

# French prosecution of Canadian Hassan Diab a travesty

Six times French investigators have recommended the Canadian professor be release and each time French courts have denied the request.



Hassan Diab arrives at an Ottawa courthouse in 2011. In 2014, Diab lost a hearing where he was fighting a deportation order to France, where he is being held in jail despite six recommendations he be released. (SEAN KILPATRICK / THE CANADIAN PRESS)

By **FAISAL KUTTY**

Thu., May 4, 2017

Canadian citizen Hassan Diab was extradited to France in 2014 for allegedly committing a terrorist attack in 1980 and has since been ordered released six times by French investigative

judges. Yet, again this week, a court of appeal overturned the release order.

The RCMP arrested 63-year-old Diab, a father of four, in 2008 at the request of French authorities for allegedly planting a bomb outside a Paris Synagogue. The blast killed four and injured dozens.

Diab, a university sociology lecturer, lost his six-year long extradition battle in 2014, even though Superior Court Justice Robert Maranger said the case against the professor was “weak, convoluted and confusing (with) suspect conclusions” but that his hands were tied due to poor extradition laws.

The case is mostly based on intelligence, which of course is not evidence per se. Canadian authorities had the good sense to withdraw much of the “evidence” during the extradition hearings because of its unreliability and the possibility that some of it may have been obtained through torture.

Moreover, the Ottawa hearings witnessed fingerprint tests coming back negative and handwriting analysis being debunked by three experts. The prosecution case rested on tenuous circumstantial evidence, including Diab’s passport being found a year after the incident on a militant linked to a terrorist group. Diab says he lost his passport during the chaotic Lebanese civil war.

Despite Maranger’s reservations, Diab lost on appeal and the Supreme Court of Canada refused to hear a further appeal. The climate of fear generated by the “war on terror” may have played a role.

“I don’t think he would have been detained eight years ago had he been anything but Muslim-Canadian,” says retired lawyer Paul Tetrault, a board member of the B.C. Civil Liberties Association.

The French criminal system is an inquisitorial one in which an investigating magistrate first conducts a judicial investigation. A hybrid between a prosecutor and a judge, such magistrates are granted broad powers. The system has come under attack from international human rights groups because in too many instances terrorism magistrates have not been impartial investigators, but have acted more like prosecutors with judicial powers.

In Diab’s case, however, several of the five investigative judges designated to handle terrorism offences have repeatedly sided with Diab.

In December, veteran investigative magistrate, Jean-Marc Herbaut, issued a release order after travelling to Beirut and conducting an extensive investigation. He said his findings “cast serious doubt” on the prosecution’s case. The appeals court overturned his order.

“After 36 years and since no one else was indicted, the court of appeal is clinging to Hassan Diab,” said his French lawyer, William Bourdon. The veteran defence attorney asserted that this

was due to “the judges’ fear to be accused of laxity in the context of today’s fight against terrorism.”

French anti-terror laws are also among the first to focus heavily on pre-emption. Pre-charge and pretrial detentions are critical components. Magistrates may recommend such detentions, if necessary, for various reasons. Since his arrival in France, according to Diab’s wife, Rania Tfaily, Diab has been locked up 22 hours a day.

Pretrial detention, as ordered in Diab’s case, can last for up to four years in terrorism cases with the investigating magistrate effectively determining the pace of both the investigation and the trial. Since 2001, all pretrial detentions must be re-authorized from time to time, due to abuses in terrorism cases.

Last week, two terrorism magistrates refused to renew the detention because in their words, there is “consistent evidence” that Diab was in Lebanon writing exams at the time of the attack. In what can only be called Kafkaesque, the prosecutor immediately appealed and the order was overturned for the sixth time. Neither Diab nor his team is privy to the grounds.

As noted by Roger Clark, former head of Amnesty Canada, this travesty continues because “of widespread Islamophobia and a fear of appearing weak on terrorism.”

Sadly, despite the anti-terror measures and climate being roundly criticized by international rights groups, French civil society groups have been mum. The hesitation of Muslim groups is understandable, but the trepidation exhibited by non-Muslim groups is concerning in that those targeted have no voice.

A coalition of Canadians is urging Ottawa to take a stand in demanding justice. Prime Minister Trudeau in the past had called on the Harper government to intervene in such situations. Indeed, Trudeau has spoken out in the past in defence of citizens. Diab’s case is ripe for such an intervention.

***Faisal Kutty** is counsel to KSM Law, an associate professor at Valparaiso University Law School in Indiana and an adjunct professor at Osgoode Hall Law School. @faisalkutty.*

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