, and the collective interests of the village are shared by the members of the collective, the villagers have the right to deal with the economic interests of the collective, the court should respect the villagers' autonomy. Secondly, the court should treat the "exclusion rule" prudently. Because such rules often infringe upon the legitimate rights and interests of individuals, the law stipulates that no organization or individual can infringe upon the personal and property rights of civil subjects. In practice, members of village committees and village groups often exclude the collective membership of villagers for their own interests and infringe on the legitimate rights and interests of villagers. The court must strictly examine and judge such "collective tyranny".

Across from the local level, introduced according to the actual situation to adapt themselves to the local customs of the relevant laws and regulations and policy documents, such as the sichuan province rural collective economic organizations ordinance, "city of jingxi recognition guidance of rural collective economic organizations membership, the tianyang recognition guidance of rural collective economic organizations membership, etc. Based on the cases and local legislation and policies, the identification of membership of collective economic organizations is generally based on the "household registration plus" model, which takes household registration as the basic standard and other factors as auxiliary references. Other factors include whether they have acquired land contract management rights, whether they rely on collective property, and whether they fulfill their obligations and enjoy rights. The report explicitly included the enactment of the Law on Rural Collective Economic Organizations in the legislative plan of the Standing Committee of the current NPC, including clarifying the criteria for the identification of members of rural collective economic organizations. The report will regulate the standards for the identification of members of rural collective economic organizations. Before the Law on Rural Collective Economic Organizations is formally enacted and promulgated, the inconsistency of the criteria for the determination of membership in collective economic organizations is still an urgent problem to be solved. No matter what elements the courts refer to to confirm membership, they should follow the following three basic principles:

First, the principle of villager autonomy. When the court determines the membership, generally speaking, it should start from the characteristics of the natural community of the rural collective economic organizations in our country and take the theory of the membership of the rural collective economic organizations as the basis. Villagers enjoy the autonomy of "the public affairs and public welfare

undertakings of the village". Villagers exercise the autonomy within the framework of the law, without violating the intention of the law. At this time, the provisions of the village regulations and people's agreement on collective membership should be fully respected.

Second, the principle of equality among villagers. The basic requirement of the principle of equality is to prohibit discriminatory treatment. When rural collective economic organizations distribute benefits, the legal rights and interests of vulnerable groups are the most vulnerable to be violated. For example, married women, immigrants, divorced groups, etc., are often faced with formal democracy, inequality in substance, and is "one against the collective" situation. "Based on the spirit of justice, any person enjoys inviolable interests, even the whole interests of the collective can not be deprived of individual interests in any form", in this case, only the court adhere to the principle of equality of villagers, can fully protect the legitimate rights and interests of vulnerable groups.

Thirdly, the principle of the consistency of villagers' rights and obligations. The consistency of rights and obligations is the basis of natural justice, and the two are interrelated and mutually restricted, which is the basic premise of forming social relations. The membership of rural collective economic organizations is the result of the free distribution of limited social resources. It is emphasized that villagers should fulfill their obligations to the collective while enjoying rights, actively participate in the village's public affairs and public welfare undertakings, and safeguard the collective interests of the village. If the villagers fail to fulfill their obligations, the village rules and regulations restrict their corresponding rights, and the court should not directly deny the village rules and regulations.

Acknowledgment

Anhui University of Finance and Economics 2021 Postgraduate Research Innovation Fund Project: Research on Judicial application of Village Regulations and Civil Covenants in Civil Disputes,(ACYC2021080)

References

- [1] Xi Jinping: We Will Take Solid Steps to Promote Common Prosperity(China National Publishing House,China2021),P.4.
- [2] Hou Meng: Judicial Application of Village Rules and Regulations,Application of Law,Vol12(2010)No.6,P.52-54.
- [3] Wang Wei: Changes of judicial Treatment of Rural "Married Women" Dispute Cases , Chinese Public Prosecutor, Vol15(2022) No.3,P.43-46.
- [4] Feng Chuan:The governance structure of "strong group, weak village" and the positioning of village governance by Villager groups: an empirical analysis based on the rural areas of County, Guangxi Province,Strives for realism,Vol18(2021)No.6,P.96-106.
- [5] Guo Jianping:Theoretical interpretation and optimization path of civil judicature application of Village regulations and civil agreements under the background of rural governance,Journal of southwest university for nationalities (humanities and social sciences edition),(2020)NO.08,P.8-86.
- [6] Zhu Hui:Research on the Applicability of Village Rules and Regulations , Administration and Law,(2018)No.07,P.84-92.
- [7] Xie hui:On the premise and field of judicial application of folk norms,Law forum,Vol.26(2011),No.3,P.51-58.
- [8] Qin jingyun: Research on the identification standard of rural collective membership, Hebei law,Vol.38(2020)No.07,P.159-176.