



**Supreme Court of New Zealand
Te Kōti Mana Nui**

19 FEBRUARY 2020

MEDIA RELEASE

MINISTER OF JUSTICE V KYUNG YUP KIM

(SC 57/2019)

CASE SYNOPSIS

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court. Given the breadth and complexity of the issues raised in the proceeding it involves some simplification and addresses only the major points in issue. The synopsis does not comprise part of the reasons for the judgments of the lower Courts. The full judgments with reasons are the only authoritative documents and can be found at www.courtsofnz.govt.nz

Note that the High Court order prohibiting publication of the identity of the countries that have provided details about their dealings with the People's Republic of China in news media or on the internet or other publicly available database remains in force.

Background

Mr Kyung Yup Kim is a permanent resident of New Zealand. It is alleged by the authorities in the People's Republic of China (PRC) that he killed a young woman while visiting Shanghai in December 2009. In May 2011 New Zealand received a request from the PRC seeking Mr Kim's extradition on one count of intentional homicide.

In 2013 the District Court determined that Mr Kim was eligible for surrender. On 30 November 2015 the Minister of Justice, after seeking diplomatic assurances from the PRC as to Mr Kim's treatment, determined that Mr Kim should be surrendered to the PRC.

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Mr Kim successfully challenged that decision on judicial review. After reconsideration and after receiving further diplomatic assurances, the Minister decided again that Mr Kim should be surrendered. Mr Kim again applied for judicial review of that decision.

On 11 June 2019 the Court of Appeal quashed the Minister's decision and held that it must be reconsidered in light of the matters identified in its judgment. These included addressing the effectiveness of assurances to address the risk of torture and making further inquiries on certain other issues related to whether there is a risk of Mr Kim not receiving a fair trial.

The Supreme Court granted the Minister and the Attorney-General (the Crown) leave to appeal against the Court of Appeal's decision in December last year. Mr Kim's application to cross-appeal was also granted.

Issues for the hearing

The Crown's position is that the Minister's decision was correct in law and that the Court of Appeal should not have remitted the matter for reconsideration. Mr Kim's position is that the Court of Appeal was correct to quash the decision.

Mr Kim's position on his cross-appeal is that there is no realistic prospect that the further inquiry directed by the Court of Appeal could address the risk of breach of fundamental rights in the PRC. He submits that, as a result, the extradition proceedings should be brought to an end entirely.

The Crown's position on the cross-appeal is that, if the appeal does not succeed, the question as to whether Mr Kim is to be surrendered must be remitted to the Minister.

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Supreme Court leave decision: [\[2019\] NZSC 142](#) (4 December 2019)

Court of Appeal decision: [\[2019\] NZCA 209](#) (11 June 2019)