

European Group for the Study of Deviance and Social Control

Established 1973

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The Honourable Robert Nicholson
Minister of Justice and Attorney General of Canada
Department of Justice Canada
284 Wellington Street
Ottawa, Ontario, Canada K1A 0H8

September 28th 2011

Dear Minister Nicholson:

We, on behalf of over 700 members of the European Group for the Study of Deviance and Social Control, are writing to ask that you exercise your power to decline the request by the Republic of France that Canada surrender your citizen Dr. Hassan Diab for extradition to France.

As an international group with members that include social scientists, socio-legal scholars, lawyers, researchers, policy-makers and justice practitioners we have numerous concerns about how the case against Dr. Hassan Diab has been handled. Basic principles of justice, due process and human rights appear to be seriously lacking in relation to the problematic evidence provided by the French to the Canadian authorities. Also of concern is that some basic rights normally available to suspects of criminal acts in the Canadian legal system (e.g. full disclosure by the prosecution of evidence, including exculpatory evidence) do not apply under the extradition legal process in your country.

Accused by the French of being one of the terrorists involved in a bombing in October 1980 near a synagogue in Paris Dr. Hassan Diab has steadfastly maintained his innocence. He opposes any form of discrimination or violence. He was not in Paris at the time of the bombing.

Since his arrest in November 2008 Dr. Hassan Diab has endured an arguably Kafkaesque personal and legal nightmare. Despite his lack of a criminal record, and despite his making no attempt to flee Canada during the approximately one year period between his learning of the accusation and his actual arrest, Dr. Diab was initially denied bail and subject to incarceration for a period until the beginning of April 2009. Since his release at that time Dr. Diab has been subject to particularly onerous bail conditions identified by Justice Robert Maranger as “virtual house arrest.” These conditions include Dr. Hassan Diab having to wear an electronic bracelet, and paying approximately \$2,000 a month for it.

Information available to us indicates that evidence provided by the French to the Canadian authorities has been faulty, incomplete, and sometimes ethically questionable. For example, reports by the first two handwriting experts put forward by the prosecution had to be withdrawn by the French upon the discovery that the handwriting samples that they were using to compare with that of the alleged suspect in 1980 (on a hotel registration card) were not even written by Hassan Diab, but by someone else.

Further, with respect to the third handwriting expert report subsequently introduced by the French authorities Justice Maranger’s observations noted that it was “convoluted, very confusing, with conclusions that are suspect.” It is worrying that the same report might be considered unproblematic in potential future legal proceedings in France.

Also of huge concern is that some of the evidence that the French authorities tried to use in Canada, and plan to use in France, came from unsourced and unidentified sources. In other words, information and allegations that may have been derived from torture. France has previously been criticized for using such intelligence, and we concur that information gathered in the course of violations of human rights contradicts principles of fundamental justice.

In Justice Maranger’s own words: “the case presented by the Republic of France against Mr. Diab is a weak case; the prospects of conviction in the context of a fair trial, seem unlikely.” The question arises: if it is basically being acknowledged that the case against Mr. Diab is not sufficiently strong to result in a conviction under Canadian jurisdiction and law, should this not logically result in a decision by Canada to refuse to surrender him for extradition?

While we do not claim to be experts on extradition law in Canada we do feel sufficiently informed to urge that steps be taken to legally remedy and reform aspects of that law that are not currently in conformity with international norms concerning respect for due process and the principles of fundamental justice. As previously stated, we are also aware that it is in your power to remedy the situation currently confronting Dr. Hassan Diab. We concur with the views already offered to you in a recent letter (12 September 2011) from Robert D. Holmes, President, on behalf of the Civil Liberties Association of British Columbia. As he states:

It is well-established that the Minister of Justice is required to consider whether the requesting state’s criminal procedures and penalties would violate the principles of fundamental justice when deciding whether - and under what conditions - an individual

should be surrendered for extradition. This is a requirement that exists not only under the *Extradition Act*, but also under s. 7 of the *Charter of Rights and Freedoms*. It is based on these principles that, for example, the Supreme Court of Canada has ruled that the Minister for Justice is constitutionally bound to ensure that Canada does not surrender individuals to face the death penalty in foreign jurisdictions. Accordingly, whether French trial procedure comports with principles of fundamental justice is an issue you must take into account when considering Mr. Diab's surrender; indeed, the extradition judge in Mr. Diab's case noted that arguments concerning the fairness of the French trial is "best advanced at the ministerial stage."

We further concur with the Civil Liberties Association when they go on to say:

A prosecution that admits the use of evidence derived from torture violates the principles of fundamental justice. It is trite law in Canada that information obtained by torture, inhuman or degrading treatment is neither credible nor reliable.... Canada's domestic law and international legal obligations make clear that information derived from torture has no place in judicial proceedings.

The *Extradition Act* sets out the circumstances under which the Minister may refuse surrender. Section 44(1) reads, in relevant part:

The Minister shall refuse to make a surrender order if the Minister is satisfied that
(a) the surrender would be unjust or oppressive having regard to all the relevant circumstances.

We respectfully submit that France's documented willingness to use unsourced intelligence from international partners known to routinely engage in torture means that you should decline to surrender Mr. Diab for trial in France.

In conclusion, we, the European Group for the Study of Deviance and Social Control, are pleading with you to deal with the case of Dr. Hassan Diab as an urgent matter, and to refuse to surrender him for extradition to France. In doing so, as well as providing Dr. Hassan Diab with relief from this lengthy and traumatic legal process, you will also be re-affirming on an important international stage Canada's commitment to the protection of human rights, and to supporting principles of fundamental justice.

We look forward to your response to our concerns.

Yours sincerely,

Maeve McMahon, PhD, European Group member
David Scott, PhD, Coordinator (on behalf of the European Group for the Study of Deviance and Social Control)

cc. Paul Dewar, New Democratic Party Foreign Affairs Critic
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