



Chinese student's murder conviction on the basis of contradictory witness statements violated his right to a fair trial

In today's **Chamber judgment**¹ in the case of **Zhang v. Ukraine** (application no. 6970/15) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.

The case concerned the applicant's conviction for murder.

The Court found in particular that the applicant had been convicted on the basis of contradictory and inconsistent prosecution witness testimony, a reason the case had earlier been remitted several times for further investigation. The courts had in the end accepted that evidence, at the same time refusing to admit testimony in favour of the applicant.

The courts had cited new procedural rules introduced in 2012 for their decision against admitting the evidence in favour of Mr Zhang, rules which had been introduced to strengthen an accused person's rights. However, the courts' interpretation and application of the provisions had been incompatible with the State's obligations under the Convention and had led to the exclusion of all the defence witness evidence from the file.

None of the courts had addressed the applicant's arguments about the flaws in the evidence against him or the unfairness and arbitrariness of excluding evidence in his favour. The trial as a whole had thus led to a violation of his rights.

Principal facts

The applicant, Yu Zhang, is a Chinese national who was born in 1983 and lives in Tianchang (China).

On 1 May 2009, a fight broke out in Kharkiv between four Ukrainians and a group of Chinese students, including the applicant, while the students were having a picnic. During the fight, one of the Ukrainian men was stabbed. He died from his injuries in hospital three days later. Mr Zhang was arrested and charged with his murder the same day.

A new Code of Criminal Procedure (CCP) came into force in Ukraine in November 2012, introducing major changes. By that time the proceedings against the applicant had been going on for three and a half years, with several rounds of pre-trial investigation aimed at rectifying numerous flaws and deficiencies.

Meanwhile all the applicant's fellow Chinese students, who had made witness statements favourable to the defence, had left the country. Relying on the new CCP, the courts refused to admit the statements as evidence as they had not been made directly in court.

In July 2013 the Kharkiv Kyivskyy Court sentenced the applicant to 12 years' imprisonment. An ordinary appeal by Mr Zhang and an appeal on points of law were unsuccessful. He argued, among

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

other things, that the testimony of the absent witnesses should have been admitted, as the old CCP had still been in force at the time of the events and it allowed such evidence. The appeal court did not take up that argument.

His conviction was largely based on the testimony of two of the Ukrainian men involved in the fight, Sa. and Su. However, Su. had reportedly been too drunk to talk to the police on the day of the incident, while Sa. had offered contradictory accounts of events on at least three occasions, at one point conceding that his identification of Mr Zhang as the culprit had been driven by emotion.

Mr Zhang was released in 2016 and returned to China.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial), the applicant complained that he had been denied a fair trial and argued that his conviction had been based exclusively on controversial, inconsistent and speculative statements from the victim's friends, which had changed several times. The courts had also refused to accept the evidence of witnesses in his favour.

The application was lodged with the European Court of Human Rights on 20 January 2015.

Judgment was given by a Chamber of seven judges, composed as follows:

Paulo Pinto de Albuquerque (Portugal), *President*,
Ganna Yudkivska (Ukraine),
Faris Vehabović (Bosnia and Herzegovina),
Egidijus Kūris (Lithuania),
Iulia Antoanella Motoc (Romania),
Carlo Ranzoni (Liechtenstein),
Péter Paczolay (Hungary),

and also Andrea Tamietti, *Deputy Section Registrar*.

Decision of the Court

The Court noted that the case against the applicant had been built on statements by the victim's friends, but that evidence had been inconsistent as the witnesses had changed their stories. It was because of such issues that the case had been remitted several times.

However, the court which finally convicted Mr Zhang had based its verdict on those statements. That meant that even though the courts should have treated the evidence with caution, they had in fact chosen, without any explanation, to believe it, and had not interpreted any doubts in his favour.

In addition, the courts, relying on the new Code of Criminal Procedure, had excluded testimony in favour of Mr Zhang that had been given in the pre-trial investigation by his fellow students. The goal of the new provisions was laudable as it prevented the use of testimony which the police had obtained under duress, a practice which the Court had criticised. However, the new provisions had been used to Mr Zhang's detriment and had led to all the evidence being in the prosecution's favour.

At the same time, the Court noted that the events in question had actually taken place before the new Code had come into force, meaning the testimony of absent witnesses could have been allowed. Ultimately the Court found that whichever Code was valid in Mr Zhang's case, the domestic courts had interpreted and applied the criminal procedure provisions on assessing the admissibility of evidence in a manner that was incompatible with the State's obligations under the Convention.

The courts at all three levels of jurisdiction had also failed to assess Mr Zhang's pertinent and important points about the serious flaws in the prosecution witness evidence and about the alleged unlawfulness and arbitrariness of the exclusion of all the defence witness evidence from the file.

Taken as a whole, the criminal proceedings against Mr Zhang had led to a violation of his right to a fair trial under Article 6 § 1 of the Convention. Given this finding, the Court saw no need to examine separately his complaint about the length of the proceedings.

[Just satisfaction \(Article 41\)](#)

The Court held that Ukraine was to pay the applicant 7,500 euros (EUR) in respect of non-pecuniary damage. He did not make a claim for costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.