

EUROPEAN GROUP

FOR THE STUDY OF DEVIANCE & SOCIAL CONTROL

www.europeangroup.org

7 April 2021

Prime Minister Justin Trudeau
Office of the Prime Minister
80 Wellington Street
Ottawa, Ontario K1A 0A2
pm@pm.gc.ca

VIA EMAIL ONLY

Dear Prime Minister Trudeau:

RE: The Case of Hassan Diab and Issues in Canadian Extradition Law

2011 letter from the European Group for the Study of Deviance and Social Control expressing concerns about the Hassan Diab case and Canadian extradition law.

On 28 September 2011 spokespersons for the European Group for the Study of Deviance and Social Control (David Scott, Coordinator, and Maeve McMahon, International Representative) wrote a letter¹ to the Canadian government (specifically to the then Minister of Justice and Attorney General, Robert Nicholson) asking that the request by the Republic of France that Canadian citizen Hassan Diab be extradited to France be declined.

Among our concerns was that there was evidence that Hassan Diab had been in Lebanon (taking university examinations) and thereby was not in France at the time of the bombing near a synagogue on rue Copernic in October 1980. Some of our additional concerns included factual, and even ethically questionable, aspects of the 'evidence' provided by the French to the Canadian authorities.

In the letter we further noted our familiarity with Canadian extradition judge Robert Maranger's expression of his reservations about the case when he observed (in June 2011) that:

¹The 2011 letter is included as an Appendix at the end of this letter..

... the case presented by the Republic of France against Mr. Diab is a weak case; the prospects of conviction in the context of a fair trial seem unlikely.

In light of the extradition judge's expression of evidentiary concerns while perceiving himself to be nonetheless legally compelled to agree to Hassan Diab's extradition, in the European Group for the Study of Deviance and Social Control's 2011 letter we directed attention **to issues concerning Canada's extradition law itself**. In conjunction with this we urged that Canadian "steps be taken to legally remedy and reform aspects of that law that are not currently in conformity with international norms concerning respect for due process and the principles of fundamental justice."

The European Group for the Study of Deviance and Social Control did not receive any response to our letter from Robert Nicholson, then Minister of Justice and Attorney General of Canada.

Ongoing concerns and observations by the European Group since 2011

Since 2011 Annual Conference of the European Group for the Study of Deviance and Social Control have often included discussions about the evolution of Dr. Hassan Diab's case (2012 – Cyprus; 2015 –Estonia; 2016 –Portugal; 2017 – Greece; 2018 – Slovenia; 2019 – Spain).²Members of the European Group (of which there are currently over1,000) have also been kept apprised of Hassan Diab's situation through posts on the group's Facebook page (e.g. 16 and 22 August 2012; 26 November 2014; 9 February, 28 April, 13 May, 9 November 2015; 7 March, 16 November 2016; 9 July, 24 July, 1 September, 7 November 2017; 12 January, 16 January, 29 January 2018; 15 February 2021). Relevant events have also been occasionally documented in the European Group's newsletter (e.g. December 2014 and August 2017). The documentary 'Rubber Stamped'³ was viewed and discussed at a plenary conference session in Greece on 2 September 2017.

It was distressing to observe the lengthy legal proceedings in Canada culminating in Hassan Diab's extradition to France in November 2014 – despite the lack of any meaningful evidence. It was further distressing to witness his subsequent incarceration at the Fleury-Merogis prison and despite the lead *juge d'instruction's* (as well as three other French judges') increasingly emphatic efforts to secure his release. It was therefore welcome news to learn that, pursuant to the two lead investigating judges' final release order on 12 January 2018 (in the context of firstly, evidence that Hassan Diab was in Lebanon at the time of the bombing, as well secondly, the absence of any evidence testifying to his involvement and various instances of exculpatory evidence to the contrary including non-matching palm and fingerprint evidence) Hassan Diab had been released. It was also a relief to learn that, with the assistance of Canadian consular

²The 2020 Annual Conference was scheduled to take place in Italy but was cancelled owing to the COVID-19 pandemic.

³https://www.youtube.com/watch?v=WVv_J7s78Bc 'Rubber Stamped: The Hassan Diab Story,' 2017, directed by Amar Wala with editing and photography by Andrea Conte, 13 minutes

officials in Paris, Hassan Diab had been able to return to Canada and be reunited with his family.



At a press conference on 20 June 2018, you, Prime Minister Trudeau, acknowledged the injustice experienced by Hassan Diab and his family. You stated:

I think for Hassan Diab we have to recognize, first of all, that what happened to him never should have happened. This is something that obviously was an extremely difficult situation to go through for himself, for his family, and that's why we've asked for an independent, external review to look into exactly how this happened and make sure that it never happens again.

While at first glance these Prime Ministerial words seemed to augur well both for Hassan Diab's situation and for the prospect of reforming Canada's extradition law, in practice positive developments have failed to materialize in Canada.

Although an external reviewer – lawyer Murray Segal – was appointed to review the extradition of Hassan Diab his mandate was limited to assessing whether the legal and Department of Justice practices and procedures were adhered to during the extradition process. Notably absent here was scope for reviewing the extradition legislation itself. From the outset in July 2018 the review process was doomed as Hassan Diab, his Canadian legal teams, and his supporters were adamant that a fundamental problem in the process was the *Extradition Act* [1999] itself, including the unacceptably low threshold of evidence required in extradition cases in Canada.⁴

⁴A related matter is that the criminal law case of *R v. Stinchcombe* [1991] does not apply in Canadian extradition cases. Therefore, while in criminal cases the prosecution is obliged to disclose all of the evidence, including

Indeed, as reported by David Cochrane⁵ of the Canadian Broadcasting Corporation on the day of the report's release in July 2019 Murray Segal himself, in a phone conversation, acknowledged that none of his recommendations, had they been in place, would have prevented Hassan Diab's extradition. In other words no measures had been suggested to give substance to your, Prime Minister Trudeau's, promise "[to] make sure that it never happens again."

Concerns by supporters that another wrongful extradition might occur, including in relation to Hassan Diab himself, hugely escalated as of 27 January 2021. On that date a French Court of Appeal ruled that Hassan Diab is to face trial in connection with the Copernic bombing of 1980.

For Hassan Diab and his supporters this information was unfathomable. During his incarceration in France four different judges sought his provisional release on eight occasions. Each of these was successfully resisted by prosecutors. However as of January 2018 lead *juge d'instruction* Jean-Marc Herbaut and his deputy, Richard Foltzer, had been able to issue a final order of release which facilitated Hassan Diab's return to Canada.

In making their decision Herbaut and his deputy had gathered evidence (from university records and eyewitnesses) that Hassan Diab was in Lebanon at the time of the bombing. They were also able to draw on exculpatory evidence (including non-matches for palm and fingerprint evidence connected to the crime scene).

The January 2021 decision that Hassan Diab was to face trial is all the more perplexing given that French prosecutorial efforts to continue building a case against him following his release only further undermined the previously discredited case against him.

A key issue here was the handwriting evidence. The initial Canadian extradition judge, Robert Maranger, expressed grave reservations about the Bisotti report describing it as "convoluted, very confusing, with conclusions that are suspect." According to Hassan Diab's Ottawa lawyer, Donald Bayne, further examination of the handwriting evidence in France over the past three years has only rendered the case even more weak. Handwriting experts for the defence during the Canadian extradition proceedings had revealed fundamental flaws in the Bisotti report (including the methodology). French handwriting experts that conducted reviews of the handwriting evidence following Hassan Diab's release indicated their complete agreement with the defence experts' testimony in Canada.

In light of the complete lack of evidence against Dr. Hassan Diab continued French prosecutorial efforts to bring him to trial can only be interpreted as political in nature. While it is

exculpatory evidence, to the prosecution, this is not an obligation under extradition law. Had exculpatory evidence available to French and Canadian prosecutors been made available to the defence and to judges at various stages of the extradition process, a decision might have been made to not extradite Hassan Diab.

⁵<https://www.cbc.ca/news/politics/hassan-diab-extradition-france-1.5226033> David Cochrane, "'Whitewash': Hassan Diab attacks report concluding government acted properly in his extradition case," *CBC News*, 26 July 2019.

understandable that victims of the bombing and their families continue to be upset and pressuring for justice, the further persecution, and prosecution, of an innocent man is not a satisfactory or ethical resolution to this.

Requests to Justin Trudeau, Prime Minister of Canada, from members of the European Group for the Study of Deviance and Social Control

The latest developments in the Hassan Diab case were discussed again at the European Group's Annual General Meeting on 28 April 2021. Please consider the following requests arising from our discussions.

In face of 1) the troubling possibility that a request for the second extradition of Hassan Diab may be forthcoming from France; and 2) Canada's failure to address the need for reform of the *Extradition Act* of 1999, we respectfully request that you, Justin Trudeau, as Prime Minister:

- 1) Provide clear and public assurance by the Canadian government that should a second request for the extradition of Hassan Diab be received from France that the request will be refused;
- 2) Establish a process to initiate reform of Canada's extradition law with particular attention to the problematically low threshold of evidence that currently exists, and generally to bring the rights of persons sought into conformity with principles of fundamental justice.

We look forward to your response about these important matters,

Yours sincerely,

Victoria Canning⁶

Katja Simoncic⁷

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CC.

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APPENDIX – 2011 LETTER FROM THE EUROPEAN GROUP FOR THE STUDY OF DEVIANCE AND SOCIAL CONTROL

European Group for the Study of Deviance and Social Control

Established 1973

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The Honourable Robert Nicholson
Minister of Justice and Attorney General of Canada
Department of Justice Canada
284 Wellington Street
Ottawa, Ontario, Canada K1A 0H8

September 28th 2011

Dear Minister Nicholson:

We, on behalf of over 700 members of the European Group for the Study of Deviance and Social Control, are writing to ask that you exercise your power to decline the request by the Republic of France that Canada surrender your citizen Dr. Hassan Diab for extradition to France.

As an international group with members that include social scientists, socio-legal scholars, lawyers, researchers, policy-makers and justice practitioners we have numerous concerns about how the case against Dr. Hassan Diab has been handled. Basic principles of justice, due process and human rights appear to be seriously lacking in relation to the problematic evidence provided by the French to the Canadian authorities. Also of concern is that some basic rights normally available to suspects of criminal acts in the Canadian legal system (e.g. full disclosure by the prosecution of evidence, including exculpatory evidence) do not apply under the extradition legal process in your country.

Accused by the French of being one of the terrorists involved in a bombing in October 1980 near a synagogue in Paris Dr. Hassan Diab has steadfastly maintained his innocence. He opposes any form of discrimination or violence. He was not in Paris at the time of the bombing.

Since his arrest in November 2008 Dr. Hassan Diab has endured an arguably Kafkaesque personal and legal nightmare. Despite his lack of a criminal record, and despite his making no attempt to flee Canada during the approximately one year period between his learning of the accusation and his actual arrest, Dr. Diab was initially denied bail and subject to incarceration for a period until the beginning of April 2009. Since his release at that time Dr. Diab has been subject to particularly onerous bail conditions identified by Justice Robert Maranger as “virtual house arrest.” These conditions include Dr. Hassan Diab having to wear an electronic bracelet, and paying approximately \$2,000 a month for it.

Information available to us indicates that evidence provided by the French to the Canadian authorities has been faulty, incomplete, and sometimes ethically questionable. For example, reports by the first two handwriting experts put forward by the prosecution had to be withdrawn by the French upon the discovery that the handwriting samples that they were using to compare with that of the alleged suspect in 1980 (on a hotel registration card) were not even written by Hassan Diab, but by someone else.

Further, with respect to the third handwriting expert report subsequently introduced by the French authorities Justice Maranger’s observations noted that it was “convoluted, very confusing, with conclusions that are suspect.” It is worrying that the same report might be considered unproblematic in potential future legal proceedings in France.

Also of huge concern is that some of the evidence that the French authorities tried to use in Canada, and plan to use in France, came from unsourced and unidentified sources. In other words, information and allegations that may have been derived from torture. France has previously been criticized for using such intelligence, and we concur that information gathered in the course of violations of human rights contradicts principles of fundamental justice.

In Justice Maranger’s own words: “the case presented by the Republic of France against Mr. Diab is a weak case; the prospects of conviction in the context of a fair trial, seem unlikely.” The question arises: if it is basically being acknowledged that the case against Mr. Diab is not sufficiently strong to result in a conviction under Canadian jurisdiction and law, should this not logically result in a decision by Canada to refuse to surrender him for extradition?

While we do not claim to be experts on extradition law in Canada we do feel sufficiently informed to urge that steps be taken to legally remedy and reform aspects of that law that are not currently in conformity with international norms concerning respect for due process and the principles of fundamental justice. As previously stated, we are also aware that it is in your power to remedy the situation currently confronting Dr. Hassan Diab. We concur with the views already offered to you in a recent letter (12 September 2011) from Robert D. Holmes, President, on behalf of the Civil Liberties Association of British Columbia. As he states:

It is well-established that the Minister of Justice is required to consider whether the requesting state's criminal procedures and penalties would violate the principles of fundamental justice when deciding whether - and under what conditions - an individual should be surrendered for extradition. This is a requirement that exists not only under the *Extradition Act*, but also under s. 7 of the *Charter of Rights and Freedoms*. It is based on these principles that, for example, the Supreme Court of Canada has ruled that the Minister for Justice is constitutionally bound to ensure that Canada does not surrender individuals to face the death penalty in foreign jurisdictions. Accordingly, whether French trial procedure comports with principles of fundamental justice is an issue you must take into account when considering Mr. Diab's surrender; indeed, the extradition judge in Mr. Diab's case noted that arguments concerning the fairness of the French trial is "best advanced at the ministerial stage."

We further concur with the Civil Liberties Association when they go on to say:

A prosecution that admits the use of evidence derived from torture violates the principles of fundamental justice. It is trite law in Canada that information obtained by torture, inhuman or degrading treatment is neither credible nor reliable..... Canada's domestic law and international legal obligations make clear that information derived from torture has no place in judicial proceedings.

The *Extradition Act* sets out the circumstances under which the Minister may refuse surrender. Section 44(1) reads, in relevant part:

The Minister shall refuse to make a surrender order if the Minister is satisfied that
(a) the surrender would be unjust or oppressive having regard to all the relevant circumstances.

We respectfully submit that France's documented willingness to use unsourced intelligence from international partners known to routinely engage in torture means that you should decline to surrender Mr. Diab for trial in France.

In conclusion, we, the European Group for the Study of Deviance and Social Control, are pleading with you to deal with the case of Dr. Hassan Diab as an urgent matter, and to refuse to surrender him for extradition to France. In doing so, as well as providing Dr. Hassan Diab with relief from this lengthy and traumatic legal process, you will also be re-affirming on an important international stage Canada's commitment to the protection of human rights, and to supporting principles of fundamental justice.

We look forward to your response to our concerns.

Yours sincerely,

Maeve McMahon, PhD, European Group member
David Scott, PhD, Coordinator (on behalf of the European Group for the Study of
Deviance and Social Control)