



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

13 APRIL 2022

MEDIA RELEASE

MINISTER OF JUSTICE v KYUNG YUP KIM

(SC 57/2019)[2022] NZSC 44

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest: www.courtsofnz.govt.nz.

Suppression

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 (PRC) in news media or on the internet or other publicly available database remains in force.

The Appeal

The issue for the Supreme Court was whether inquiries made by the Minister, at the direction of the Court, and further assurances and material received from the PRC in response, provided a reasonable basis for the Minister of Justice to conclude that Mr Kim would not be at risk of torture or of an unfair trial if he were extradited to the PRC.

Background

The issue arises in this way.

Mr Kim succeeded in the Court of Appeal in his challenge to the decision of the Minister of Justice to extradite him to the PRC to face trial for intentional homicide there. The Minister of Justice and the Attorney-General appealed from that decision to this Court

In a judgment delivered on 4 June 2021, the Supreme Court held, among other things, that if further assurances had been obtained and further inquiries made, the Minister could have reasonably concluded there were no substantial grounds for believing that Mr Kim would be

subject to torture or an unfair trial on surrender to the PRC. However, the Court was split on the disposition of the appeal.

A majority of the Supreme Court, comprising Glazebrook, Ellen France and Arnold JJ, adjourned the appeal to allow the Minister to make further inquiries, seek further assurances from the PRC government and consider any submissions from Mr Kim. The parties were also directed to submit a joint report setting out the result of their actions and the proposed disposition of the appeal. The report has now been provided and Court has heard further from the parties.

Rather than adjourning the appeal, the minority, comprising O'Regan and French JJ, would have dismissed it and upheld the order of the Court of Appeal quashing the Minister's extradition decision. The minority's view was not altered by the steps that have been taken since the adjournment of the appeal.

Assessing the further steps

Torture

In the earlier judgment, the Court held that an assurance should have been obtained that, if extradited, Mr Kim would be tried in Shanghai and would be detained there, both before and after trial (if he is convicted). The Minister also should have obtained confirmation from the PRC that visits by New Zealand consular staff during the investigation phase, before Mr Kim's trial, would be permitted at least every 48 hours, as well as within a short time period after any request by Mr Kim.

Assurances to this effect have been obtained. The majority of the Court (comprising Glazebrook, Ellen France and Arnold JJ) did not accept Mr Kim's arguments that there were material changes in circumstances that meant the assurances were insufficient. Instead, the majority concluded that the further assurances provide a reasonable basis on which the Minister could be satisfied that there was no real risk of Mr Kim being tortured on surrender for trial in the PRC.

Fair trial

In the earlier judgment, in terms of fair trial, the Court identified outstanding concerns relating to the likelihood that Mr Kim's case would be referred to a judicial committee with the associated uncertainties over what that entailed, as well as uncertainty as to the approach to disclosure.

In response to questions asked by the Ministers, the PRC provided a number of assurances and further explanatory material. In assessing whether the assurances addressed the outstanding concerns, the majority of the Court rejected Mr Kim's submissions as to the inadequacy of the assurances and materially changed circumstances. The majority concluded that the further assurances provided a reasonable basis on which the Minister could be satisfied that there was no real risk Mr Kim would face an unfair trial on surrender to the PRC.

Disposition

Accordingly, the majority of the Court allowed the appeal. The decision of the Court of Appeal was set aside and the Minister of Justice's decision to surrender Mr Kim was reinstated. In accordance with their views in the earlier judgment, the minority dissented from the decision to reinstate the order for surrender.

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