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New Zealand Court, Blocking Extradition, Is Latest to Rebuke China's Judiciary

By **Charlotte Graham-McLay**

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WELLINGTON, New Zealand — A New Zealand court on Tuesday blocked a murder suspect's extradition to China, the latest repudiation of a Chinese legal system under Communist Party control.

The move came two days after hundreds of thousands of people in Hong Kong, a semiautonomous Chinese territory, marched in protest of a plan by the local government to allow extraditions to the Chinese mainland. It also followed a decision by Australia two years ago to back away from a proposed extradition treaty with China.

In a strongly worded ruling, the New Zealand court ordered the country's government to consider human rights risks in China before deciding that the suspect, Kyung Yup Kim, should be sent there.

The case of Mr. Kim — who is Korean-born and became a legal resident of New Zealand after moving there as a teenager — poses a political quandary for the New Zealand government. It is trying to shore up its relationship with China, the country's biggest trading partner, after hitting rocky patches over the past year.

Late in 2018, New Zealand joined Australia in blocking the use of components made by the Chinese company Huawei in the country's next-generation telecommunications networks. Prime Minister Jacinda Ardern of New Zealand struggled for months to schedule a visit to China, and a major bilateral tourism initiative was postponed.

In the extradition case, analysts said that other Western nations, including Australia, would be keenly watching whether the New Zealand government ultimately became satisfied that Mr. Kim would not face human rights abuses if sent to China.

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“The way this person is treated in China could have an effect on any future consideration of a bilateral extradition treaty between Australia and China,” said Kevin Boreham, a former diplomat and international law professor at the Australian National University.

Mr. Kim's case is the first time China has asked New Zealand to extradite one of its citizens or residents. Like most Western nations, New Zealand does not have an extradition treaty with China.

The saga has unfolded over nearly a decade. In 2009, Mr. Kim was accused by officials in China of killing a Chinese woman, Peiyun Chen, 20, while in Shanghai on vacation. He traveled to South Korea before he could be questioned.

The decision on Tuesday by the New Zealand Court of Appeal, the country's intermediate appellate court, noted that the Chinese police had circumstantial and forensic evidence against Mr. Kim.

But in its 99-page judgment, it directed the justice minister in New Zealand's current center-left government to determine whether China valued adherence to the international human rights agreements it had signed.

The minister, Andrew Little, must address evidence that torture of prisoners in China persists and is difficult to detect, the panel of judges wrote. Mr. Little must also seek evidence about “the extent to which the judiciary is subject to political control.”

China has made assurances about Mr. Kim's protection from torture. But the court judgment ordered Mr. Little to question them.

Tony Ellis, Mr. Kim's lawyer, said Mr. Little faced “a difficult if not impossible task” in answering “the profound and important questions posed by the Court of Appeal.”

Mr. Little was traveling overseas on Tuesday, and his office did not respond to a request for comment.

New Zealand's previous center-right government twice ordered Mr. Kim's extradition. The first time was in 2015, after Chinese officials gave assurances that Mr. Kim would not face the death penalty. Mr. Kim appealed the decision to the High Court, which ordered the justice minister at the time, Amy Adams, to reconsider his case. Ms. Adams ordered again that he be extradited.

Mr. Ellis said he hoped that his client would avoid extradition under Ms. Ardern's government, which he said was more focused on human rights and criminal justice reform.

But he acknowledged that the decision was politically thorny. “I’m sure ministers would say they’re not pressured,” he said, “but unconsciously it’s difficult to avoid that sort of pressure when 20 percent of your exports” go to China.

If Mr. Little prefers not to make a decision in the case, lawyers for the government could appeal the latest decision to New Zealand’s Supreme Court. Mr. Ellis said he would take the case to international human rights bodies if the Supreme Court upheld an extradition ruling.

Mr. Kim remains on electronically monitored bail in Auckland. He was jailed for the first five years of the extradition proceedings — a period believed to be the longest a person has remained in a New Zealand prison without being charged.