

# Hassan Diab supporters fear changing political climate could hurt chances of fair trial



AEDAN HELMER

[More from Aedan Helmer](http://ottawacitizen.com/author/aedanhelmer) ([HTTP://OTTAWACITIZEN.COM/AUTHOR/AEDANHELMER](http://ottawacitizen.com/author/aedanhelmer))

Published on: February 18, 2017 | Last Updated: February 18, 2017 8:04 PM EST



Hassan Diab, a Lebanese-born Canadian citizen, was arrested eight years ago in Ottawa on murder charges from a 1980 bombing outside a Paris synagogue. *TONY CALDWELL / POSTMEDIA*

Supporters of Hassan Diab, the former University of Ottawa professor who remains imprisoned in France after his extradition two years ago, fear for his right to fair process in the face of rising nationalism and Islamophobia in a country that doesn't want to appear "soft" on terror.

Diab, 63, a Lebanese-born Canadian citizen, was arrested eight years ago in Ottawa on murder charges from a 1980 bombing outside a Paris synagogue. Diab denies he was in France at the time of the bombing and says he is a victim of mistaken identity.

He was extradited to France despite Ontario Superior Court Justice Robert Maranger expressing grave concerns the evidence presented against Diab was "convoluted and confusing (with) suspect conclusions."

French prosecutors continue to rely on that evidence, and an order that would have freed Diab on bail was recently overturned, sending the Ottawa academic back to his Paris jail cell despite the opinion of a French judge who ordered bail after investigating the case and finding "consistent evidence" that Diab is telling the truth, that he was not in France at the time of the bombing that killed four and wounded more than 40 others.

His supporters have released a short film documenting the case, highlighting the evidence against Diab, which his Ottawa lawyer, Don Bayne, describes in the film as "shockingly weak."

Now, fearing the implications a changing global political climate may have on the case, the Justice for Hassan Diab group hopes the Canadian government will apply whatever necessary pressure to ensure Diab's right to fair judicial process.



In a short film documenting Hassan Diab's case, his Ottawa lawyer, Don Bayne, above, describes the evidence against his client as "shockingly weak." *TONY CALDWELL / POSTMEDIA*

"Certainly in France right now, to release Hassan Diab and to abandon the trial process would not look good from a political perspective," said Diab supporter Roger Clark, former secretary general of Amnesty International Canada. "The optics are probably greater now than they were a year ago. So therefore any inclination the French justice system may have to follow an appropriate course of real justice is diminished significantly.

"It's a time when people don't want to appear soft on people who may be suspected of terror, and if these people happen to be Muslim, it's just going to colour it even more so."

Other supporters have voiced similar concerns, including Paul Tetrault, a retired lawyer and board member of the B.C. Civil Liberties Association, who said, "I don't think he would have been detained eight years had he been anything but Muslim-Canadian."

Global Affairs Canada said it is "closely monitoring the case of Hassan Diab in France and officials are providing him with consular services."

The ministry declined to comment on details of the case, citing privacy concerns, but confirmed it has met with members of Diab's local support group through its parliamentary secretary for foreign affairs.

Diab's supporters have voiced their frustration throughout the process, saying the latest court decision is another in a long line of setbacks.

French Judge Jean-Marc Herbaut, a veteran anti-terrorism and organized crime investigator, filed a release order in December after a lengthy investigation, which included interviews with Diab and former associates, who provided evidence to support his claim that Diab had been studying in Beirut, and was not in France at the time of the October 1980 bombing.

Herbaut said his investigation "cast serious doubt" on the prosecution's case, though he conceded "questions remain" over how Diab's passport was found on a militant associated with the Popular Front for the Liberation of Palestine a year after the bombing. Diab claims he lost his passport while studying at university during the chaos of Lebanon's civil war.

Herbaut wrote that the evidence "demands" Diab be granted bail, but the release order was immediately challenged by prosecutors and overturned by a panel of appeal judges on the grounds that Diab presents a flight risk and his release could "disrupt public order."

The same three-judge panel has overturned three prior orders to release Diab.

Diab's Paris-based lawyer said in December the situation is "unprecedented ... . 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," said lawyer William Bourdon, adding "such a situation would be inconceivable in an ordinary law situation."

Some of the evidence against Diab is based on intelligence, which has no publicly known source and which was withdrawn in the Ottawa extradition hearing because of its unreliability, in part over concerns it may have been gleaned through torture.

Other evidence centred on a handwriting analysis that was debunked by three experts at the extradition hearing. Fingerprint tests on samples collected from a Paris hotel register, a car police say was used in the attack

and another document have been compared to Diab's prints, and have all come back negative.

Diab's six-year odyssey through Canada's legal system ended after he was ordered extradited in June 2011, a decision that was confirmed by then-justice minister Rob Nicholson and upheld by the Ontario Court of Appeal. The Supreme Court of Canada refused to hear the case.

Justice Maranger reluctantly signed the extradition order, but not before criticizing the evidence against Diab — evidence he said would be unlikely to reach conviction in a Canadian trial — and suggesting he had no choice but to extradite Diab given Canada's low threshold for evidence in extradition hearings.

"That was a major disappointment and a setback," said Clark. "But the process in France is even more complex. We have the sense there is political motivation behind some of this. Now is a time when terrorism, and fundamentalists and jihadists are, if not suspect, then on the wrong side of the way justice is being decided.

"In the case of Hassan Diab, the investigating magistrate (Herbaut) carried out his work very thoroughly — he travelled to Beirut, he interviewed witnesses, and it was on the basis of his very precise investigation that he reached the conclusion that bail should be granted and that ultimately the case should then be dropped.

"But that was overruled by the prosecutor in France, and part of the problem is that no one knows on what basis it was overruled.

"We have to set it against French anti-terrorism law and the sort of process they feel is appropriate in this case — that involves a high level of secrecy, information not made public, and if it were to go to trial then evidence is admitted without cross-examination of witnesses. The whole process is flawed in terms of what we in Canada would expect from a legal process."

Now, Diab's supporters are meeting with MPs and senators, and will soon launch a Parliamentary petition, according to Clark, "to encourage authorities to place appropriate pressures, not to push for trial, but to abide by the position of the investigating judge to grant bail, and then to determine whether they should proceed at all.

“More than two years has gone by, even under any sort of reasonable procedure, we’re now way beyond what would be acceptable in terms of normal justice.”

Diab’s support group also hopes to convince a Senate committee to re-examine Canada’s extradition laws.

“But first things first,” said Clark. “We need to get Hassan Diab back to Canada.”

## RELATED

**Diab documentary highlights "shockingly weak" evidence**

(<http://ottawacitizen.com/news/local-news/diab-documentary-highlights-shockingly-weak-evidence>)

— *With files from Chris Cobb*

[ahelmer@postmedia.com](mailto:ahelmer@postmedia.com) (<mailto:ahelmer@postmedia.com>)

[Twitter.com/helmera](https://twitter.com/helmera)

