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Deregulation of dismissal law and unjust dismissal in Korea

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Abstract

Using data of Korean court cases, related to the unjust dismissal claims between 1987 and 2000, this paper examines how the deregulation of Korean dismissal law in 1998 affects the incidence of unjust dismissals. Logit estimation to identify the determinants of unjust dismissal rate in Korea shows that deregulation of the dismissal law led to a higher incidence of unjust dismissals. Reasons for this empirical result were explored. These included misinterpretations of the law on the part of employers, due to the disorderly process of legislation and poor coordination in industrial relations, changes in court's adjudication criteria influenced by socio-economic factors, and finally misalignment of law and economic conditions.

JEL classification: K4; J5

Keywords: Deregulation of dismissal law; Unjust dismissals; Financial crisis; Labor market flexibility

1. Introduction

The legal rule governing unjust dismissal is an important component of labor law in any country. It is difficult to compare the scope of legitimate dismissals in a particular country with that of other countries, because comparative studies on labor law require proper knowledge of historical background and socio-economic factors.

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The level of employment protection in Korea had been very strong prior to the 1990s. The Korean Labor Standards Act (hereafter LSA) had limited the power of employers to break employment contracts at will, and has stipulated that an employer can dismiss an employee only with justifiable reason.

In 1997, Korea experienced a financial crisis that necessitated a "bail out" by the IMF. Due to pressure from the IMF, the new dismissal law was legislated in 20 February 1998. The adoption of this new law intended to relax pre-existing limitations on employers' use of discretion in relation to employment adjustment (IMF, 2004). This legislative change certainly allowed for increased flexibility in the Korean labor market, which could in some instances "even reduce job security." Employers fully supported this trend in deregulation, argued that greater freedom to making employment adjustments creates more jobs, and thus eventually benefits employees.[1] As expected, labor unions strenuously opposed this trend, and argued that due to this legal transition, unjust dismissals would become more prevalent and the labor market more unstable.

Regarding the regulation or deregulation effects of employment protection, there are two-key OECD studies. In the first study (OECD, 1996), rank correlations are provided between job turnover, unemployment inflow/outflows and long-term unemployment. They are not statistically significant except in the case of long-term unemployment and unemployment inflows. The second study (OECD, 1999) confirmed the results of the first study with a visible and significant improvement for the overall measure of employment protection. Furthermore, Addison and Teixeira (2003) summarized the previous literatures on the effect of employment protection on the labor market. They suggested that the employment protection seemed to work in predicted manners to reduce both flows into and out of employment and to increase jobless duration.

This study empirically analyzes how the deregulation of dismissal law in 1998 has affected employers' unjust dismissals, using dismissal court cases since 1987. The *ceteris paribus* analysis controlling personal, institutional and socio-economic factors assesses how this legal change affected the incidence of employers' unjust dismissals.

Various aspects in legislating dismissal law cause the trend in increased unjust dismissals. First, the disorderly process of law-making may result in design failure, which is to be seen in vague standards that fail to establish clearly the scope of legitimate dismissals (Büchtemann & Walwei, 1996) and thereby give rise to employers' erroneous interpretations. This may cause a trend of increased unjust dismissals. Second, the court itself may change the substance of applicable law when considering the societal and economic environment in fixing the terms of the new dismissal law. This may cause a new trend of unjust dismissals. Third, the misfit between dismissal law and economic conditions could be seen as a reason for increase in the rate of unjust dismissals. The new dismissal law would have enhanced flexibility to a certain degree in a particular historical moment like the 1998 financial crisis. However, it may cease to do so when economic circumstances change. For instance, more

[1] Employer's groups do not always advocate liberalized dismissal law. In contrast to Korean employer's groups, US employer's groups supported the adoption of a more protective dismissal law. Krueger (1991) explained the intriguing process of US unjust dismissal legislation and suggested that US employer groups, responding to the threat of large and variable damage awards imposed by the judicial system, eventually support unjust dismissal legislation in order to clearly define property rights, reduce uncertainty, and limit employer liability.

Table 1
Regime of legal regulations on dismissal in the LSA

Reason within the labor contract	Reason beyond the labor contract
Personal cause of employee: ordinary dismissal Behavioral cause of employee: disciplinary dismissal	Managerial need: economic dismissal
Article 30 of the LSA	Article 31 of the LSA

intensified global competition after the financial crisis may induce employers to seek for a higher level of flexibility, causing the trend of rise in unjust dismissals.

Section 2 defines the economic dismissal in LSA terms, and explains the historical change in Korean dismissal law. Section 3 demonstrates the rising trend in Korean unjust dismissal cases and logit estimation, which identifies factors causing such trends. Section 4 interprets empirical results obtained in Section 3. Section 5 concludes this paper.

2. Legal change in Korean economic dismissal law

2.1. Legal regulations on dismissal in Korea

Table 1 categorizes the kinds of dismissals in the LSA; ordinary, disciplinary and economic dismissal. Since the 1998 legislation of Article 31 in the LSA, the definition of dismissal for managerial reasons (economic dismissal) and dismissals of personal (ordinary dismissal) and behavioral grounds (disciplinary dismissal) has been formally established. In the period prior to legislation of Article 31, the economic dismissal was regulated by Article 30 of the LSA as with other kinds of dismissals.

In Table 1, ordinary and disciplinary dismissal belong to individual dismissal where an employee is dismissed for personal or behavioral causes such as employees' ill-health, incompetence or disqualification; or an employee misconduct, so-called violation of work rules, unauthorized absence and insubordination. On the contrary, the economic dismissal embraces business reorganization and firm's restructuring reasons, and mostly takes a form of the collective dismissal where employees are dismissed for managerial reason beyond the labor contract.[2]

Article 30 of the LSA stated, "*an employer shall not dismiss. . .without justifiable reason*." However, the LSA does not explicitly specify the justifiable reason. In general, whether the reason of dismissal is justifiable is decided by the judge when the dismissal is disputed in the court.

2.2. Historical changes in Korean economic dismissal law

The scope of justifiable reasons for economic dismissals has varied over time. Fig. 1 displays the history of the Korean laws relating to economic dismissals. This history can

[2] For international source documenting definitions of economic dismissal, see ILO Recommendation 119 (ILO, 2006) and OECD publication (OECD, 2004). For the international comparison of labor law and industrial relations associated with economic dismissal, see Hepple (1998).

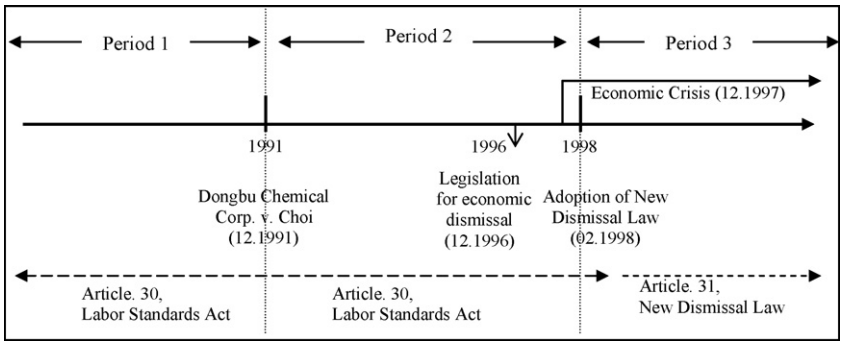

Fig. 1. Historical changes in Korean economic dismissal law.

be divided into three periods. The first period covers the 1980s when Article 30 of the LSA strictly prohibits unjust dismissal. In fact, the Korean courts in the 1980s interpreted the scope of justifiable reasons so narrowly as to allow legitimacy of economic dismissals only when the firms would have been bankrupted without such economic dismissals (*e.g.* Higher Court 86NA2061, Supreme Court 87DA2132, Seoul District Court 88GA21980, Supreme Court 88DA34094).

The trend of court cases in 1980s is somewhat changed in the second period, which covers the years from 1991 to 1997. In the second period, the Korean courts have moved slightly in the direction of relaxing restrictions on economic dismissal even if there was no modification in Article 30 of the LSA. *Dongbu Chemical Corp. v. Choi*, Supreme Court 91DA8647 and *Dongjin Corp. v. Kim*, Supreme Court 90NU9421 are threshold cases where the Korean courts broadened the scope of justifiable reasons by legitimizing the economic dismissals made by solvent firms for the purpose of corporate restructuring. Korean courts generally followed this rule during the period between 1991 and 1995.

On 26 December 1996, the government and the ruling political party passed the bill of new economic dismissal law despite strong opposition from the rival party. The bill intended to incorporate the previous court cases prevailing in the second period into a formal law. This precipitated a major protest by the labor unions. On 13 March 1997, the government withdrew the original bill (Article 31 of the LSA) which was amended to be postponed until 1999.[3]

In December 1997, which is the ending year of the second period, Korea experienced a financial crisis that necessitated a "bail out" by the IMF. The IMF required the deregulation of dismissal law as one of the prerequisite conditions of providing such a "bail out" fund. At that time, the Tripartite Commission was introduced where three parties of employers, employees and government gathered and discussed issues pertaining to system development in collective and individual labor-management relationship (www.lmg.go.kr).

[3] Chun, Kim, and Moon (2001) suggested that the frequency of dismissal in the field have already increased since the deregulation of dismissal law was first discussed at the Reform Committee of Korean Industrial Relations in 1996.

On 26 February 1998, the Tripartite Commission made an agreement to adopt the new dismissal law (Article 31 of the LSA) in order to satisfy IMF demands. It legitimated economic dismissals in the course of "*The transfer, acquisition and mergers*" which had not been considered just reasons for economic dismissal in the 1996 bill. However, in the bargaining table of the Tripartite Commission, labor unions were not empty handed. They harvested the stringent procedural requirements such as employers' obligations of faithful negotiation with unions, union notification 60 days prior to dismissal day (*Minutes of Main Committee*, Korean Tripartite Commission, 1998; Article 31 of the LSA). After much struggle between employer groups and unions, a trade-off was achieved in the final round of bargaining. Adoption of new dismissal laws which catered to employer demands for liberalizing preexisting dismissal regulation was traded politically for more stringent procedural requirements of union demands.

3. Empirical investigation on unjust dismissal rate

3.1. Data

This study investigates how deregulation of the Korean dismissal law in 1998 affected employers' tendency to carry out unjust dismissals. Next, possible causative factors are examined in relation to the change in the incidence of employers' unjust dismissals. The principle data source for empirical investigation is Korean court cases. Between March 1987 and November 2000, there were 859 court cases dealing with unjust dismissals.[4]

There are two avenues open to employees seeking protection from unjust dismissal (see Fig. 1A in Appendix A). One is to submit a remedial application for unjust dismissal to the Korean Labor Relations Commission (hereafter KLRC), which are differentiated by "local" and "central". The plaintiffs (employee) or defendants (employer) can litigate to the courts against the adjudication of the KLRC. Of the 859 cases, 434 chose this option. Alternatively, employees may go directly to the district court (civil suit). The cases may later be appealed in higher courts.[5] The parties in the residual 425 cases took this route.

[4] In order to scrutinize all cases of unjust dismissals, two references for unjust dismissal cases were used. The first one is the literature survey on the Collection of Cases of the Korean Labor Relations Commission (KLRC), the Collection of Cases of the Korean District and Higher Court and the Collection of Cases of Korean Supreme Court. Even if these literature surveys provided a whole set of cases, some High Court and Supreme Court cases did not provide information on some variables utilized in our empirical analysis. For those cases, lower court cases with full information were searched in Lex, Kingsfield and Net-Law.

[5] The advantage of the remedial application through KLRC is that the litigation cost in KLRC is lower, the adjudication in KLRC for unjust dismissal cases is restitution instead of damage compensation and the time required for the adjudication is shorter than in civil suits if the unjust dismissal claim is settled by KLRC. However, if the cases go to Administrative Court or Supreme Court, the litigation costs soared tremendously. These comparative advantage and disadvantage make the plaintiffs' remedial choices almost evenly distributed between KLRC (50.5%) and civil suit (49.5%) in Table 2. Cho and Lee (1999) made a logit estimation in order to identify the determinants of remedial choice. The estimation results suggested that the union involvement and the number of plaintiffs were the key variables in determining the remedial choice. Specifically, if the cases took place in unionized firms or the number of plaintiffs increased, the cases were more likely to go to KLRC.

Table 2
Plaintiff's winning fraction in the unjust dismissal cases for each remedial choice and dismissal type

Classification		Number of cases	WIN (%)
Total		859	37.8
Remedial choice	KLRC	434	35.3
	Civil suit	425	40.5
Dismissal type	Disciplinary	557	40.6
	Economic	69	36.2
	Ordinary	233	31.8

Overall, 591 cases out of the 859 have been appealed in higher courts. If a case goes to the upper level court, the final court decision was utilized so as to avoid any double counting.

Table 2 shows the plaintiff's winning fraction in the unjust dismissal cases (hereafter WIN) in each classification. WIN in KLRC (35.3%) was lower than civil suit (40.5%), while WIN in disciplinary dismissal (40.6%) was higher than economic (36.2%) and ordinary (31.8%) dismissal.

Fig. 2 shows the period change of WIN. In Fig. 2, WIN has a tendency to decline in period 1 (between 1988 and 1990), reaching its lowest value of 24.6% in 1990. In the beginning of period 2 (1991), when the Supreme Court made a final adjudication on *Dongbu Chemical Corp v. Choi*, the direction of this trend was reversed, increasing to 38.9% in 1992. It subsequently stabilized at between 35% and 40% where it remained until 1997. However, in period 3 where the economic crisis occurred, and was followed by introduction of the IMF "bail out" package in 1999, this stable trend was broken, and WIN soared to 59.5%. It is questionable whether these changes can be attributed to judicial change.

For analytical purposes, the court cases are divided into three sub-periods, explained in Section 2. This allows analysis of the longer-term trend in employers' unjust dismissal

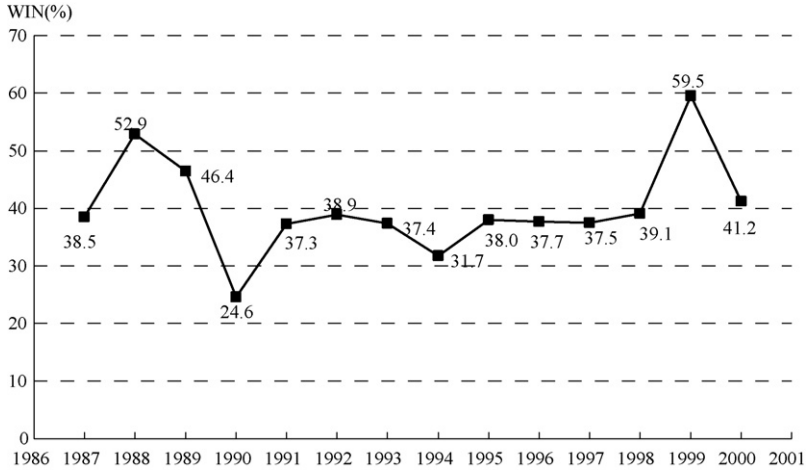

Fig. 2. Time trend of WIN for unjust dismissals: 1987–2000.

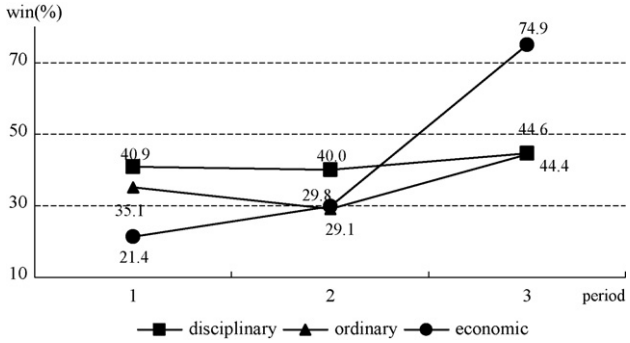

Fig. 3. Period change in WIN by each dismissal type.

as affected by legal changes. In period 1 (1987–1990), the Korean civil movement for democratization encouraged labor disputes to soar. Of the 859 cases, 115 belong to this period. In period 2 (1991–1997) during which the Supreme Court decision on *Dongbu Chemical Corp. v. Choi* broadened the scope of just reasons for economic dismissal, there were 662 cases of unjust dismissal. Finally, in period 3 (1998–2000), the deregulation of dismissal law (Article 31 of the LSA) has the effect of relaxing limits on employers' discretion in employment adjustment. This was implemented at the very time of the onset of the Korean economic crisis. This period encompasses 82 cases.

In Fig. 3, the trends in WIN for disciplinary dismissal and ordinary dismissal are stable over all periods. The disciplinary is 40.9% in the first period, 40.0% in the second period and 44.6% in the third period, while the ordinary dismissal is 35.1% in the first period, 29.1% in the second period and 44.4% in the third period. In contrast, the rising tendency of WIN for economic dismissal during the third period is much more prominent than WIN for disciplinary and ordinary dismissals. It was 21.4% in the first period, 29.8% in the second period and 74.9% in the third period covering the period following adoption of the new dismissal law.

3.2. Logit estimation

This section examines how the deregulation process of Korean dismissal law and other variables affect the probability of employers, unjust dismissal practice through logit estimation. The logit equation, estimated by maximum likelihood, takes the general form: $\text{Logit}[\Pr(\text{WIN} = 1|X_i)] = \beta_i X_i$, where β_i is the vector of slope parameters and X_i is the set of explanatory variables for the ith cases.

Table 3 shows the definition and descriptive statistics of dependant and explanatory variables. It demonstrates that the average rate of unjust dismissal stands at 37.8% of total dismissal cases. The average tenure of unjustly dismissed employees was 5.65 years with the maximum tenure being 35.2 years. 73.8% of case firms have unions, and approximately 50% of firms have more than 300 employees. Fifty percent of dismissal cases went to the Korean Labor Relations Commission (KLRC). Finally, the average unemployment rate over the entire sampling period was approximately 2.75%.

Table 3
Variable definitions and descriptive statistics

Variables	Variable description	Mean	Min/max
WIN	The dependent variable for the plaintiff win case (if the plaintiff wins in the case, WIN = 1)	0.3784	0/1
TENURE	The tenure of plaintiff worker[a]	5.6485 (5.4672)[b]	0/35.2
UNION	The dummy for unionization (if there exists an union in the case firm, UNION = 1)	0.7381	0/1
FSIZE	The dummy for large firm (if the firm has employees more than 300, FSIZE = 1)	0.5006	0/1
ECON	The dummy for economic dismissal (if the type of dismissal is economic dismissal, ECON = 1)	0.0803	0/1
DER98	The dummy for the deregulation of dismissal law (if the dismissal takes place after the 1998 deregulated dismissal law adopted, DER98 = 1)	0.0955	0/1
KLRC	The dummy for type of remedial choice (if the type of remedial choice is KLRC, KLRC = 1)	0.5052	0/1
UNEMP	The unemployment rate at dismissal year	2.7452 (1.1224)[b]	2/6.8

[a] The average tenure of plaintiffs is utilized for the economic dismissal cases with multiple plaintiffs.
[b] The standard deviation for the continuous variable.

Table 4 shows the results of the logit estimation in three kinds of models, to identify the determinant of the unjust dismissal rate. Model (1) utilized the dummy for plaintiff win case (WIN) as a dependent variable, and the tenure of plaintiff worker (TENURE), unionization (UNION), firm size (FSIZE), type of remedial choice (KLRC), and economic dismissal (ECON) as explanatory variables. Model (2) adds the interaction term between DER98 and

Table 4
Logit estimates for the determinants of unjust dismissal rate

Explanatory variables	Coefficient (std. error)		
	(1)	(2)	(3)
TENURE	0.0428*** (0.0158)	0.0405*** (0.0159)	0.0305* (0.0165)
UNION	−0.1114 (0.1717)	−0.0667 (0.1737)	−0.2091 (0.1837)
FSIZE	−0.5907*** (0.1048)	−0.6078*** (0.1857)	−0.7140*** (0.1921)
KLRC	−0.4890*** (0.1655)	−0.5088*** (0.1665)	−0.7027*** (0.1862)
ECON	0.0248 (0.3343)	−0.4065 (0.4047)	−0.4733 (0.4085)
DER98 × ECON	–	1.6126** (0.7957)	1.4122* (0.8071)
UNEMP	–	–	0.1436** (0.0612)
−2 log likelihood	708.35	703.77	698.20
N	859	859	859

Statistically significant at: the * 0.10 level; ** 0.05 level; *** 0.01 level.

ECON as an explanatory variable in order to capture the pure effect of 1998 deregulation on economic dismissal. Finally, Model (3) adds the unemployment rate at the dismissal year.

The tenure may reflect past contribution to the organization and also employees' cost of being dismissed (Mayers & Thaler, 1979; McShane & McPhillips, 1987).[6] It is also suggested that Korean courts have traditionally used tenure, age and number of family members as important criteria for establishing justness of dismissal.[7] In all three models, the coefficients estimated for tenure (TENURE) were significantly positive (p-value for model 1 and 2: 1%, p-value for model 3: 10%). This implies that the frequency of the court's adjudication in favor of the plaintiff increases with tenure.

The union may affect the unjust dismissal rate. The union contracts stipulate clauses relating to workers' job security[8] and the union itself may be capable of deterring unjust dismissals. In this case, unjust dismissal cases with a high winning probability are less likely to take place in unionized firms. This case-screening in unionized firms will negatively influence the win probability of unjust dismissal cases. The coefficients estimated for union variables (UNION) were negative but proved to be insignificant.

The unjust dismissal rate decreased markedly for the large firms. Personnel managers in large firms may manage their burden of proof more effectively or may feel the litigation cost less burdensome than those in small firms. These aspects will negatively affect the unjust dismissal rate in the large firms. The coefficient estimated for the large firm (FSIZE) was significantly negative in all three models (p-value: 1%).[9]

As for the influence of the KLRC on the unjust dismissal rate, there are some factors bringing the unjust dismissal rate of the KLRC lower than that of the regular court. First, the KLRC facilitates pre-trial bargaining to a greater degree than does the regular court. Second, the dismissed employees may feel that there is "nothing to lose by applying." Inevitably, some dismissed employees will take advantage of the KLRC system in this way. Third, the KLRC has intended to be informal bodies accessible to employees who prefer to represent their own cases without the need for legal or other representation. This apparent freedom of employee choice is constrained, however, by the employers' ability to obtain other special representation.[10] The coefficients estimated for the KLRC variable were significantly negative in all three models (p-value: 1%). The empirical results suggest

[6] McShane and McPhillips (1987) use the tenure variable for their empirical study of Canadian court cases. In Canada, when an employee has been unjustly dismissed, the courts decide the length of reasonable notice that should have been given and award a severance payment in lieu of that notice. They found that the tenure variable is the strongest predictor in the court's determination.

[7] See Korean Supreme Court 96NU8031 and Korean Supreme Court 92DA34858; see also Choi (2004) for the general survey on the decision criteria of Korean courts.

[8] As for US job security, Addison (1986) emphasizes the role of collective contracts in providing job security rather than the formal legislation. Moreton (1998), Moreton (1999) makes use of the (empirically supported) assumption that union members enjoy greater job security than non-members, in the form of reduced probability of dismissal. Schnabel (1998) also pointed out that the private good of increased job security acts as a selective incentive to join the union.

[9] There are no multicolinearity issues between union presence (UNION) and firm size (FSIZE) in our court case samples. The correlation coefficient for UNION and FSIZE was only 0.22 (p-value: 1%).

[10] The same factors were first explained by Dickens, Hart, Jones, and Weekes (1984) in explaining reasons for a low plaintiff win rate in British Tripartite Tribunals in 1970s.

that the negative forces dominate the positive in the remedial choice of the KLRC, resulting in a lower unjust dismissal rate for the KLRC.

The key variable in the logit analysis is the interaction terms between DER98 and ECON which filters the pure effect of the deregulation of economic dismissals. The interaction terms were nontrivial in both models (2) and model (3) (p-value for model (2): 5%, p-value for model (3): 10%) while the coefficients for economic dismissal (ECON) were insignificant. This observation seems to be consistent with Fig. 3 where the rising tendency of WIN since 1998 in economic dismissal is much more prominent than in ordinary and disciplinary dismissal.

The Separate regression may be exploited for different types of dismissals instead of the pooling regression. Even in the separate regression, coefficient for DER98 was positive, and there was no noticeable difference in the signs of explanatory variables between pooling and separate regressions.

The labor market condition may be a relevant factor. It may be that the greater the individual's anticipated difficulty in securing alternate employment, the higher the degree of job protection awarded by the court. With a court decision endogenously affected by the labor market condition, the frequency of unjust dismissal adjudicated in the court increases. Previous studies suggest that the labor market condition affects the court decision. For example, using firing cases in an Italian bank, Ichino, Polo, and Rettore (2001) show that local labor market conditions influence the court's decision. McShane and McPhillips (1987) also show that the court's frequency of adjudicating unjust dismissal also increases as the unemployment rate soared. On the other hand, high unemployment rate may reduce the bargaining power of employees who might then be more likely to be exposed to the threat of unjust dismissal. The coefficients for UMEMP was significantly positive in model (3) (p-value: 5%), implying that the unjust dismissal rate increased with unemployment rate.

4. Interpretation for rising unjust dismissal rate

Section 2 illustrates the fact that WIN for economic dismissals increased in the periods after the deregulation law of dismissal came into effect in 1998. Section 3 also illustrates the fact that the influence of the 1998 deregulation of economic dismissals (*i.e.* DER98 × ECON) on the unjust dismissal rate was significantly positive even after filtering out the effect of controlling personal, institutional and socio-economic factors.

Several factors may explain the rising incidence of unjust dismissals since 1998. One important factor to consider is the possibility of employers' misinterpretation of the dismissal law. As explained in Sections 1 and 2, the adoption of new dismissal laws catering to employers' demands was exchanged at a political level for a more stringent procedural requirement struggled for by employees. As a result, a new mosaic law was fabricated and allows far-fetched or arbitrary interpretation. Furthermore, the disorderly political process surrounding legislation of these dismissal laws may have encouraged employers to believe they had gained heightened leverage in dismissing workers. Poor coordination of dialogue at the national level of the Korean Tripartite Commission and of collective bargaining at the enterprise level also appears to have encouraged enterprise-level employers to misinterpret changes in the law. As central level consensus is not backed up by enterprise-level

collective bargaining,[11] the social pact made at the central level of Tripartite Commission may be interpreted differently in the field (Lee & Lee, 2004).[12] In order to understand how the disorderly and ill coordinated process contributed to the occurrence of chaotic interpretations at the level of individual firms during these periods, the example of the *Hyundai Motor Co.* which is one of biggest companies in Korea can be reviewed The employers at *Hyundai Motor Co.* with the expectation of an increased discretion on dismissals set out their highest priority at the table of collective bargaining as being a need for restructuring and dismissals. In 20 July 1998, a large strike at *Hyundai Motor Co.* resulted in victory for the union. Today, *Hyundai Motor Co.* has in place a collective agreement which affords employees one of the highest levels of protection of job security in the country (*Minutes of Sub-committee for Industrial Relations*, Korean Tripartite Commission, 2004).

Another factor is a possible change in decision standards of the Korean court brought about by the deregulation law itself. A well-known case in 2001 illustrates this. The Korean court (*Administrative Court*, *2001GU18489*) declared/ruled that the urgency of managerial needs referred to in Article 31 of the LSA should conceptually include precautionary workforce reduction at firms making positive profits. Furthermore, the courts tend to adjudicate dismissals caused by managerial urgency as just dismissal even though certain procedural requirements such as early notice or faithful negotiation with the union leaders are not met.[13] The overall trend in decisions made by Korean courts has shifted slightly in the direction of broadening the scope of justifiable reasons for economic dismissal and thus in the direction of legitimizing workforce reduction at financially solvent firms since the new dismissal law was adopted. However, this change in decision standards of the Korean court does not seem to increase the unjust dismissal rate. In fact, it contributed to decreasing unjust dismissal rate.

Finally, the misalignment of law and economic condition such as global competition may result in the unjust dismissal rate rising. As global competition presumably increased gradually throughout the entire decade of the 1990s, this factor alone cannot adequately explain the abrupt increase in WIN witnessed since the new dismissal law was adopted. It is more reasonable to suggest that a certain interaction between the dismissal law and the labor market have resulted in the unjust dismissal rate rising. For instance, more intensified global competition due to the open market policy the Korean government has pursued since the financial crisis may raise the employers' incentive of utilizing economic dismissals which are beyond the legal limits. The legislation of dismissal law may have contributed to overcome the financial crisis and may have enhancing flexibility in the labor market during

[11] Compared to the dismissal practices in other countries, collective agreement on dismissal procedures at the enterprise level in Korea is also not well established (Park, 2000). According to a survey of Kim et al. (2001), 86.4% of Korean enterprises have no explicit stipulation on dismissals and simply replicate the relevant article of Korean labor law.

[12] The similar point has been raised in a different context. Delsen and Poutsma (2005) argued that the decentralization in the industrial relations in Netherlands raised the transaction cost in the Dutch labor market. They argued that the higher transaction costs were expressed in the increasing lawyer density, the rising expenditure on legal services, the higher intensity of supervising personnel, and the rising number of days lost due to strikes and other industrial conflicts. The collective agreement à la carte was also accompanied by higher engagement, administrative, monitoring, negotiating and maintenance costs.

[13] For example, see Supreme Court 2002Na58138; Supreme Court 2003Du4119.

the financial crisis in 1998, and cease to do so when economic condition requires a higher degree of flexibility in the Korean labor market. If this is the case, rises in WIN for economic dismissals occurring since 1998, and having a positive sign of DER98 × ECON, may be seen to take place as a result of the increasing misfit between dismissal law and economic conditions.[14]

5. Conclusion

Since 1998, Korean dismissal law has been amended to relax limitations on employers' discretion in relation to employment adjustment. This in turn has allowed greater flexibility in the labor market. However, the disorderly and ill coordinated manner in which this change was introduced, may in fact have led to higher incidence of unjust dismissals.

Here, the total population of unjust dismissal cases has been scrutinized since 1987, with the purpose of analyzing how the deregulation of dismissal law in Korea has affected employers' unjust dismissals. Over the relevant period of time, changes in the plaintiff win rate have been investigated, to assess changes in the incidence of employers' unjust dismissals.

Explanations for this apparent increased incidence of unjust dismissals were also explored. These included misinterpretations of the law on the part of employers due to the disorderly process of legislation and poor coordination in industrial relations, changes in court's adjudication criteria influenced by socio-economic factors, and finally misalignment of law and economic conditions.

A tentative conclusion was drawn that the disorderly political process of legislating the dismissal laws led to employers misinterpreting the law to mean that they had greater leverage in dismissing workers. In fact, the disorderly liberalization of Korean dismissal laws may have amplified errors in the subjective evaluations of employers in the field. Poor coordination between the national-level bargaining and enterprise-level collective bargaining relations also appears to have aggravated the situation.

Employers overestimating the effect of liberalization are more likely to dismiss their employees unjustly than are those in the other comparison group. To make matters worse, more intensified market competition due to the open market policy the Korean government has pursued since the financial crisis increased employers' needs to rely on numerical flexibility as a way of higher level corporate restructuring. The increasing misfit between dismissal law and economic conditions are then to be seen as rising unjust dismissal.

The insights in this paper can contribute to the provision of guidelines for countries that seek to evolve policies to increase labor market flexibility. The legal change should be consistently made through more orderly and formal collective bargaining relations. Back-up institutional framework may be necessary to promote faithful negotiation between employers and employees and to make the legislation compatible with collective bargaining

[14] In the similar context, Büchtemann and Walwei (1996) also pointed out that one of the most frequent sources of policy failure is poor coordination between institutional and legally required behaviors on the one hand and the changing opportunity structures as well as shifting behavioral dispositions of economic agents (workers and firms) on the other.

relations. Coordination between central level-bargaining and enterprise-level collective bargaining relations is important. Central level union and management must also have actively mediated and coordinated their interests in the field. Procedural requirements appropriate to the peculiar circumstances of each enterprise may be encouraged to be explicitly stated in each agreement. Stipulation containing abstract expression should be minimized, and the scope of managerial needs in dismissal law should be defined more transparently.

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Appendix A. Appendix

See Fig. 1A.

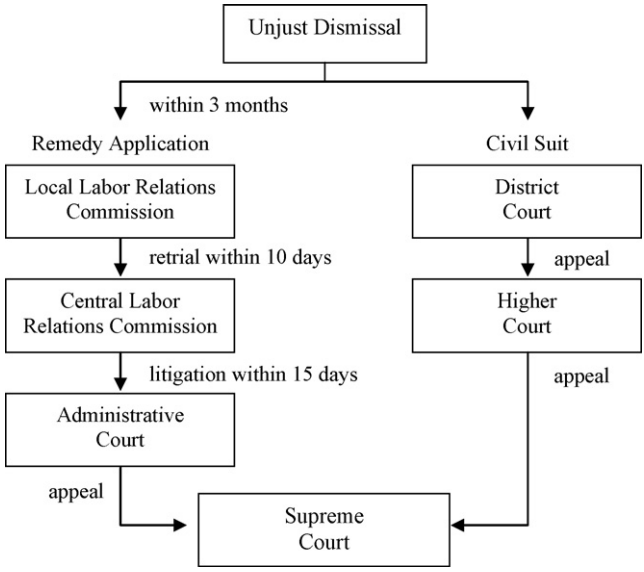

Fig. 1A. Plaintiff's remedial choice for unjust dismissals.

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