

The Hill Times

Extradition and justice: the case of Hassan Diab

Opinion | BY GAR PARDY | May 3, 2023

Born in Lebanon in 1953, Dr. Hassan Diab has not had much enjoyment nor benefit from his 30 years of Canadian citizenship. For reasons that are not yet supported by conclusive evidence, he became the prime suspect in the 1980 bombing of a synagogue in Paris, killing four and injuring another 46 people.

The French authorities have struggled inconclusively to find the persons responsible for the bombing. Unusual in such acts of violence: no organization has claimed responsibility. French courts, in contradicting each other, have concluded that Diab is not responsible, that he is responsible, and, following a trial in which he was not present, have convicted and sentenced him to imprisonment for life.

In 2008, the French authorities believed it had sufficient evidence to seek Diab's extradition from Canada. He was arrested, and after spending four months in prison, spent the next few years under house arrest with a GPS ankle monitor, while the Canadian courts considered the extradition request. Six years later, our judicial system supported the request and the minister of justice agreed to Diab's extradition to France.

Even within the limited requirements of the Extradition Act, a Canadian judge concluded in 2011 that the evidence produced by the French authorities was "convoluted, very confusing, with conclusions that are suspect." The judge went on to state that "the prospects of conviction in the context of a fair trial seem unlikely," but, in his decision, he was constrained by the narrow evidentiary requirements for extradition.

Diab was extradited to France in November 2014, and spent three more years in detention while a French magistrate (*juge d'instruction*) examined the evidence. In January 2018, the examining magistrate concluded the evidence was not sufficient for prosecution (*non-lieu*), and Diab was released and returned to Canada, despite pending appeals by the French authorities.

Since then, a higher French court overturned the examining magistrate's conclusions. Despite further appeals by Diab's lawyers, his case went to trial without his presence. On April 21, 2023, he was convicted of the 1980 bombing and sentenced to life in prison.

From the available information, it appears the French court involved in the conviction did not have evidence any different than the juge d'instruction in early 2018. As such, it can be assumed the court was influenced by the investigators and judicial authorities' inability to reach a conclusion in the over 40 years since the 1980 bombing.

The bombing—as with all matters involving the Jewish community—was assumed to be related to developments in the Middle East and as a result is as much political as judicial. In these circumstances, and with last month's conviction, there is little doubt the French authorities will again seek Diab's extradition for a new trial with him present. At best, this third judicial action in France might result in a sentence less than life for the 70-year-old Canadian.

Conveniently for France, a new extradition request transfers its responsibility to the Canadian authorities. Diab's Canadian supporters' reaction to the conviction so far suggests every possible legal and political action will be taken to ensure that he is never returned to France.

For the Canadian government, a second extradition request from France will be troublesome. Despite the various reservations associated with the original request, Canada can legitimately state it has fully met its obligations under the Extradition Treaty. Any decisions relating to a second extradition request should reflect the cautionary words of the Canadian extradition judge in 2011 and the decision of the juge d'instruction in 2018. In the absence of any new evidentiary information, Canada should make the assumption the second extradition request is now more political than judicial.

The Canadian Extradition Act has an appropriate provision for such requests. The justice minister can refuse to send the new request to an extradition judge for the initial determination of its legitimacy. With this refusal, the minister effectively terminates the second extradition request.

Canada is one of a few nations willing to extradite its citizens for criminal trial in another country and believes that it is appropriate. However, in doing so, it takes on a large responsibility to ensure that any given extradition is not tainted by motivations other than justice. In the past, Canada has sought to apply this standard, and as recently as 2011, the

Supreme Court refused to allow the extradition of Canadian Abdullah Khadr, brother of Omar, to the United States on charges relating to terrorism.

France, however, does not permit the extradition of its own citizens to face criminal charges in other countries. Late last year, French authorities refused to extradite its citizen—former priest Johannes Rivoire—to face trial in Canada, following a request from Canada based on the sexual abuse of an Inuit child in the late 1970s. There has not been any action by the French authorities to initiate judicial action itself against the former priest, citing the time factor involved with the charge.

In the Diab case, the central issue is the quality of France's evidence supporting the view that Diab was in Paris during the bombing in 1980. That evidence, which is apparently based solely on limited hand writing on a hotel registration card, was recently accepted by the French court as being in the hand of Diab.

This has been contested at every stage of earlier judicial hearings in both Canada and France by international experts along with evidence that Diab was in Lebanon at the time of the bombing. This remains the only evidence, and was indirectly raised by the Canadian judge who oversaw the extradition process. It will, again, be a feature in any new court cases relating to a second extradition request from France should the justice minister decide to send the case for Canadian judicial review.

It is still early days, and without an actual extradition request from the French authorities based on Diab's conviction, the speculation will continue. But as with his extradition back in 2014, any final decision will be made by the courts and the minister of justice. The previous process suggests this will be years in the making, and will require the Canadian justice minister to exercise his unique discretion to ensure that a citizen of Canada is not subject to arbitrarily politically motivated justice systems.

Gar Pardy is a former ambassador and has been involved in a variety of cases similar to that of Diab. His latest book, The Scary World of Nuclear Weapons, is available online and from Books on Beechwood in Ottawa.

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Correction: *Hassan Diab did not spend two years in prison in Ottawa, as this article previously stated. He spent over four months in prison in Ottawa, and a few years after that under house arrest. Diab also spent three years—not two—in prison in France. The story was updated on May 5 to reflect these changes.*