

Human rights groups sound alarm over Diab extradition evidence

BY CHRIS COBB, OTTAWA CITIZEN JULY 3, 2013



Hassan Diab spent several months in jail before being released on strict bail conditions that amounted to house arrest. Those conditions have been loosened slightly.

Photograph by: Wayne Cuddington, Ottawa Citizen

OTTAWA — Amnesty International and two of Canada's leading civil liberties groups have intervened in the extradition case of former Ottawa university professor Hassan Diab, who is wanted by France for his alleged involvement in a 1980 terrorist bombing at a Paris synagogue.

Along with Amnesty, the Canadian Civil Liberties Association and the British Columbia Civil Liberties Association have filed interventions with the Ontario Court of Appeal, which is to hear Diab's appeal against federal Justice Minister Rob Nicholson's decision to order the academic's extradition. The hearing is set for November.

While neither Amnesty nor the civil liberties groups are commenting directly on the merits of the case, they say they are deeply troubled that French evidence against the academic could have been gleaned from torture and will be used against him at any criminal trial in Paris.

Sending an accused person to face trial under such circumstances, they say, “offends the principles of fundamental justice.”

In addition to concerns over torture, the CCLA has intervened because they say crucial evidence in the case against Diab is unreliable and would be inadmissible in any Canadian trial.

Even though they are studiously avoiding commentary on Diab’s guilt or innocence, the groups’ interventions on the most controversial aspects of the case will be a boost to Diab and his many supporters. What influence, if any, it might have on the Appeal Court’s ruling is unpredictable.

The French want the Lebanon-born Canadian citizen to stand trial for murder and attempted murder, but while most extradition cases are often rubber stamped the Diab case has evolved into one of the most complex in Canadian history, and has shone a light on what many legal critics say is a slice of Canadian law that doesn’t meet this country’s legal or constitutional standards.

Four passersby were killed, and many inside and outside the synagogue injured, when a bomb planted in the saddlebags of a motorcycle exploded on a Friday evening in October 1980.

French authorities have not charged Diab nor asked to come to Canada to interview him, but in a surprise admission last year said they are still in the throes of investigating the bombing. Typically, suspects are extradited to face trial, not police interrogation.

Diab, a former University of Ottawa and Carleton University sociology professor, says he is innocent and is the victim of mistaken identity.

Nicholson decided to surrender Diab for extradition following a ruling by Ontario Superior Court Justice Robert Maranger that Canadian federal prosecutors had presented enough evidence to support the order against the 57-year-old terrorist suspect.

The case against Diab hinges on controversial evidence from a French handwriting analyst that three internationally-recognized forensic handwriting experts that testified at his hearing unanimously condemned as deeply flawed and incompetent.

The French analyst, whose evidence would certainly be part of any criminal case against Diab, examined handwriting found in a Paris hotel’s register.

Maranger said the low legal threshold of Canadian extradition law left him no choice but to commit Diab on the basis of the handwriting evidence, but conceded that the French case would likely be too weak to convict Diab if he were to be tried in Canada.

(Federal Justice prosecutors at the extradition hearing were unable to prove that the unsourced intelligence evidence was not derived from torture so withdrew it).

“This is not extradition to stand trial,” Diab’s lawyer Donald Bayne said shortly after Nicholson announced his decision last spring. “France has admitted they have an incomplete case and in fact there may never be a trial or sufficient evidence to put him on trial. France wants this country to hand over a Canadian citizen to further an investigation. This has never been done in Canada.”

Diab was arrested on Nov 13 2008 in a raid by an RCMP SWAT team on his Gatineau apartment as he was preparing to go for a run.

He spent several months in jail before being released on strict bail conditions that amounted to house arrest.

Those conditions have been loosened slightly since then but he is still forced to wear a GPS tracking device on his ankle at a cost of \$1,500 a month. Diab has been unable to work since his arrest.

Bayne said Wednesday that the interventions from Amnesty International and the two civil liberties associations focus on the “noble issues” of the Diab case.

“What they show is that reputable, responsible public organizations are concerned about issues that transcend the particular case,” he said. “It demonstrates important public issues involved in both the law of extradition and the practice of extradition that trouble — and should trouble — thoughtful members of the public who are concerned about human rights, legal rights, individual liberties and due process.”

In its written intervention, Amnesty says extraditing a person to face a trial where evidence gleaned from torture could be introduced violates Canada’s obligations under international law.

“The Minister of Justice should refuse extradition where there is a real risk that torture-derived evidence would be used at trial,” it says. “The Minister should not require proof on a balance of probabilities.”

Amnesty cites judgments from Canada’s Supreme Court, international jurisdictions, and human rights groups around the world to support its argument.

In its comments on the handwriting evidence, the Canadian Civil Liberties Association notes that there is “a substantial body of evidence” that questions its reliability and Maranger’s decision to allow it to stand has “far-reaching implications” for Canadian law.

“Bitter experience has demonstrated that unreliable evidence can take many forms and occasion much injustice,” it says. “Over the past 25 years Canada’s growing platoon of the wrongfully convicted has exposed the risk of unreliable evidence occasioning miscarriages of justice.

Although the causes have been multi-faceted, evidence that initially seemed compelling but that ultimately proved unreliable has been a recurring theme.”

It is likely to be well into 2014 before the Court of Appeal decision will be released and almost certain that whoever loses will then appeal to the Supreme Court of Canada.

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