At Work in the Law, with AI: Towards Building a Labour Constitution for Korea's "*Artificially Intelligent*" Workplace

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Abstract

The use of ARM (algorithmic management) at the workplace has been widespread over recent years, with Korea, of course, not being the exception. Indeed, today's workers are 'at work with AI.' However, the central question this research poses is, against the new contextual background of the rise of ARM at the workplace, are we truly 'at work in the law'? Despite much debate and legislative efforts to formulate a comprehensive policy framework for the use of ARM at the workplace, the current landscape surrounding ARM at Korean workplaces lacks foundational legal principles when dealing with legal issues related to the use of artificial intelligence at work. In short, workers in Korea are 'at work with AI', but not yet 'in the law.'

In this study, I first show how ARM is being utilized in Korean workplaces in an unbridled manner, in some cases reaching a degree of violation of fundamental labour rights, such as bias at algorithmic job interviews and AI chatbots, adoption of people analytics in the working process that might infringe upon not only the privacy rights of the employees but also their right not to be treated unfavourably by their employer without justifiable reason (Art. 23 of the Labour Standards Act), and occupational safety and health violations being caused by automated robots. Up until now, the existing labour law scheme has failed to address and remedy these situations. A pending bill on AI in Korea, such as the Act on Promoting the AI Industry and Establishing the Foundation for Trust (February 2023), although it provides some vague ethical guidelines for the use of AI by the government, developers, and users in general, is far from establishing legal rights. More problematically, the bill is inherently tilted towards fostering the use of AI for market-oriented purposes rather than addressing the rights of workers who are affected by ARM.

In this context, I argue that the concept of the labour constitution, first proposed by Sinzheimer in his writings in early twenties century and its relevance to contemporary workplaces elaborated by Dukes (2014) should be revisited to lay a comprehensive and protective legal foundation for today's rapidly automated workplace. The text of the current Korean Constitution, inspired by the Weimar Constitution of 1919, was influenced by the idea of labour constitution in terms of its social provisions. Labour rights in the Korean Constitution such as right to work, right to collective action, and the right to a humane condition of life, stem from the key provision of 'economic democracy' in Art. 119 of the Constitution. I suggest that this concept of the Korean labour constitution should be the underlying and overarching legal foundation for regulating ARM, so that all working people would find themselves 'at work with AI, in the law.'

About the speaker

Ida Dahea Lee is a professor of labour law at Handong Global University, School of Law in the Republic of Korea. Previously a lecturer of law at Seoul National University, she has written extensively in the fields of labour law, social security law, and human rights. Her main research focuses on the future of work and the protection of vulnerable groups in today's world of work. Her works include At Work with Our Heart: Korean Labour Law and the Future of Work (2019), listed by the Korean Ministry of Culture

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She is currently carrying out a university funded project on AI and the future of labour law and is also actively engaged with labour policymaking in Korea such as Economic, Social and Labor Council of Korea. At Handong Global University, Ida teaches Korean labour law and social security law, international labour standards, and U.S. labor and employment law. Ida can be reached at idalee@handong.edu.