

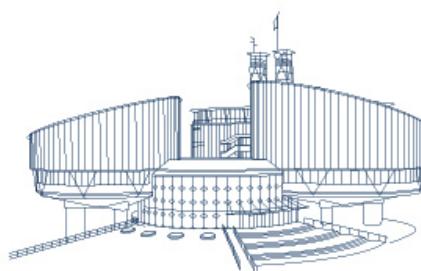
PRESS RELEASE

OVERTURNING AN ACQUITTAL WITHOUT HEARING THE DECISIVE WITNESS, DESPITE DOUBTS ABOUT HIS CREDIBILITY, VIOLATED FAIR TRIAL RIGHTS

Brunell and McArdle v. the Netherlands

ECHR 209 (2026) 01.09.2026

Issued by the Registrar of the Court



In today's **Chamber** judgment¹ in the case of [Brunell and McArdle v. the Netherlands](#) (applications nos. 30395/20 and 31220/20) 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 criminal proceedings against Mr Brunell and Mr McArdle for charges of manslaughter and unlawfully disposing of a body. After first being acquitted of manslaughter, they were convicted on appeal without the Court of Appeal directly hearing the witness who had incriminated them.

The European Court found in particular that, in overturning the applicants' acquittal, the Court of Appeal had reassessed the facts and the applicants' guilt while relying on decisive testimony from a key witness whose credibility was central to the case without hearing him in person, despite that credibility having been seriously called into question. This meant that that court had not had an opportunity to directly assess his reliability. This was incompatible with the principle of immediacy, requiring courts to use original, primary evidence, and undermined the fairness of the proceedings as a whole.

PRINCIPAL FACTS AND COMPLAINTS

The applicants, Kenneth Brunell and Barry McArdle, are Irish nationals who were born in 1986 and 1985 respectively. They are both held in the Netherlands (Mr Brunell in Alphen aan den

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.

Rijn and Mr McArdle in Westzaan), serving custodial sentences for manslaughter and disposing of the body.

The events date back to February 2009, when the body of a man known to the criminal underworld and wanted by the Irish authorities was found dismembered in bin bags and in a suitcase on a canal dyke in Amsterdam. The victim had been stabbed, and his head and legs had been cut off. It was determined, from forensic findings, that he had been killed in the flat he was staying in in Rotterdam.

Telecommunication records showed that X had been staying in the same flat as the victim. Considered a suspect, he was arrested in Ireland and extradited to the Netherlands. Initially invoking his right to remain silent, after having access to the case file and the investigation results, he then stated that Mr Brunell and Mr McArdle, who had also been staying in the same flat in Rotterdam, and who had been on a wanted list in Ireland, had been responsible for the killing, allegedly acting in self-defence, when X had gone out to buy drinks. He provided further details regarding his and their alleged respective involvement in the events, including his helping to clean the flat, dispose of the body and his driving them all to France for a ferry to England.

Following X's statements, Mr Brunell and Mr McArdle were arrested in Ireland in July and October 2011 respectively. They were charged with the intentional and premeditated killing, either together or in association with others, and with helping to get rid of the body. In December 2015, X was questioned by the investigating judge, the applicants' counsel and the public prosecutor about his statements. At four hearings at the Amsterdam Regional Court held in April and May 2017, Mr Brunell and Mr McArdle answered questions and denied any involvement in the offences, acknowledging that they had been staying with X, but that they had never met the victim, and had not been present when he was killed.

During the proceedings, X's statements were examined. As no decisive forensic evidence was available to prove the applicants' involvement in the murder or manslaughter, the Regional Court considered that the case was mainly about assessing the reliability of X's statements and the credibility of the applicants.

In a judgment of 15 May 2017, the Regional Court found the applicants guilty of jointly and unlawfully disposing of a body, but not guilty of murder or manslaughter. They were both sentenced to two years' imprisonment. The Regional Court considered X's statements to be insufficiently reliable to establish beyond reasonable doubt their involvement in the murder or manslaughter of the victim. It noted that X had only incriminated them after he had seen the case file and realised that phone tracking data placed him at the scene. Moreover, it seemed likely from phone data that, if anyone had left the apartment, it was Mr Brunell who had left the apartment for a short time that evening.

The public prosecutor appealed against the judgment in so far as the applicants were concerned. The three appeal hearings took place in April and May 2018. Not in attendance, Mr Brunell and Mr McArdle were represented by counsel. During one of the hearings, Mr McArdle's counsel asked to be able to question X and Mr Brunell, but his request was rejected on the grounds that insufficient reasons for the request had been formulated, given that the witness had already been examined by the investigating judge.

In assessing the reliability of the statements, the Amsterdam Court of Appeal observed that the applicants' account of not being at the apartment on the evening of the killing lacked credibility, as telephone tracking data showed that their mobile telephones had remained in or near the apartment throughout. In that light, their assertion that they had not visited the apartment that night and had instead spent several hours in a strip club was considered implausible.

Relying on the statements of witness X, despite the Regional Court's finding that they were insufficiently reliable, the Amsterdam Court of Appeal, in a judgment of 17 May 2018,

overturned the Amsterdam Regional Court's judgment and convicted Mr Brunell and Mr McArdle of jointly committing manslaughter and unlawfully disposing of a body. The court sentenced both of them to 13 years' imprisonment.

On 22 May 2018 and 2 April 2019, Mr Brunell and Mr McArdle lodged appeals on points of law with the Supreme Court, with Mr McArdle arguing that the Court of Appeal had provided insufficient reasons for refusing his counsel's request to question witness X. Both of them further submitted that the Court of Appeal ought to have decided of its own motion to question X as a witness, as his statement had been used as decisive evidence.

In an advisory opinion of 7 September 2019, the Advocate General at the Supreme Court recommended that the appeals on points of law be dismissed. He considered that insufficient reasons had been given as to why it was necessary to examine X again, given that X had already been heard by the investigating judge in the presence of the applicants' counsel. In any case, the Court of Appeal's reasoning had made it clear why it had reached a different conclusion, despite it leaving open the accuracy of X's account as to how the victim had died. The applicants responded in writing, reiterating their complaint and maintaining that the Court of Appeal should have questioned X rather than merely supply explanations as to why it had come to a different conclusion to that of the Regional Court.

In its judgment of 28 January 2020, the Supreme Court upheld the Amsterdam Court of Appeal's judgement convicting Mr Brunell and Mr McArdle of manslaughter.

Relying on Article 6 § 1 (right to a fair hearing) of the Convention, Mr Brunell and Mr McArdle complained that they had been denied a fair hearing because, after being acquitted due to the unreliability of witness X, they had been convicted on appeal without the appellate court directly hearing that witness. Mr McArdle further complained under Article 6 §§ 1 and 3 (d) (right to obtain attendance and examination of witnesses) that he had been deprived of his right to examine witness X in person before the appeal court that ultimately convicted him.

OUTCOME

REASONING OF THE COURT

The Court noted that, in the absence of any conclusive forensic evidence, the Amsterdam Court of Appeal had found that important aspects of X's statement were corroborated by objective material and could therefore be admitted in evidence, referring, in particular, to mobile telephone tracking data and information concerning travel movements which corresponded to X's description of events. It also relied on the fact that DNA belonging to Mr McArdle and the victim had been found on the chainsaw used to dismember the victim's body.

However, the Court considered that this material could only place the applicants inside the house. It did not provide direct insight into what had occurred inside the premises and could not reconstruct the sequence of events leading to the victim's death or clarify the individual roles or responsibilities of those involved. In the absence of any other evidence, the assessment of guilt had hinged on the credibility and reliability of X's version of events. In these circumstances, the statements of witness X, and the weight attached to them, had been decisive.

In overturning the applicants' acquittal, the Court of Appeal had reassessed the facts and the applicants' guilt while relying on decisive testimony from a key witness whose credibility was central to the case without hearing him in person, despite that credibility having been seriously called into question at first instance. This meant that that court had not had an opportunity to make a direct assessment of his reliability. This was incompatible with the principle of immediacy and undermined the fairness of the proceedings as a whole.

The Supreme Court had not redressed the situation by referring the case back to the Court of Appeal for a fresh examination of the witness. Such an appeal could therefore not be regarded

as a sufficient safeguard to preserve the overall fairness of the proceedings. There had therefore been a violation of Article 6 § 1 of the Convention.

The applicants had not claimed any pecuniary or non-pecuniary damage, or costs and expenses, and the Court held that the reopening of the proceedings would be the most appropriate form of redress. That being so, the finding of a violation constituted sufficient just satisfaction.

PROCEDURE AND COMPOSITION OF THE COURT

The applications were lodged with the European Court of Human Rights on 16 and 17 July 2020.

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

Lado **Chanturia** (Georgia), *President*,
Lorraine **Schembri Orland** (Malta),
Faris **Vehabović** (Bosnia and Herzegovina),
Anja **Seibert-Fohr** (Germany),
Ana Maria **Guerra Martins** (Portugal),
Anne Louise **Bormann** (Denmark),
Corinna **Wissels** (the Netherlands),

and also Simeon **Petrovski**, *Deputy Section Registrar*.

The judgment is available only in English.

The Court's judgments finding a violation are binding on the State concerned. The [Committee of Ministers](#) of the Council of Europe, the executive body of the Council of Europe, supported by the [Department for the Execution of Judgments of the European Court of Human Rights](#), is responsible for supervising their implementation.

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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.