

A 'controversial' imam in prison

The case of Imam Abdukhalil Abduzhabbarov in the light of ICCPR Article 5

Willy Fautré, Human Rights Without Frontiers

HRWF (10.03.2017) - On 17 February 2017, the Saudi authorities deported 41 year-old Sunni Imam Abdukhalil Abduzhabbarov, his wife, and their ten children back to Kazakhstan via Dubai, on the basis of an extradition request issued by Astana. On his arrival in Kazakhstan, the authorities arrested him and put him in jail. The KNB secret police in Oral is currently investigating his case.

In its 20 February statement, the KNB secret police accused Imam Abduzhabbarov of spreading the ideas of so-called takfir^[1] in western Kazakhstan in the early 2000s, inciting religious hatred (Criminal Code Article 174), and being involved in terrorist activities (Article 256). He denied these accusations.

The KNB has claimed that it had opened a criminal case against him as early as 2015. It also claims that since his move to Saudi Arabia in 2006, Imam Abduzhabbarov has "continued attempts to influence Muslims in Kazakhstan and students who were studying abroad". The charges for such a crime can carry many years of imprisonment.

In May 2006, he and his family (they then had five children) went on the umra pilgrimage to Mecca. Although the family did not intend to remain abroad for long, they decided to stay in Medina, Saudi Arabia for longer than originally planned. From Saudi Arabia, Imam Abduzhabbarov remained in contact with Muslims back in Kazakhstan and some visited him while they were on the hajj pilgrimage.



Imam Abdukhalil Abduzhabbarov and his family

Article 5 of the ICCPR

Article 5 of the ICCPR reads as follows:

Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

So, the question becomes: Has Imam Abdukhalil Abduzhabbarov engaged in any activity or performed any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation while claiming the protection of his religious freedom?

Under Article 17 of the European Convention on Human Rights, which is identical to Article 5 of the ICCPR, the European Court has raised a similar issue in two cases concerning the Islamic movement Hizb-ut Tahrir and its members who claim not to advocate the use of violence.[2] The Court sought to answer whether their ideology aimed at the destruction of any of the rights and freedoms recognized in Article 5 of the ICCPR or at their limitation. Ultimately, the Court answered 'yes' in both cases.

What was the theological training of Imam Abdukhalil Abduzhabbarov?

According to Forum18:

"Imam Abduzhabbarov - who also uses the name Sheikh Khalil - studied Islam in a mosque in his native South Kazakhstan Region, according to Ponomarev of Memorial, who has been following his case. In 1999 he graduated from the **International Islamic University in the Pakistani capital Islamabad**. On his return he taught in the then Kazakhstan-Kuwaiti University in Shymkent, which lost its state registration and had to close in 2004.

In 2003 Abduzhabbarov moved to Atyrau on the northern shores of the Caspian Sea in western Kazakhstan to teach in a madrassah (Islamic school) attached to the city's Imangali Mosque. On the recommendation of the Mosque's imam he advised on Arabic calligraphy in the new Attakua Mosque built in Rembaza on the southern edge of the city.

In November 2003, the Regional Prosecutor's Office accused Abduzhabbarov of rejecting state registration and violating the Religion Law under the then Administrative Code Article 375, Part 1. Prosecutors accused him of leading evening prayers illegally during Ramadan in October 2003 in the illegally-built Attakua Mosque in Rembaza, attended by up to 20 Muslims.

However, witnesses testified in court that the authorities had assigned the land for the Mosque that it had not been completed and only the building workers had used the uncompleted building for worship, Ponomarev noted. In December 2003 an Atyrau court acquitted Abduzhabbarov of the charges. The following month Atyrau Regional Court rejected the Prosecutor's Office appeal against the acquittal.

In June 2004, the authorities finally registered the Darus-Salam Muslim community, under which the Attakua Mosque was able to begin functioning. Up to 70 Muslims would regularly attend Friday prayers there. Darus-Salam later organised courses in Islam and Arabic, with up to 40 attendees, most of them young people.

However, in summer 2004 Abduzhabbarov had to leave Atyrau and moved to Oral, capital of the neighbouring West Kazakhstan Region. Local Muslims told Ponomarev of Memorial that officials had given "unofficial warnings" that the Mosque would not get registration if Abduzhabbarov remained in Atyrau. He maintained contact with Mosque members after his move to Oral, Ponomarev added.

Local media later noted differences between Imam Abduzhabbarov and other local clergy, who appeared less knowledgeable about Islam and were said to mix folk elements into their religious practice. The media accused Abduzhabbarov of being a Wahhabi or Salafi." [3]

What is the **International Islamic University of Islamabad** where Imam Abduzhabbarov studied and what can we find in its curriculum?

In his 2013 paper on the International Islamic University of Islamabad, Qasir Amir notes that the following teachings of the criminal law are instructed in the said institution:

The punishments of Hudood^[4] are the fundamental and integral part of Islam and cannot be done away with or abolished on the demand of certain elements. Islam has ordained three kinds of punishments - Hadd, Qisas and Tazir - for different offences and crimes subject to fulfillment of certain prerequisites.

Adultery/ Illegal sexual intercourse

For those who are married: The punishment of Hadd for adultery is Rajam i.e. stoning to death for those who are married.

For unmarried: For those who are un-married/bachelors the punishment is 100 stripes.

This sentence was not introduced by Islam but even before Islam, this sentence was present in other divine books like Torah that was revealed to the Moses.

In this regard, Almighty God says in verse number 2 of Surah Noor, "Those who fornicate whether female or male - flog each one of them with 100 lashes. And let not tenderness for them deters you from what pertains to Allah's religion, if you do truly believe in Allah and the Day of Judgment and let a party of believers witness their punishment".

Theft

The punishment of Hadd for theft is amputation of right hand from the joint of the wrist if the theft is committed for the first time.

In this regard, Almighty God says in verse number 38 of Surah Maidah, "As for the thief - male or female - cut off the hands of both. This is a recompense for what they have done, and an exemplary punishment from Almighty Allah. Allah is All-Mighty, All-wise".

Drinking alcohol

The punishment of Hadd for drinking wine or taking intoxicating liquor is whipping 80 stripes.

About the prohibition of drinking/taking liquor Almighty God says in verse 90 of Surah Maidah, "Believers! Intoxicants, games of chance, idolatrous sacrifices at altars and divining arrows are all abominations, the handiwork of Satan. So turn wholly away from it that you may attain to true success".

Apostasy (Irtidad)

The punishment of Hadd is death. [5]

Some conclusions

In the light of these teachings, it is easy to imagine what was being taught about the Universal Declaration of Human Rights, the status of non-Muslims and women, school education for girls, the choice of their spouse, in an "ideal" Islamic society as seen at the Islamic University of Islamabad.

It can be expected that this is the sort of theological training that Imam Abdukhalil Abduzhabbarov received in the 1990s in Pakistan. This theological teaching might have been the one he had shared when he was back in Kazakhstan and for which he got in trouble with the authorities until he left for Saudi Arabia in 2006. In this country, he might have felt more "at home" than in post-Soviet Kazakhstan as a similar theology is endorsed by the Saudi Arabian state and its practical implementation in criminal law is strictly implemented.

More research about what Imam Abdukhalil Abduzhabbarov was preaching and teaching in Kazakhstan and in Saudi Arabia to other Kazakhs visiting the country is needed before an opinion can be expressed on his case. However, if the contents of his writings and sermons are in line with the curriculum of the International Islamic University of Islamabad and the theological ideology of Saudi Arabia, he is obviously violating Article 5 of the ICCPR even if he does not advocate violence.

Despite that, Imam Abdukhalil Abduzhabbarov has the right to a fair trial and to be free from torture, and the international human rights community should make sure that these rights are respected. However, people who profess and promote an ideology that implies the destruction of any of the rights and freedoms recognized in the ICCPR or at their limitation should not be considered prisoners of conscience or victims of violations of their freedom of religion. They should not be instrumentalized either by 'democratic' countries or human rights NGOs to denounce autocratic or dictatorial regimes under which they live. It would be jumping from the frying pan into the fire.

[1] The identification by a Muslim of others as being infidels. This term is as strong as "infidel" in English or « mécréant » in French. It presupposes that non-Muslims are second-rank citizens and conveys the concept that they are some sort of "Untermensch".

[2] See Application no 31098/08: Hizb-ut Tahrir and Others v. Germany. The case concerned the prohibition in Germany of the activities of Hizb-ut Tahrir, which advocated the overthrow of non-Islamic governments and the establishment of an Islamic Caliphate. The Court held in particular that under Article 17 (prohibition of abuse of

rights) of the European Convention on Human Rights, it was impossible to derive from the Convention a right to engage in an activity aimed at destroying any of the rights and freedoms set forth in the Convention. The association could therefore not rely on Article 11 (freedom of assembly and association) to complain about the ban of its activities.

See as well Application nos. 26261/05 and 26377/06: *Kasymakhunov and Aybatalov v. Russia* (Paragraphs 106, 113 and 116

[3]http://forum18.org/archive.php?article_id=2259

[4]The Hudood Ordinances are laws in Pakistan that were enacted in 1977 as part of then military ruler Zia-ul-Haq's "Sharisation" of "Islamisation" process. It replaced parts of the British-era Pakistan Penal Code adding new criminal offences of adultery and fornication, and new punishments of whipping, amputation and stoning to death. The Hudood Law was intended to implement Shari'a law or bring Pakistani law into "conformity with the injunctions of Islam", by enforcing punishments mentioned in the Quran and sunnah for *zina* (extramarital sex), *qazf* (false accusation of zina), theft, and consumption of alcohol.

[5]<https://www.academia.edu/people/search?utf8=%E2%9C%93&q=International+Islamic+University+in+the+Pakistani+capital+Islamabad>