

# 'Consistent evidence' suggests Ottawa academic did not commit 1980 terrorist bombing, French judge says



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The French judge investigating terrorism allegations against Hassan Diab (above) says there is “consistent evidence” that the Ottawa academic is telling the truth and was not in Paris in October 1980 when a powerful bomb killed four passers-by outside a Paris synagogue. *TONY CALDWELL / POSTMEDIA*

The French judge investigating terrorist allegations against Hassan Diab says there is “consistent evidence” that the Ottawa academic is telling the truth and was not in Paris in October 1980 when a powerful bomb killed four passersby outside a Paris synagogue.

Judge Jean-Marc Herbaut’s dramatic comments were filed in a release order that would have freed Diab from the Paris jail where he has been held since being extradited from Canada two years ago on Monday.

The judge’s order was immediately challenged late last week by prosecutors and overturned by a panel of appeal judges on the grounds that Diab is a flight risk and could “disrupt public order.”

The Lebanese-born Canadian citizen is charged with murder in the synagogue bombing in which 46 people inside and on the street were also injured.

Diab, who turns 63 this month, says he is innocent, denies he was in France at the time of the bombing and says he has been the victim of mistaken identity.

Herbaut, a veteran anti-terrorism and organized crime investigator, questioned Diab over three days earlier this year and recently returned from Lebanon where he interviewed people who were part of Diab’s circle four decades ago.

Although his investigation isn’t finished, it appears that the Beirut visit has led Herbaut to doubt the evidence against Diab.

This is the third time Herbaut has ordered Diab released but the first time he has publicly suggested that there might not be enough evidence to send him to trial.

Another judge, whose job it is to periodically review the cases of prisoners held in pre-trial custody, made a similar order earlier this year.

All four orders have been overturned by the same three-judge panel.

Following the review judge's first order in the spring, Diab was briefly freed on strict bail conditions and spent his 10 days of freedom at the home of a Paris academic and without incident.

"Hassan Diab's situation is unprecedented," Diab's Paris lawyer, William Bourdon, told the Citizen. "After 36 years and since no one else was indicted, the court of appeal is clinging to Hassan Diab. He is detained because of the judges' fear to be accused for laxity in the context of today's fight against terrorism in France. Such a situation would be inconceivable in an ordinary law situation."

Bourdon is now asking the French Supreme Court to overturn the latest appeal court decision.

Herbaut said in his release order that what he has learned "cast serious doubts on the fact that he (Diab) traveled to France via Spain over this period of a fortnight between 20th September and 7th October 1980 and hence that he is the bomber. It is plausible that he accompanied his girlfriend who was going to study in England for two years to the airport on 28 September, 1980 as claimed by (then girlfriend) Nawal Copty whose testimony is corroborated by her passport and her father's passport.

"Late September, early October 1980 he was very likely immersed in his exam. We know this due to witness reports and documents from the Lebanese University confirming that he studied for his exams, sat them in Beirut and passed them."

The judge concedes "questions remain" over how Diab's passport was found on a Popular Front for the Liberation of Palestine militant a year after the bombing.

“However, the fact that there is some doubt about his involvement demands that he should be released without waiting for the outcome of the ongoing investigation regarding this,” wrote Herbaut. “There is no evidence to indicate, or even imply, that these investigations will enable to gather further incriminating evidence against him.” (The judge underlined “demands”).

Diab has said that he lost his passport while studying at university during the chaos of Lebanon’s civil war.

French prosecutors continue to rely on evidence that Diab’s Canadian extradition judge, Superior Court Justice Robert Maranger, described as “weak, convoluted and confusing,” and unlikely to result in a conviction if Diab was tried in Canada.

Part of the evidence still in play is based on intelligence for which there is no known source and which was withdrawn during the extradition hearing in Ottawa because of its unreliability — including the possibility that it could have been gleaned through torture.

The remaining French evidence involves handwriting analysis debunked by three internationally renowned handwriting experts at the extradition hearing.

Repeated fingerprint tests comparing Diab’s prints to those found on a hotel register, in a car police say was used in the attack and another document have all been negative.

Maranger said the low threshold of Canadian extradition law gave him no choice but to recommend extradition.

Appeals by Diab’s lawyers eventually made their way to the Supreme Court, which refused to hear the case, ending a six-year Canadian legal saga.

Unlike Canada, France does not extradite its own citizens.

Diab’s Ottawa lawyer, Don Bayne, praised Herbaut for the “rare” stand he is taking.

"I can't imagine the pressure he is under," said Bayne. "I never give up hope but there are divisive right-wing forces in France and an atmosphere of terrorism paranoia.

"We have put a Canadian in this terrible position and every Canadian citizen at risk. Our courts have failed Hassan Diab at every level through an extradition system that is a shambles of injustice."

Diab's wife, Rania Tfaily, said in an interview that her husband had phoned her twice from prison since the latest failed bail appeal.

"He is disappointed but never loses his sense of hope," she said. "It's what keeps him going."