

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ZHERDEV v. UKRAINE

(Application no. 34015/07)

JUDGMENT
(*Revision*)

STRASBOURG

25 January 2018

FINAL

25/04/2018

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Zherdev v. Ukraine (request for revision of the judgment of 27 April 2017),

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Angelika Nußberger, *President*,
Erik Møse,
Ganna Yudkivska,
André Potocki,
Yonko Grozev,
Carlo Ranzoni,
Mārtiņš Mits, *judges*,
and Claudia Westerdiek, Section Registrar,

Having deliberated in private on 19 December 2017,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 34015/07) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Artyom Leonidovich Zherdev ("the applicant"), on 30 June 2007.

2. In a judgment delivered on 27 April 2017, the Court held that there had been violations of Article 3 on account of the degrading treatment the applicant had suffered following his arrest and because of a failure to conduct an effective investigation into those circumstances. It also found violations of Article 5 §§ 1 and 3 of the Convention on account of a lack of sufficient legal grounds for two periods of his pre-trial detention and on account of its excessive length. The Court also decided to award the applicant 8,000 euros (EUR) for non-pecuniary damage, EUR 2,150 for costs and expenses and dismissed the remainder of the claims for just satisfaction.

3. On 11 July 2017 the applicant's representative informed the Court that he had learned that the applicant had died on 15 June 2016. He accordingly requested a revision of the judgment within the meaning of Rule 80 of the Rules of Court.

4. On 10 October 2017 the Court considered the request for revision and decided to give the Government until 23 November 2017 to submit any observations. Those observations were received on 20 November 2017.

THE LAW

THE REQUEST FOR REVISION

5. The applicant's representative requested a revision of the judgment of 27 April 2017 because the applicant had died before the judgment had been adopted. Mr Leonid Zherdev and Mrs Iryna Zherdeva, the applicant's parents, were his only heirs and should therefore receive the sums awarded to the deceased.

6. The Government pointed out that the applicant's parents had failed to inform either the Court or the applicant's representative about the death in time. However, in view of the Court's case-law concerning the revision of judgments, they left the matter to the Court's discretion.

7. The Court considers that in the circumstances the judgment of 27 April 2017 should be revised (see, for example, *Wypukoł-Piętka v. Poland* (revision), no. 3441/02, 8 June 2010, and *Dzhabrailovy v. Russia* (revision), no. 68860/10 and 4 others, 4 February 2016), pursuant to Rule 80 of the Rules of Court, the relevant parts of which provide:

> "A party may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party, request the Court ... to revise that judgment.
>
> ..."

8. The Court accordingly decides to award the heirs jointly the amounts it previously awarded to the deceased applicant, namely EUR 8,000 for non-pecuniary damage and EUR 2,150 for costs and expenses.

9. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to revise its judgment of 27 April 2017 as regards the application of Article 41 of the Convention;

accordingly,

2. *Holds*

(a) that the respondent State is to pay Mr Leonid Zherdev and Mrs Iryna Zherdeva jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the

Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,150 (two thousand one hundred and fifty euros), plus any tax that may be chargeable to the applicant and/or to his heirs, in respect of costs and expenses, to be transferred directly to the account of the applicant's lawyer Mr E. Markov;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 25 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President