

PRESS RELEASE – Politics Trumps Justice: In a shocking decision, Cour de Cassation upheld Court of Appeal decision ordering Diab to stand trial despite its deeply troubling flaws

For Immediate Release

19 May 2021, Ottawa – Today, in a shocking decision, France's Cour de Cassation upheld the Court of Appeal's decision (27 January 2021) ordering Dr. Hassan Diab to stand trial. As [documented by Don Bayne](#), Hassan's lawyer in Canada, the Court of Appeal misrepresented evidence, misstated facts, relied on discredited evidence, made up non-existent evidence, and engaged in contradictory reasoning and troubling analysis based on unfounded speculation. France's avocat général had asked the Cour de Cassation to quash the Court of Appeal decision referring Dr. Diab to trial due to its contradictory reasoning and failure to address important issues raised by the defense.

Diab's lawyer in Canada, Don Bayne, remarked that “the Cour de Cassation decision is inexplicable – even the French advocate general agreed that the Court of Appeal decision is defective and should be quashed. The travesty of justice continues despite clear evidence of Hassan's innocence. This shows how political pressure trumps justice. We call upon PM Trudeau to put an end to this miscarriage of justice.”

Background

Dr. Hassan Diab was wrongfully extradited from Canada to France based on a deeply flawed handwriting analysis opinion — the “Bisotti report” — which was criticized by five of the world's leading handwriting experts, from the U.S., U.K., Canada, and Switzerland, as “totally unreliable”. Hassan languished in solitary confinement in France, without formal charge or trial, for over three years, while France continued its investigations, finally concluding with the unanimous decision of the investigative judges that there was too much evidence of innocence to justify a trial.

On 12 January 2018, two juges d'instruction (investigative judges), Jean-Marc Herbaut and Richard Foltzer, both of the Paris Court anti-terrorist division, dismissed the case against Hassan Diab. This was due to witness testimonies and official university documents confirming that Hassan was in Beirut taking exams at the time of the 1980 bombing in Paris, in addition to significant evidence (fingerprints and palm prints) exculpating Hassan. Following the investigative judges' decision, Hassan Diab was immediately freed, and he returned to his wife and family in Canada.

However, the French state prosecutor and civil parties were determined to keep the case going rather than admit their wrongful pursuit of Hassan after more than 10 years of investigations. They filed an appeal against the investigative judges' Order of Dismissal. The appeal was heard in April 2018; however, the decision was postponed again and again. On October 26, 2018, the Court of Appeal ordered that two new French handwriting experts examine the discredited “Bisotti report”, together with the critical opinions of the five international experts. The two new French experts were also ordered to conduct their own comparison of Hassan Diab's writing with the hotel card's block-printed words and written date. The “Bisotti report” was found by the two new French experts to have used improper methodology, rendering it and its opinion unreliable (exactly as the international experts had testified during the Canadian extradition process). The French experts reported that “we are in total agreement with the defence experts”. Regarding the five block-printed words on the hotel card, their conclusion was “inconclusive”. Hassan Diab could neither be included nor excluded. The Bisotti report's conclusion of a positive identification was not only totally unreliable, but it was also impossible to reach. The experts also found that the date, which was written by the suspect on the hotel card, was not written by Hassan Diab.

Despite this, on January 27, 2021, the French Court of Appeal (with a different presiding judge) overturned the decision of the investigative judges and ordered a trial. According to the [French newspaper Le Monde](#), the Court of Appeal's decision is exceptional, because never before, in terrorism cases, had a Court of Appeal opposed the investigating judges. The Court of Appeal decision shows a

consistent and troubling pattern of misstating facts and misrepresenting evidence, which began with the initial extradition request in 2008.

Here are some examples of instances in which the French Court of Appeal misrepresented evidence, misstated facts, relied on discredited evidence, made up non-existing evidence, and engaged in contradictory reasoning and troubling analysis based on unfounded speculation.

a) The French Court of Appeal relied on two handwriting analysis reports that were totally discredited, and which France withdrew from the extradition hearing in Canada, following the revelation that they were based on documents that were not even written by Hassan. The French Court of Appeal also relied on the “Bisotti report” even though the French Court of Appeal’s own experts discredited the “Bisotti report” as unreliable and based on wrong methodology.

b) The Court of Appeal, in its own description of the hotel card, showed confusion and errors of fact.

c) The Court of Appeal’s treatment of the fingerprint evidence was even more troubling. The Court of Appeal dismissed the important fact that Hassan’s fingerprints were not found on any of the documents that were handled by the suspect by arguing that the suspect was “likely careful” not to leave any fingerprints. This is despite evidence that the suspect was not careful at all; in fact, the suspect was caught shoplifting and was taken to the police station for questioning. These attempts to explain away exculpatory evidence amount to purely speculative fiction.

d) The Court of Appeal completely and erroneously made up evidence of fingerprints supposedly found on a rental contract, even though no such evidence exists.

e) In considering the exculpatory (alibi) evidence that Hassan Diab was in Beirut at the time of the bombing, the Court of Appeal showed a shocking determination to ignore the actual evidence by misrepresenting evidence based on official documents. The Court of Appeal even speculated that because Beirut is “a city only a few hours away from Paris by plane”, Hassan Diab could have flown there “for a few days at the very beginning of the month of October”. This is in spite of solid evidence that the suspect was in Paris from at least September 22 until at least October 3, 1980.

The serious multiple errors of fact, reliance on evidence so unreliable it should be disregarded, misstatement of its own mandated handwriting report, resort to sheer speculation in an effort to explain away “essential elements” of exculpatory fingerprint and consistent alibi evidence, willful ignorance of the actual evidence and imposition on Hassan Diab of an impossible onus to prove absolute innocence “indisputably” demonstrate that the decision of the French Court of Appeal to set aside the investigative judges’ Order of Dismissal, and order that Hassan Diab be put on trial in France, is an unjust decision and one that perpetuates a decades-long miscarriage of justice.

The Canadian Government must protect this Canadian citizen and make it plain that it will refuse any new French request for Dr. Hassan Diab’s extradition. Canada must make it clear that it will not be party to this ongoing miscarriage of justice.

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