

Extradition being attempted 'under the cover of darkness'

Process worse than that used against Maher Arar: lawyer

BY CHRIS COBB, THE OTTAWA CITIZEN NOVEMBER 3, 2010

The legal process Canada is using to extradite accused terrorist Hassan Diab to France is "arguably worse" than the laws of rendition used to airlift Maher Arar from the United States to torture in Syria, says Diab's lawyer.

"It isn't being done under the cover of darkness," Donald Bayne told the Citizen, "but they are trying to use the same stuff they used with Arar and squeeze it into our justice system."

France has asked Canada to extradite the Lebanese-born Diab to face charges that he was part of a group of Palestinian terrorists that killed four people in bomb attack outside a Paris synagogue in October 1980.

Diab, who lives in Ottawa, denies the French allegation.

When the formal extradition hearing starts on Monday, Bayne says he will ask Superior Court Justice Robert Maranger to throw the case out because he says it is an abuse of process and contravenes Diab's rights under the Canadian Charter of Rights and Freedoms.

In a motion to stay the proceedings against Diab, Bayne says he expects to spend most of next week making the case that the material from France is "replete with misrepresentations, overstatements, misstatements, omissions, inaccuracies and editing that create a misleading, incomplete, unreliable and unfair record.

"(It) not only prejudices a fair extradition hearing for Hassan Diab ... but also strikes at the fundamental principles that underlie the Canadian community's sense of fair play and decency."

Diab, a Canadian citizen and former University of Ottawa professor, was arrested at the request of France two years ago and after spending several months in jail was granted bail in exchange for virtual house arrest and other strict conditions. He lost his teaching job shortly after being arrested.

Key information in the case comes from Middle East sources via Germany, but is so vague, claims Bayne, that the French themselves do not know its source.

Any foreign official can sign a document and it is accorded a "presumption of reliability," said Bayne. "It didn't used to be that way. You used to have to have sworn affidavits from live witnesses. Now you get zealous prosecutors claiming 'this is my case.'"

Canada's extradition process is "very troubled," said the lawyer.

"Extradition is a very odd duck that grew out of diplomatic niceties between states," he said. "It's the principle of comity: 'We will send who you want and you send who we want. It doesn't matter what the

guy's defence is, just send him to us.

"This diplomatic nicety of stripping people of their liberty and shipping them off to foreign places in the belief that they are kinds of good guys too and they'll get fair treatment is not always borne out," added Bayne. "It is one of the dark corners of the criminal justice system."

Crown lawyers say the evidence they will present to the hearing conforms to Canadian legal standards and will fight Bayne's motion.

If Bayne wins his bid next week, the case will be over.

If he loses, the full extradition hearing will likely continue for a month.

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