

## Muslims in Europe and Covid-19: Transnational and National Fatwas

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### Abstract

Covid-19 obliged the authorities of all countries to adopt a series of measures aimed at limiting the spread of the virus (e.g. social distancing and restrictions on internal and international movement), some of which prevent Muslims from performing, or only partially perform, some of their acts of worship, in particular those which, by requiring and/or prescribing the formation of an assembly, physical proximity or direct contact between those performing them (collective prayers, pilgrimage, religious festivals, funeral rites), are more conducive to the spread of the virus. This situation is at the root of the many questions that some European Muslims have asked jurists to provide them with guidance, based on Islamic law, on how to reconcile the anti-Covid rules with the obligation to perform acts of worship. This article analyses the *fatāwā* issued by the European Council for Fatwas and Research in response to these questions. In particular, this article has three aims: 1. to identify and describe the solutions adopted by the Mağlis to adapt religious practice to the restrictions imposed by the Covid; 2. to verify whether the solutions adopted by the ECFR to combat the pandemic are compatible with the provisions adopted by European governments in this regard; 3. to verify whether and in what terms the Islamic jurisprudence produced at the national level (the Italian one) transposes the transnational jurisprudence of the ECFR. The focus will be on *fatāwā* concerning collective prayers and funeral rites.

*Key words:* Covid-19, European Council for Fatwas and Research, Fatwas, Italian Islamic Association of Imams and Religious Guides, Muslims in Europe.

### Introduction

The authorities in all countries have taken a number of measures to limit the spread of the Covid-19. The most important of these measures have probably been physical distancing and restrictions on movement (internal and international). These measures have also had an impact on religious practices. The practices that have been drastically restricted are those that are more conducive to the spread of the virus because they require and/or prescribe, the formation of an assembly, physical proximity or direct contact between those who perform them. In the specific case of Muslims, the restrictions have affected the performance of

various types of prayers,<sup>1</sup> pilgrimages,<sup>2</sup> the feast of breaking the fast (*ʿīd al-ḥajj*), the feast of sacrifice (*ʿīd al-aḍḥā*),<sup>3</sup> funeral rites,<sup>4</sup> etc., to the point of imposing a temporary ban on their performance, especially during the most acute phase of the pandemic. This situation is at the origin of the numerous questions that Muslims have put to the jurists (*fuqahāʾ*, sing. *faqīh*) to provide them with guidance, based on Islamic law, on how to reconcile the anti-Covid rules with the obligation to perform acts of worship. However, it was not only individual believers, but also the government authorities of some Muslim-majority countries<sup>5</sup> and international health authorities who asked for the opinion of the jurists (WHO 2020): in these cases their intervention was requested in order to religiously legitimise precisely those regulations and instructions which, in the name of the fight against Covid-19, restricted freedom of worship and thus make them plausible in the eyes of believers who would have accepted and respected them more. The *fuqahāʾ*, both those acting individually and those gathered in collegial institutions,<sup>6</sup> produced hundreds of responses (*fatāwā*, sing. *fatwā*)<sup>7</sup> in response to the many and varied requests they received, resulting in a jurisprudence specifically devoted issues related to Covid-19 (ʿALLĀMĀ 2020a; ŞABRĪ 2020),<sup>8</sup> to which was added a debate on the

- 1 The performance of congregational prayers, which require the presence of a plurality of believers, clashed with the prohibition of assembly and physical distance.
- 2 As it involves millions of believers from all over the world, it violated both ban on assembly and the restrictions on freedom of movement. In this regard, it should be noted that on 26 February 2020, Saudi Arabia decided to suspend the issuing of visas to foreign Muslims wishing to go there to perform the minor pilgrimage (*ʿumra*); a few days later, when the first case of Covid-19 was recorded in the country, the performance of *ʿumra* was also banned for the population of the state. Instead, only one thousand believers were allowed to perform the great pilgrimage (*ḥaǧǧ*) (EBRAHIM-MEMISH 2020; HOANG [et al.] 2020; JOKHDAR 2021; SAYED 2021).
- 3 The large number of believers involved violated the prohibition on gathering, physical proximity, and direct contact. In July 2021, the World Health Organization (WHO) expressed concern about the impact of the Feast of Sacrifice on the number of infections, which had already been rising for several weeks in some Maghreb countries: “With the Eid al-Adha feast taking place during the week starting 20 July [2021], traditionally marked by religious and social gatherings, WHO is concerned that the current up-surge may continue to peak in the coming weeks, with catastrophic consequences” (WHO 2021).
- 4 Since they involved direct contact with the body of the deceased, who died from or with Covid-19, they could be the source of possible infection. Restrictions on international travel also prevented the bodies of many Muslims from being returned to their countries of origin for burial there.
- 5 This was the case in Pakistan, for instance, whose president, Arif Alvi, asked al-Azhar, one of the most prestigious and authoritative religious centres in the entire Islamic world, to issue a *fatwā* on the possibility of suspending Friday congregational prayer. Egypt’s 2020.
- 6 I am referring here to those institutions—independent or linked in various ways to the governmental authority of the country in which they operate—that are engaged in the process of *iftāʾ*, i.e. the issuance of *fatāwā*.
- 7 A *fatwā* is the answer to a question posed by a believer or a group of believers concerning the legal-religious regulation of a particular matter. The person who asks for it is called a *mustaftī*, while the scholar who issues it is called a *mufṭī*. The *fatwā*, being a mere opinion, has no binding character, so the *mustaftī* is free not to disregard it; this is one of the reasons why it is not possible to compare a *fatwā* with a judgement. “Fatwā” 1995; ZULFIKAR 2014; AWASS 2023.
- 8 This is not the first time that jurists have been called upon to instruct believers on how to behave during an epidemic. Indeed, this has happened during other epidemics throughout history. For example, Jacqueline Sublet, analysing one of the most important treatises in Islamic literature on the plague, that of the Egyptian jurist Ibn Ḥaǧar al-ʿAsqalānī (1372-1449), states that “les savants ont été poussés par le désir ...

jurisprudence of emergencies (*fiqh al-tawāriʿ*) (‘ALLĀMĀ 2020b).<sup>9</sup> This extensive jurisprudential production testifies well to the importance that many believers attach to respecting the rules of Islamic law in its confessional sense, and thus to the vitality that characterises it (DE ANGELO 2010).

Covid-19-related fatwas have been issued both in Arab-Islamic countries and in societies where Muslims are a minority.<sup>10</sup> On 27 February 2020, in Baghdad, the Commission [for the Issuance] of the Fatwā of the Iraqi Legal Council<sup>11</sup> issued a ruling entitled *Response Regarding the Performance of Collective Religious Practices Following the Spread of the Coronavirus*.<sup>12</sup> To the best of my knowledge, this *fatwā* is the first written response in the Middle East and North Africa to the request for instructions (*kayfiyya*) from worshippers who wanted to know whether and how to perform acts of worship in the face of the ongoing pandemic.<sup>13</sup> Outside the Arab-Islamic world, however, the first Muslim jurists to comment on the relationship between the coronavirus and religious practice were those of the Resident Fatwa Committee<sup>14</sup> (RFC) of the Assembly of Muslim Jurists of America<sup>15</sup> (AMJA), who issued a statement (*al-bayān*)<sup>16</sup> from California on 3 March in response to the many questions (*‘adad min al-asʿila*) they had received from mosque leaders and, more generally, individual worshippers about this very relationship (AMJA 2020).<sup>17</sup>

Moving from the New to the Old Continent, and remaining in the sphere of collegial institutions responsible for issuing *fatāwā*, as well as the main actors involved in the production of Islamic law in the West, the responses of the European Council for Fatwas and

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de proposer enfin aux fidèles un ensemble de préceptes, une jurisprudence, en définissant la conduite que le musulman doit tenir devant la peste .... Ces savants auxquels la population des régions atteintes demande expressément ... de prononcer des *fatwā*, se sont à nouveau tournés vers les textes sacrés et ont consulté les recueils de *fiqh* pour élaborer les réponses aux questions posées”. SUBLET 1971: 145-146.

- 9 A major conference organised by the World Islamic League (Rābiṭat al-‘Ālam al-Islāmī) and the Emirati Council for [the Issuance of] Legal Opinions (Maḡlis al-Imārāt li-l-Iftā’ al-Šar‘iyyi), which was held remotely on 18-19 July 2020 (VV. AA. 2020; al-BAYĀN 2020), was also devoted to this *fiqh*.
- 10 For an overview of the Islamic responses to the Covid-19 pandemic, see SHABANA 2023.
- 11 In Arabic Laḡnat al-Fatwā fī l-Maḡmū‘a al-Fiḡhiyya al-‘Irāqīyya.
- 12 In Arabic: *Fatwā bi-Ša’n Adā’ al-‘Ibādāt al-Ġamā‘iyya ma’a Intiṣār Fāyṛūs Kūrūnā*. This *fatwā* was addressed to the Sunni part of the population. The Shia part of the population, however, found a point of reference in the *fatwā* issued, on 16 March 2020/21 raḡab 1441, by the āyatullāh al-Sistānī. Al-Sistānī 2020. Unless otherwise indicated, all translations from Arabic are my own.
- 13 Among scholars, the Iraqi *fatwā* is certainly less well known than the one issued a few days later, on 3 March 2020, by the Emirates Council for Legal Opinions: *Fatwā no. 11 of 2020 Regarding Rules for the Performance of Collective Religious Practices Following the Spread of the Covid-19 (Corona) Virus [Fatwā raqm (11) li-Sanat 2020 bi-Ḥuṣūṣ mā Yata‘allaq bi-Aḡkām Adā’ al-‘Ibādāt al-Ġamā‘iyya ma’a Intiṣār Fūrūs Kūfīd-19 (Kūrūnā)]*. The Emirati *fatwā* is better known than the Iraqi one. In fact, it was immediately translated into English, making it accessible even to scholars who do not read Arabic.
- 14 In Arabic al-Laḡnah al-Dā‘imah li-l-Iftā’. Curiously, the English translation of the Commission’s name does not exactly match with the Arabic version: Internal Fatwā Commission (translation from English), Permanent Fatwā Commission (translation from Arabic).
- 15 In Arabic Maḡma‘ Fuqahā’ al-Šarī‘a bi-Amrīkā.
- 16 Beyond the formal title, this document has a content that makes it a *fatwā*.
- 17 All RFC responses, in both English and Arabic, are available on the AMJA website (<https://www.amjaonline.org>).

Research (ECFR),<sup>18</sup> which, as will be seen shortly, issued an initial statement on Covid-19 on 3 March 2020, similar to that of the AMJA, are relevant. This institution was established in London in 1997—later moved to Dublin in 1999<sup>19</sup>—on the initiative of the Federation of Islamic Organisations in Europe, founded in 1989.<sup>20</sup> Its former president, ‘Abd Allāh bin Yūsuf al-Ġuday’,<sup>21</sup> explained the reasons for its establishment as follows:

one of the principal reasons for the creation of this Council is to fill the gap in scholarly research, with regards to the Islamic legal provisions relating to the reality of living in Europe, which is a collective obligation ... upon the community. The ECFR aims to produce for fatwa that is sympathetic and mindful of the European context.<sup>22</sup>

The Council has therefore set itself the goal of becoming the transnational religious authority<sup>23</sup> of reference for Muslims in Europe, i.e. to provide them with an Islamically legitimate solution to the problems they encounter in the exercise of their religious practice, which are determined by the specific context in which they live. In this sense, the Council represents one of the forms of global Islam that “were developed as means of accommodating Muslims to either life as pious minorities or dominant secular modernity, while protecting them from the moral pitfalls of Western lifestyle” (GREEN 2020: 138).

The ECFR pronounced on Covid-19 on three separate occasions between March and April 2020. On 3 March 2020, the Council issued a short statement<sup>24</sup> commenting on the precautionary measures (*al-iğrā’āt al-ihtirāziyya*) taken by states to reduce the dangers posed by the virus and to limit its transmission. In particular, the Mağlis stressed the importance that Islam attaches to human health (*ṣiḥhat al-insān*), for the protection of which it provides a number of instruments of both a preventive (*al-wasā’il al-wiqā’iyya*) and curative (*al-asālib al-‘ilāğiyya*) nature. For example, in order to prevent the spread of infectious diseases (*al-amrāḍ al-mu‘diya*), it prescribes, mainly on the basis of prophetic indications, quarantine (*al-*

18 In Arabic *al-Mağlis al-Ūrūbī li-l-Iftā’ wa-l-Buḥūt*. Henceforth alternatively ECFR or Council or Mağlis.

19 For possible reasons for this shift, see SCHARBRODT [et al.] 2015.

20 For the origins of this Federation and its links to the Muslim Brotherhood, see VIDINO 2012.

21 He is a British citizen born in Iraq in 1959. He has lived in the United Kingdom since 1993. He was elected President of the Council on 9 November 2018, replacing Yūsuf al-Qaraḍāwī, who had been President since 1997. The current President is Suhayb Ḥasan.

22 This statement is included in the “Introduction – The President’s Word” section of the Euro Fatwa App. This is a smartphone app launched by the Council in 2019 with the aim of disseminating its statements more widely. It is currently available in four languages (Arabic, English, Italian and Spanish). Islamicfiqh.net, a platform for teaching of Islamic law, described the app as “a simplified and concise Fiqh guide issued by the European Council for Fatwa and Research (ECFR) to enable European Muslims to adhere to the regulations and manners of Islam and to fulfil their duties as Muslim citizens, while taking care of the legal, customary and cultural specificities of European societies”. Islamicfiqh.net no date. The Euro Fatwa App is available on both the Play Store and the App Store.

23 The transnational nature of the Council is linked to the fact that it addresses all Muslims in Europe, regardless of the specific national reality to which they belong.

24 *Bayān al-Mağlis al-Ūrūbī li-l-Iftā’ wa-l-Buḥūt hawla Fīrūs Kūrūnā (COVID-19) / Statement of the European Council for Fatāwā and Research on the Corona virus (Covid-19)*. ECFR 2020a.

*ḥağr al-ṣiḥḥī*) and isolation (*‘azl*),<sup>25</sup> prohibition of entry into and exit from areas where an epidemic is raging, and vaccination (*al-taṭ‘īm*). It is therefore not surprising that in the face of the growing spread of the coronavirus, the ECFR addressed worshippers, imams and mosque staff, urging them to take all precautions deemed necessary to avoid contagion, even going so far as to refrain, if the situation so required, from participating in congregational prayers and from the obligation to perform Friday prayer, an exception deemed permissible if, among other hypotheses, the worshippers are ill or fears for themselves or their family (ECFR 2020a). A little more than two weeks after 11 March 2020, the date on which the WHO issued its statement elevating Covid-19 to pandemic status, the Council urgently convened an extraordinary meeting (*al-dawra al-tāri‘a*) of its work, the 30th, which was held electronically [*bi-taqniyyat (zoom) al-tawāṣuliyya*] from 25 to 28 March 2020. This meeting concluded with the issuance of a final statement (*al-bayān al-ḥitāmī*) entitled *Legal Developments Related to the Corona Covid-19 Virus*,<sup>26</sup> which contained 21 *fatāwā* (nos. 1-21) and 10 recommendations (*tawṣiyāt*) (ECFR 2000b), in which it pronounced on the performance of collective prayers, the possibility of anticipating the payment of legal alms (*zakāh*), the obligation to respect quarantine, the prohibition of movement and physical contact, the prohibition of social stigma for Covid-19 sufferers, the prohibition of speculation, and finally on the performance of funeral rites (*aḥkām al-ḡanā‘iz*). At the end of the meeting, the Mağlis announced that they would meet again soon to discuss practices related to the upcoming month of Ramaḍān and to answer any other questions that might arise regarding the Covid-19 (ECFR 2020b). Indeed, the approaching month of Ramaḍān, which was due to begin on 23 April 2020, prompted some Muslims to turn to the Mağlis<sup>27</sup> for clarification on fasting (e.g. about the possibility that not drinking liquids during the day might increase susceptibility to infection), the *tarāwīḥ* prayer (which, for example, had to be performed at night, in the mosque, and thus conflicted with the curfew and ban on movement imposed in many countries), the fasting festival (which would have violated the rules on assembly and movement), and so on. In order to dispel these doubts, the Council had to convene a new meeting—in addition to the extraordinary one (*al-ḡalsa al-takmīliyya*) held in March—which was held, again online (*bi-taqniyyat al-tawāṣul al-ṣabakī*), on 13 and 14 April 2020; the results of this second meeting were incorporated in the publication of another final statement entitled *The Rules of Fasting and their Developments in Light of the Covid-19*,<sup>28</sup> containing thirteen more *fatāwā* (nos. 22-34) and some recommendations<sup>29</sup> (ECFR 2000c).<sup>30</sup> However, the content of

25 Islamic law therefore recognises the difference between the confinement of the potentially ill person (quarantine) and the confinement of the diagnosed person (isolation). On the difference between quarantine and isolation, see GENSINI [et al] 2004: 258.

26 *Al-Mustağiddāt al-Fiqhiyya li-Nāzilat Fīrūs Kūrūnā Kūfīd-19*.

27 In all cases, requests for replies were sent to the General Secretariat of the Council [al-Amāna al-‘amma li-l-Mağlis (ECFR 2020b) or al-Amāna (ECFR 2020c)].

28 *Aḥkām al-Ṣiyām wa-Mustağiddātuh fī Ḍaw’ Nāzilat Fīrūs Kūrūnā Kūfīd-19*.

29 Unlike the first document, this one presents the recommendations in an unnumbered list.

30 The Council published the two statements in Arabic, without providing an official translation, effectively making them virtually inaccessible to all those European Muslims who, increasingly, know little or no Arabic. Aware of the limitations that this repeated failure imposes on the usefulness and dissemination of its jurisprudence, the Mağlis, through the mouth of its Secretary General, Ḥusayn Ḥalāwa, thanked

this document does not fully reflect its name: in fact, it deals not only with matters related to fasting (*ṣiyām*) and the month of Ramaḍān, but also with legal almsgiving, pilgrimage (*ḥaǧǧ*),<sup>31</sup> funeral rites and interest-bearing loans (*al-qurūd al-ribawīyya*).

A look at the content of the opinions issued by the Maǧlis reveals the variety of cases related to Covid-19, on which they have issued opinions, a circumstance that makes them unique in the panorama of European Islamic legal production.<sup>32</sup> In fact, in some countries of the Old Continent, individual fatwas have been issued by local Islamic centres and associations on only a few specific issues, mainly the adaptation of the conduct of collective prayers and funeral rites to the anti-Covid rules. Moreover, these *responsa* have a reduced territorial scope than those issued by ECFR, since they are addressed only to Muslims living within the borders of the state and/or region in which they are issued.<sup>33</sup> Conversely, the ECFR's responses are addressed to all European Muslims.<sup>34</sup> In view of the above, I have decided to make the Council's jurisprudence on the relationship between coronavirus and religious practice the subject of this article. In particular, this article has three objectives: 1. to identify and describe the solutions adopted by the Maǧlis to adapt religious practice to the restrictions imposed by the Covid; 2. to verify whether the solutions adopted by the ECFR to combat the pandemic are compatible with the provisions adopted by European governments in this regard; 3. to verify whether and in what terms the Islamic jurisprudence produced at the national level (the Italian one) transposes the transnational jurisprudence of the ECFR. In other words, whether global Islam, i.e. "the doctrines developed and practices promoted by transnational religious activists" (GREEN 2020: 1), of which the ECFR is one, has influenced local Islam, i.e. Italian Islam. The focus is on *fatāwā* which refers to collective prayers and funeral rites.<sup>35</sup> This choice was dictated by two reasons. First, the impossibility of performing collective prayers and funeral rites<sup>36</sup> seems to be what has worried Muslims the most, increasing the need to remedy it. Second, since the Islamic jurisprudence produced in Italy

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those who cooperate with the General Secretariat to translate the texts produced into English, French, German and Turkish (ECFR 2000c).

- 31 Only one *fatwā*, no. 31, is devoted to this rite. A believer asked the Council if it was permissible to postpone the pilgrimage until the following year in view of the increasing spread of the coronavirus. The answer was in the affirmative. If it is indeed true that the believers are obliged to perform the *ḥaǧǧ* at least once in their lives, it is also true that it is up to them to decide when, basing this decision on their economic possibilities, their state of health and the absence of factors that could endanger their lives. During the pandemic, this last condition could not be fully met, so the pilgrimage could be postponed until health conditions made it safer.
- 32 Outside Europe, however, the ECFR's jurisprudence is comparable to that of the AMJA in terms of the type and number of subjects covered.
- 33 However, they have a greater chance of actually reaching potential recipients than the ECFRs because they are written in local languages.
- 34 Only recently has there been a survey of the real appreciation of the ECFR among European Muslims (SHAVIT-SPENGLER 2017).
- 35 Instead, for a general overview of the ECFR jurisprudence on Covid, see SONA 2021.
- 36 Given the increasing number of deaths due to Covid-19, it is natural that Muslims have become concerned about the impossibility of complying with many of the rules regarding the treatment of corpses.

has mainly concerned collective prayers and funeral rites, it has been possible to compare the national (Italian) with transnational (ECFR) *fatāwā* on these issues.

### Transnational Fatwas: ECFR's Responses Regarding Collective Prayers

In an attempt to prevent gatherings, which were identified as one of the main means of spreading the virus, some states ordered the closure of places of worship, such as the UK (AL-ASTEWANI 2021), while others left them open but banned gatherings, such as France (LICASTRO 2020b; IVALDI 2020), Italy (LICASTRO 2020a) and Germany (BALDINI 2020). For Muslims, the effect of these measures, for the time they remained in force, was to suspend the performance of collective prayers (*ṣalawāt al-ḡamā'a*) in the mosque (*masḡid*, pl. *masā-ḡid*),<sup>37</sup> especially the Friday noon congregational prayer<sup>38</sup> (*ṣalāt al-ḡum'a*).<sup>39</sup> In fact, the obligation for all believers, even those living in non-Islamic countries (AL-LAḠNA 1996: 183, 186), to perform *ṣalāt al-ḡum'a* in a mosque<sup>40</sup> is the reason why a large number of believers usually congregate in its premises,<sup>41</sup> who, being in close contact with each other,<sup>42</sup> risk

37 This expression refers to the prayer that is performed by the faithful, at least two/three (the imam and one/two praying people), who gather for this purpose in the same place and at the same time. AL-QAHTĀNĪ 2003: I,410.

38 The Friday prayer is only valid if it is performed at the time for which it is prescribed (*fī waqt al-maṣrū'*), i.e. when the sun begins to set (*hīna tamīl al-šams*). AL-QAHTĀNĪ 2003: II,794-801.

39 Or *ṣalāt al-ḡumu'a* or *ṣalāt al-ḡama'a*. AL-QAHTĀNĪ 2003: II,739.

40 All jurists agree that, with some exceptions, the Friday prayer must be performed in the mosque. On the other hand, the same agreement does not exist for the other collective prayers [the five daily prayers (*al-ṣalawāt al-ḡamsa*), those of the month of Ramaḏān (*ṣalāt al-tarāwīḥ*), the prayer of the two religious festivals (*ṣalāt al-ṭdayni*), the funeral prayer (*ṣalāt al-ḡanāza*), etc.]. Some jurists consider their performance in the mosque to be obligatory (*wāḡib*), while others consider it to be highly recommended action (*sunna mu'akkada*). For example, on the five daily prayers, see AL-QAHTĀNĪ 2003, I:410-411, footnote 4.

41 The likelihood of this happening is greater in the West, where the number of mosques is small. The few *masāḡid* that exist in Paris, for example, cannot accommodate all the worshippers who wish to perform the Friday prayer; to remedy this situation, it was proposed that they be performed twice in succession in the same mosque. The *fuqahā'*, however, considered this solution legally inadmissible (*inšā' ḡum'atayn fī wāḥid masḡid ḡayr ḡā'iza šar'*); the rule (*al-aṣl*), in fact, dictates that only one *ṣalāt al-ḡum'a* may be performed per city. An exception is allowed only if the mosque cannot accommodate all the worshippers or if its location within the city is too far from the area where the worshippers live: in these cases, it is permissible to hold a second prayer, but in another mosque or, in the absence of a mosque, in a private house, in a garden or even in a public square, subject to the permission of the competent authorities (AL-LAḠNA 1996: 262-264). The ECFR has also expressed itself on this point: the proliferation of mosques in which Friday prayers are held in the same area betrays their purpose, which is that of congregation (*al-iḡtimā'*) and convergence (*al-talāqī*) of the believers, and should therefore be banned. The proliferation of *ṣalawāt al-ḡum'a* is one of the reasons why the ECFR did not consider acceptable the proposal to perform the Friday prayer at home rather than in the mosque, which some Muslims had seen as a possible solution to circumvent the ban on congregational prayers in places of worship imposed during the pandemic. *Fatwā* no. 5.

42 In congregational prayers, the worshippers are arranged in horizontal rows behind the imam. The rows must be close (*istiwā' al-ṣufūf*), i.e. there must be no space between one believer and another: the shoulder and heel of the person praying must touch those of the person next to him. AL-ʿUṬAYMĪN 2002: 11.

infesting each other and thus contributing to the spread of the virus. In addition to violating the ban on assembly, holding group prayers in the mosque also violated the rules restricting movement: entering the place of worship to pray was not one of the permitted exceptions to the lockdown. It is therefore clear that Muslims found themselves in the difficult position of having to comply with the prohibitions of the political authorities, which prevented them from holding congregational prayers in the mosque, on the one hand, and the religious rules, which required or recommended the latter, on the other.

In order to get out of this *impasse*, some believers turned to the ECFR and asked whether the assumptions on which the above-mentioned prohibitions are based, mainly the protection of life, could also be considered legitimate from an Islamic point of view, i.e. whether they could be counted among those hypotheses for which the religion allows an exception to the performance of *ṣalawāt al-ḡamā'a*. The Maḡlis clearly stated that in view of the lethal (*qātila*) and infectious nature<sup>43</sup> of Covid-19 (*intiḡāluḡā min šaḡs muṣāb bi-hi ilā ḡayri-hi*) (*Fatwā* no. 14), Muslims, in fulfilling the obligation imposed on them by Islam to protect life (*al-ḡifāz 'alā arwāḡ al-nāfs wāḡib*), their own and that of others (*ḡifāz 'alā al-naḡs wa-l-ḡayr*), are obliged (*yaḡib*) to take all measures (*ḡamī' al-tadābīr*) deemed necessary to prevent the spread of infection (*ḡifāz 'alā arwāḡ al-anḡus min naḡl 'adwā ḡirūs kūrūnā ilayḡā*) i.e. to abide by the decisions of the political and health authorities of the place where they live<sup>44</sup> (*al-aṣl ḡuwa al-iltizām bi-qarār al-suluḡāt wa-l-munazzāmāt al-ṣiḡḡiyya ḡi madīnatika*), for example, those concerning the prohibition of assembly (*man' al-taḡammu'*) and physical distance (*al-tabā'ud al-ḡasadī*), including the suspension of collective prayers in the mosque, which the ECFR considers not only legitimate but even obligatory (*yaḡib an tu'alliq al-ṣalawāt ḡi l-masḡid ḡi ḡādīḡi l-ḡāla ḡifāz 'alā arwāḡ al-nās*), also because of the exemplary role that mosques must play both in defending life and in complying with the regulations issued by the authorities (*Fatāwā* nos. 3, 5, 6, 7, 12, 14, 16, 19, 22). The primary value that the sacred Texts place on the preservation of life (*dālika l-amr min ḡumlat al-qiyam al-'ulyā*), and the consequent inclusion of this principle among the objectives that the *ṣarī'a* must pursue (*ḡifāz 'alā l-naḡs allatī ḡiya maḡsad min maḡāṣid al-ṣarī'a*), is the premise of the ECFR's argument that the performance of group prayers must give way to the protection of physical health (*ṣiḡḡat al-ḡasad*). In fact, allowing believers to perform group prayers in the mosque is tantamount to allowing them to create the conditions for contracting and transmitting the virus, thus endangering their lives and the lives of others at risk, in violation of the dictates

43 On the basis of the scientific data available, the ECFR warns that the virus can be transmitted both directly and indirectly. Direct transmission occurs when the distance between the infected person and the healthy person is such that the droplets produced by the former are not prevented from reaching the mucous membranes of the latter; this is why the ECFR has banned the handshakes and hugs that are normally recommended. This decision is based on the tradition that the Prophet avoided meeting a leper for fear of being infected (Muslim 2004: II,477 – *ḡadī' 2231*; *Fatwā* no. 15). Indirect transmission occurs when the healthy person comes into contact with an object that has been touched by the infected person, e.g. the door handle in a mosque. *Fatwā* no. 7.

44 The ECFR's call for Muslims to follow the advice of the political/health authorities seems to be shared by the imams and *ṣuyūḡ* (sing. *ṣayḡ*) in many European countries (Bawidamann [et al.] 2021; KÜHLE-LANGHOLM LARSEN 2021; KOSTRCKI-PIWKO 2020), without this of course implying that the decision of the latter is derived from the opinion of the former, a hypothesis that remains to be verified.



of the Qur’ān and Sunnah.<sup>45</sup> With regard to the Book, the ECFR refers to only two verses—II:195 (“do not throw [yourselves] with your [own] hands into destruction [by refraining]”) and IV:29 (“do not kill yourselves”)<sup>46</sup>—which are not followed by any commentary. However, four traditions (*aḥādīṭ*, sing. *ḥadīṭ*) are reported from the Sunnah. The first, “A sick person should not be taken to one who is healthy” [AL-BUḤĀRĪ 2003: III,92 (*ḥadīṭ* no. 5771); MUSLIM 2004: II,471 (*ḥadīṭ* no. 2221)], is used to support the thesis that holding collective prayers in mosques should be forbidden to all, not just those diagnosed with Covid-19. In fact, medical science has pointed out that among the healthy there may be some who are not actually healthy, i.e. the so-called asymptomatic; the latter, unaware that they have contracted the infection, risk spreading the virus and endangering the lives of others by going to the mosque and coming into close contact with other worshippers. The second tradition cited that is considered authentic (*ḥadīṭ ṣaḥīḥ*), is the one according to which the Prophet said “if you hear that it (plague) has broken out in a land, do not go to it; but if it breaks out in a land where you are present, do not go out escaping from it”;<sup>47</sup> this *ḥadīṭ* is combined with that from which the general principle of law (*qā’ida ‘amma li-l-aḥkām al-šar‘iyya*) is derived, which states the prohibition of harm: “No harm shall be done either to oneself or to others” (*lā ḍarar wa-lā ḍirār*) (KAMALI 2015: 123-127; ZAKARIYA 2015: 158-172). In essence, the prohibition for Muslims to enter an area where an epidemic is spreading is equivalent to the protection of their own lives, i.e. the prohibition against causing harm (infection) to themselves; the prohibition not to leave the area where an epidemic is spreading is equivalent to the obligation to protect the lives of others, i.e. the prohibition against causing harm (infection). The ECFR added that if this prohibition applies to countries, regions and cities (where it is easier to keep one’s distance), it must apply all the more to smaller contexts, such as a mosque, where it is more difficult to keep one’s distance, thus increasing the chances of contagion. The *ḥadīṭ* in question has also been invoked by the ECFR as a basis (*dalīl*) for legitimising quarantine and lockdown from an Islamic point of view: the Muslim living in the place where these measures are imposed must strictly abide by them, i.e. stay indoors and go out only in cases of force majeure, taking all necessary precautions. The believer who does not abide by these measures is considered a sinner and will have to answer before God

45 The preservation of life is the reason why, for example, believers are not allowed to go to the mosque to pray in the context of war. The Syrian Islamic Council issued a *fatwā* in 2016 entitled *Decision on Friday Prayer in Areas Subject to Bombardment* (*Ḥukm Ṣalāt al-Ġum‘a fī l-Manāṭiq allatī Tata‘arraḍ li-Qaṣf*) in response to a believer who wanted to know whether the residents of Aleppo, threatened by the bombs of the Russian air force, could perform the noon prayer on Fridays instead of the *ḡum‘a*. The Maḡlis declared that performing the Friday congregational prayer in the mosque was an obligation that fell on all *mukallaḡūn* (able-bodied men), “except those who have justification” (*illā man ‘uḍr*). It held that the latter category includes those believers who, because they live in areas of conflict, run the risk of losing their lives in order to go to the mosque; in order to avoid this risk, they must replace the *ṣalāt al-ḡum‘a* with the *ṣalāt al-zuḥr* to be performed at home. In fact, the jurists stated that since the preservation of life is one of the objectives of Islamic law (*maqāṣid al-šar‘a*), anything that concerns it constitutes a valid reason for exemption from the obligation of congregational prayer on Fridays. The text of the response in Arabic is available at the following URL: [urly.it/3py05](http://urly.it/3py05) (Last accessed Nov. 17, 2022).

46 The English translation of all verses is taken from al-MEHRI 2010.

47 This tradition is found in the collection of al-Buḡārī (2003: III,83 – *ḥadīṭ* no. 5728) and, with minor differences, in that of Muslim (2004: II,467 – *ḥadīṭ* no. 2218).

(*Fatāwā* nos. 13, 14, 16). The third tradition says “Ibn ‘Abbās said to his mu’addīn on a rainy day: when you utter the words ‘I testify that Muhammad is the Messenger of Allah’, do not say, ‘Come to prayer’ but say ‘Pray at your homes’. By this (announcement) the people were surprised. He said: ‘One who was better than me has done it’”.<sup>48</sup> The Mağlis used this *ḥadīṭ* to prove that Muḥammad ordered the ban on going to the mosque to protect the believers from the dangers of bad weather, which could not be compared to the much more serious dangers of pandemic. Therefore, if it was possible to suspend prayers in the mosque because of the damage that the heavy rain might have caused to those who would have gone to pray, then by analogy (*qiyās*), collective prayers must be suspended to prevent the believers, gathered in the place of worship, from becoming infected amongst themselves and, once they leave, from transmitting the coronavirus to others. The last *ḥadīṭ* used by the Council to support the thesis of the legitimacy of the suspension of congregational prayers is that which lists some of the cases in which the performance of the *ṣalāt* in the mosque may be dispensed with: “Ibn ‘Abbās reported that the Prophet said: If anyone hears him who makes the call to prayer and is not prevented from joining the congregation by any excuse—he was asked what an excuse consisted of and replied that it was fear or illness—the prayer he offers will not be accepted from him”.<sup>49</sup> Fear of infection—which is quite likely in the case of group prayer, given the physical proximity required for its performance—is sufficient in itself to allow the believer to leave group prayer. (*Fatāwā* nos. 2, 6, 13, 14, 15, 16).

In summary, the Council is of the opinion that the obligation to preserve life, which is the reason why the authorities banned collective prayers at the height of the pandemic, must take precedence over *ṣalawāt al-ḡamā’a*, since the performance of the latter in a mosque is classified as a strongly recommended act (*sunna mu’akkada*):<sup>50</sup> between the fulfilment of an obligation and the fulfilment of a strongly recommended act, the former always takes precedence. However, the ECFR holds that the obligation of believers to preserve their own and others’ existence must also take precedence over the fulfilment of another obligation, that of performing *ṣalāt al-ḡum’a* in the mosque: in this case the order of precedence is explained by the fact that the first obligation is to be regarded as an exception (*ruḥṣa*) to the second. Indeed, in several cases the Qur’ān allows believers to deviate (*tark*) from the strict obligations (*‘azīma*)<sup>51</sup> to which they are bound, in the name of preserving life. By way of example, the Mağlis refer to Q. XVI:106<sup>52</sup> and II:184:<sup>53</sup> the former states that the life of a person who

48 The Mağlis, in *Fatāwā* no. 16, stated that this tradition conveys a general command which, as such, has the value of an obligation (“*hādā l-amr wa-l-amr al-muṭlaq yufid al-wuḡūb*”).

49 This tradition is contained in Abū Dāwūd’s collection of *aḥādīṭ* (2015: 76 – *ḥadīṭ* no. 551).

50 By *sunna mu’akkada*, the Mālikis mean “that which [if performed] multiplies the reward”; the Ḥanafī, on the other hand, define it as “that to which the Prophet devoted himself with constancy, except for occasional omissions”. It is considered “*ka-l-wāḡīb*”, i.e. on a par with an obligatory act, with the difference, however, that failure to perform the latter is punishable, while failure to perform the former is not. BUĞAYB 1988<sup>2</sup>: 185.

51 On the concept of *‘azīma* and *ruḥṣa*, see KAMALI 2003: 436-438.

52 “Whoever disbelieves in [i.e., denies] God after his belief... except for one who is forced [to renounce his religion] while his heart is secure in faith. But those who [willingly] open their breasts to disbelief, upon them is wrath from God, and for them is a great punishment”.

53 “Fasting for] a limited number of days. So whoever among you is ill or on a journey [during them] - then an equal number of days [are to be made up]. And upon those who are able [to fast, but with hardship] -

has renounced Islam under duress, thus breaking the obligation “to persist in his faith until death”, will be spared (KAMALI 2003: 437); the latter, on the other hand, recognises the possibility for the sick believer to escape the imposition of fasting that must be observed during the month of Ramaḍān by postponing it until conditions permit (*Fatwā* no. 3).

The decision to legitimise the suspension of collective prayers is followed by an indication of the legally permissible alternative form (*badā'il šar'iyya*) by which they may be performed (*Fatwā* no. 3). In principle, all collective prayers that are recommended to be performed in the mosque (*ṣalāt al-tarāwīḥ*, *Fatwā* no. 24; *ṣalāt al-īdayni*, *Fatwā* no. 25) are to be performed at home (*adā'ihā fī l-buyūt*; *tuqām ṣalāt al-tarāwīḥ fī l-buyūt*; *lā ba's an yuqīm ahl kull bayt ṣalāt al-īdayni fī makānihim*) and only those who live there (*al-ṣalawāt al-ḥamsa ḡamā'a ma'a ahl bayti-ka*) should take part, choosing as their imam the person who knows the Qur'ān and the manner of performing the prayer best; all this, of course, in accordance with the rules laid down by the authorities. On the other hand, with regard to the *ṣalāt al-ḡum'a* (Friday prayer), which must normally be performed in the mosque, the Maḡlis ruled that it should be replaced by the obligation to perform the noon prayer (*ṣalāt al-zuhr*) at home.<sup>54</sup> This ruling was a negative response to those who had questioned the possibility of performing the Friday prayer at home. There are several reasons why this hypothesis was considered inadmissible, which can be summed up in the fact that the discipline of *ṣalāt al-ḡum'a*, including the place where it is to be performed, is clearly established by direct and indirect revelation, the Qur'ān and the Sunnah, and is thus beyond any kind of interpretation and change. This is evidenced by the fact that from the time of the Prophet to the present there have been several instances when the performance of the Friday prayer had to be suspended, but no one ever suggested that it should be performed in a place where neither Muḥammad nor the generations of Muslims after him had performed it. In fact, although the Prophet had the opportunity to perform the *ṣalāt al-ḡum'a* at home on several occasions, he never did so (*Fatwā*, no. 5).<sup>55</sup>

The Council stated that the suspension of congregational prayers in the mosque should have lasted until the reason for which the measure was taken had ceased to exist (*Fatwā*, no. 5). In fact, it held that it was inadmissible to perform the *ṣalawāt al-ḡamā'a* even if a physical distance of one metre was guaranteed between the prayers. According to the ECFR, prayers

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a ransom [as substitute] of feeding a poor person [each day]. And whoever volunteers good [i.e., excess] – it is better for him. But to fast is better for you, if you only knew”.

54 Under normal circumstances, the *ṣalāt al-zuhr* is recited every day at noon (the time from which it takes its name), except on Fridays, when the *ṣalāt al-ḡum'a* is recited at the same time instead. The two prayers differ not only in the day on which they are recited, but also in the way they are performed and the function they serve. AL-QAHTĀNĪ 2003, vols I and II.

55 Several believers have asked the ECFR for its opinion on the possibility of performing *ṣalāt al-ḡum'a* at a distance, particularly through the use of social media. Despite the fact that international health organisations have invited “religious leaders” to perform collective rites “through distance, live streaming, and video technologies” (WHO 2020), the response of the Maḡlis has been negative. For reasons of space, it is not possible to elaborate on this point; suffice it to say that among the reasons on which the Council based its decision were the non-derogation of the rules governing the performance of *ṣalāt al-ḡum'a* (e.g. the believers and the imam must necessarily gather physically in the same place) and the fear that believers would continue to prefer the virtual dimension to the physical one even after the pandemic (*Fatwā*, no. 4).

performed in this way not only violate the rules governing their performance (including, for example, the rule that there should be no space between prayers), but also do not sufficiently protect the prayers from the possibility of contagion through indirect contact (frequenting the same places, touching the same things, etc.) (*Fatwā* no. 7). Sufficient physical distance between worshippers, on the other hand, was one of the main conditions imposed by the authorities in several European countries for the possibility of holding collective prayers, once the spread of the virus had been slowed down.<sup>56</sup> In a way, therefore, it seems that the Mağlis not only supported and endorsed the anti-Covid measures taken by the political and health authorities, but in some cases took even more stringent measures.<sup>57</sup>

### Transnational *Fatāwā*: the ECFR's responses on funeral rites<sup>58</sup>

On 11 March 2020, WHO declared that the spread of the Covid-19 had reached pandemic status (more than 118,000 infected people in 114 countries and 4291 deaths); two days later, it declared that Europe had become the epicentre of the pandemic, with more infections and deaths than the rest of the world (except China) (WORLD HEALTH ORGANIZATION 2020a; WORLD HEALTH ORGANIZATION 2020b).

The ever-increasing number of deaths prompted international health authorities to quickly identify measures to contain the spread of the virus, including those related to the safe handling of the bodies of people who had definitely or presumably died from Covid-19. With regard to the latter, the aim was to avert the hypothesis that the body of the deceased could be the source of infection for those who came into contact with it in various capacities (coroners, mortuary staff, funeral directors, families, etc.). This possibility is not scientifically excluded, but is considered to be remote,<sup>59</sup> and is essentially linked to the case where the living person had direct contact with the surface of the body of the person who died with or from Covid-19<sup>60</sup> or with the fluids and/or secretions leaking from it. Given the uncertainty surrounding the actual occurrence of this form of infection, international health authorities considered that standard precautions would be sufficient to prevent it, i.e. the use of personal protective equipment (PPE: coat, gloves, face shield, goggles, mask, disposable shoe covers, etc.) and hand washing. They also considered that by following these instructions it would be possible for anyone (mortuary staff, funeral directors, undertakers, families, etc.) to

56 One example is the protocol signed by the Italian Ministry of the Interior has concluded with the Islamic communities, which stipulated that there must be a safety distance of at least one metre between those praying.

57 This applies not only to collective prayers but also to certain matters relating to funeral rites.

58 The dead Muslims have four rights towards their living brothers and sisters: washing (*gusl*), wrapping in a certain number of cloths (*kafan*), the funeral prayer (*ṣalāt al-ḡanāza*) and burial (*dafn*). The literature on Islamic funerary practices is extensive. For the purposes of this paper, the main references were al-ĞAZĪRĪ 2002: I, 455-491; al-QAHTĀNĪ 2002; al-TĪYYĀR 2012<sup>2</sup>: I,455-512; IX,71-80. For an overview of the management of the dead related to Covid-19, see AL-DAWOODY 2021.

59 In contrast, Ebola and Marburg viruses have been shown to be transmitted from the deceased infected person. USSAI [et al.] 2020: 1.

60 Considered potentially infectious in the hours immediately following death.

proceed with the preparation of the body.<sup>61</sup> The latter refers to all the operations carried out before burial in accordance with custom or the rules of the religion to which the deceased belonged. The preparation of the corpse had to take place preferably at the place of death (hospital or home); this choice was due to the need to reduce as much as possible the causes that could have led to the release of fluids and secretions from the corpse, which were considered particularly contagious, one of which was certainly the shaking of the corpse caused by the transport. The display of the remains for the last rites by relatives/friends/community members was permitted, provided that they refrained from touching and kissing the relics and kept a minimum distance of one metre. The deceased had then to be transported in a body bag or coffin to the place of burial or cremation,<sup>62</sup> which had to be carried out with the use of PPE and washing of hands at the end of the operations. Finally, it was recommended that all funerals should be postponed until the epidemic was over; if this alternative was not feasible, then as few people as possible should attend the funeral, provided they wore masks and stood one metre apart (WORLD HEALTH ORGANIZATION 2020d;<sup>63</sup> ICRC FORENSIC UNIT 2021; EUROPEAN CENTRE FOR DISEASE PREVENTION AND CONTROL 2020; INTERNATIONAL LABOUR ORGANIZATION 2020: 16); those who were not allowed to attend the funeral prayer to avoid forming a crowd could do so *in absentia* (WORLD HEALTH ORGANIZATION 2020e: 7). The WHO also urged the cooperation of religious leaders, local religious communities and religious organisations to adopt the measures it recommended to combat the spread of the virus and to promote their acceptance and respect by their brothers and sisters in faith. In fact, according to the WHO, believers were more likely to accept and follow the instructions of their religious authorities than those of rulers and health authorities. This is partly because believers sometimes place greater trust in their religious authorities than in government and health authorities, and partly because the instructions of the former, being based on religious doctrines and teachings, have a greater influence on believers than civil instructions (WORLD HEALTH ORGANIZATION 2020e: 4).

The viability and effectiveness of the recommendations issued by international health authorities—including those on safe body disposal and respect for the funeral rites of the religion of the deceased—depend on the willingness of states to adopt them. Many countries have adopted them in their original form, while others, especially at the onset of the pandemic, have tightened them, severely restricting religious freedom (DU PLESSIS 2020; CORBIN 2020; MARTÍNEZ-TORRÓN 2021; MAZURKIEWICZ 2021). In Europe, France<sup>64</sup> and

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61 These operations had to be carried out on as few people as possible. People over the age of 60, people with weakened immune systems, people with respiratory or heart disease, and people with diabetes were not allowed to take part.

62 The need to prevent the spread of the virus is at the root of the measures to drastically restrict freedom of movement both internally and internationally, by preventing the repatriation of remains. WORLD HEALTH ORGANIZATION 2020c.

63 This guide was updated on 4 September 2020 and is available at the following URL: [urly.it/3dnjp](http://urly.it/3dnjp).

64 On the limits of religious freedom resulting from anti-Covid rules in France, see: FORNIEROD 2020; IVALDI 2020; DIEU 2021; TAWIL 2021.

Italy are certainly worth mentioning.<sup>65</sup> In both cases it was decreed that the deceased infected, or likely to be infected with Covid-19, had to be placed in a coffin (France)<sup>66</sup> and/or a body bag (Italy),<sup>67</sup> as soon as possible, with no provision for “preparing” the body for and/or performing the last rites. Italy also introduced a ban on religious ceremonies, including funerals,<sup>68</sup> and the closure of cemeteries to the public.<sup>69</sup>

The longest *fatwā* on funeral rites is no. 19, entitled *The Funeral Rules in the Light of the Crisis [arising from] the Corona[virus]*.<sup>70</sup> The *mustafī*<sup>71</sup> asked the ECFR how Muslims should treat the bodies of their deceased co-religionists, given that the exceptional nature of the moment (*al-zurūf al-ṭāriʿa*) made it impossible for them to perform some of the funeral rites (washing, wrapping in the shroud, prayer)<sup>72</sup> that they were obliged to perform under normal conditions (*al-aḥwāl al-muʿtāda*). Before giving a precise answer to the question posed to it, the Maḡlis gave a brief introduction in which it clarified the three elements on which its opinion was based and which helped to understand its scope. First, it stressed that the content of a *fatwā* depends on the time, place and specific situations in which it is issued; this explains why jurists sometimes propose different solutions to an identical problem, precisely because of logistical, temporal and circumstantial contingencies.<sup>73</sup> In essence, the successful application of a rule cannot ignore the actual assessment of the situation of the

65 On the limits of religious freedom resulting from anti-Covid rules in Italy, see: ALICINO 2020; COLAIANNI 2020; CONSORTI 2020; COLAIANNI 2020; FUCILLO - ABU SALEM - DECIMO 2020; LICASTRO 2020; MACRÌ 2020; MONTESANO 2020; PACILLO 2019; PACILLO 2020.

66 “Les défunts atteints ou probablement atteints du covid-19 au moment de leur décès font l’objet d’une mise en bière immédiate. La pratique de la toilette mortuaire est interdite pour ces défunts”. Décret n° 2020-384 du 1er avril 2020 (art. 12-5). This document is available at the following URL: [urly.it/3dp8p](http://urly.it/3dp8p) (Last accessed Apr. 14, 2021).

67 “Prior to the arrival of the funeral transport staff, the health care personnel shall ensure that the deceased is isolated in a sealed, externally disinfected waterproof bag in order to minimise the risk of contamination during coffin handling. In the case of death outside healthcare facilities, if the deceased has not already been isolated in a sealed, disinfected waterproof bag, the funeral transport staff must ensure that the deceased is wrapped in a sheet soaked in disinfectant to minimise the possibility of contact”. MINISTERO DELLA SALUTE-DIREZIONE GENERALE DELLA PREVENZIONE SANITARIA 2020: 3.

68 Decree of the President of the Council of Ministers of 8 March 2020 (Art. 1, co. 1, lett. i). This document is available at the following URL: [urly.it/3dqg5](http://urly.it/3dqg5). Decree-Law no. 19 of 25 March 2020 (Art. 1, co. 2, lett. h). This document is available at the following URL: [urly.it/3dq7k](http://urly.it/3dq7k) (Last accessed 5 April 2021).

69 “Cemeteries should be closed to the public in order to avoid the possibility of infection due to the congregation of visitors”. Ministero della Salute-Direzione generale della prevenzione sanitaria 2020: 5. However, from May 2020, “funeral ceremonies will be allowed in cemeteries with the exclusive participation of the relatives of the deceased and, in any case, up to a maximum of fifteen people designated by the entitled persons, preferably outdoors, wearing respiratory protection and strictly observing a safety distance of at least one metre between people”. MINISTERO DELLA SALUTE-DIREZIONE GENERALE DELLA PREVENZIONE SANITARIA 2020a.

70 The Arabic title is *Aḥkām al-Ġanāʿiz fī Zill Azmat Kurūnā*.

71 We know almost nothing about the believers who have turned to the Maḡlis for advice. In fact, in the *fatāwā* the ECFR does not add any information (age, sex, nationality, place of residence, etc.) to what can sometimes be deduced from the question put to it.

72 However, burial was possible.

73 The adaptation of the *fatwā* to time and place is one of the cardinal principles of the methodology followed by the ECFR. Fundamental in this regard are the works of Yūsuf al-QARADĀWĪ (1988; no date).

Muslims to whom it is addressed. That is why, at the beginning of the first meeting, in order to make decisions that would take into account of the current pandemic, the members of the Mağlis listened to the opinions of four doctors<sup>74</sup> who informed them, among other things, about the existing problems of prevention and contagion, as well as of the treatment of the ceased Muslim. The hearing of these doctors showed that it was essential for the Council to integrate religious knowledge with scientific knowledge. The need to ground the *fatwā* in the context in which it is to be applied also emerges from the second clarification the Council made at the beginning of its response, namely that Islamic jurisprudence (*al-fīqh al-islāmī*) provides a set of principles (*ḡumla min al-qawā'id*) elaborated on the basis of an inductive reading (*buniyat 'alā istiqrā'*) of the Qur'ān and the Sunnah, whose application can be resorted to deal with exceptional circumstances and cases of necessity (*al-zurūf al-istiḡnā'iyya wa-hālāt al-darūra*), of which the circulation of Covid-19 is certainly an example. In particular, the Mağlis cite three principles: “necessity makes lawful what is not lawful” (*al-darūrāt tubīḥ al-maḥzūrāt*), “difficulty leads to facilitation” (*al-maṣāqqa taḡlib al-taysīr*), and “there is no obligation except for that which can be discharged” (*lā taklīf illa bi-maḡdūr*). The final criterion considered by the Council in its response was the need to comply with the laws and regulations enacted by the state and the competent authorities to combat the virus,<sup>75</sup> in response to the appeal made by international health authorities to religious leaders in this regard. By adopting this criterion, the Council opposed those Muslims, fortunately few in number, who instead called for disobedience to anti-Covid measures that violated religious rules. According these Muslims since everything depends on God it is He who should be feared and not the disease, hence the need to give priority to religious obligations rather than health obligations.<sup>76</sup>

As for the content of the Council's response, it is divided into three parts.

The first deals with issues related to the washing (*ḡusl*) of the body of a deceased Muslim from Covid-19. The *ḡusl* consists of performing a series of actions aimed at purifying the body of the deceased. Bearing in mind that there are differences related to the different doctrinal orientations followed by Muslims, these operations can be summarised as placing the corpse on an elevated surface, undressing it and covering its *'awra* (i.e. the parts of the body that must not be seen, for men from the navel to the knees, for women the whole body except the face, the hands and the feet; in this regard, it is good to remember that the person performing the washing must be of the same sex as the deceased, except for the husband to the

74 A virologist, an anaesthetist and two internists specialising in acute medicine, cardiology and general medicine.

75 To emphasise the importance of collective responsibility, the Council mentions in *Fatwā* no. 2 (*Wazīfat al-Dīn fī l-Ta'āmul ma'a l-Frūsāt wa-l-Kawāriḥ / The Role of Religion in Dealing with Viruses and Disasters*), a tradition of the Prophet quoted by Buḡārī: “The example of the person who abides by Allah's orders and restrictions compared to those who violate them is like the example of those persons who drew lots for their places in a boat. Some of them were placed in the upper part and the others in the lower part. When the latter needed water, they had to go up to get it (and this annoyed the others), so they said: Let's make a hole in our part of the bot (and get water) so that those above us are not disturbed. So, if the people in the upper part let the others do what they had proposed, all the people in the ship would be destroyed, but if they prevented them, both parties would be safe”. Al-BUḤĀRĪ 2003: I,547 (*ḡadī* no. 2493).

76 For the positions of Islamic religious authorities on the coronavirus measures taken by political and health authorities, see BELHAJ [et al.] 2020.

wife, and vice versa, and for children under the age of seven). Place one hand behind the neck and push the upper part of the body until it reaches a sharp angle; with the other hand apply gentle pressure to the abdomen to induce the expulsion of any residual urine, faeces or other substances. Wash the private parts (not by direct contact, e.g. by using gloves or running the hand over the fabric covering them). Perform minor ablution (wash hands, mouth, nostrils, face, arms up to the elbows, head and then feet). Wash the whole body (at least once; if necessary, the washing can be repeated several times, as long as the number is odd: 3, 5, 7, etc.). Wash the right side of the body first then the left, from top to bottom, then from head to toe. The water used for washing must contain lotus leaves or, if these are not available, soap. Camphor or a little perfume should be added to the water used for the last washing. Dry the body and sprinkle it with perfume. For women with long hair, braid it and pull it down behind the neck. If there is no water, the washing can be done dry (*tayammum*), i.e. by placing the hands on the earth/sand/stone and wiping the face, back and palms down to the wrists. From this brief description, it is possible to deduce the reason why the Council was asked to give its opinion: the correct performance of washing, whether with water or dry, does indeed presupposes direct contact with the body, which is one of the possible, albeit remote, causes of infection.<sup>77</sup> On this point, the Mağlis, after hearing the medical opinion, was clear and

77 This is not the first time that jurists have been asked to give their opinion on the performance of the washing of the bodies of those who have died of an infectious disease, a case that has arisen several times in history, long before the spread of the coronavirus. If I confine myself to the present day, the debate has recently focused on those who have died of AIDS and Ebola. The analysis of these two cases has clearly shown how jurists have based their decisions on the contagiousness of the corpse. The Permanent Commission for Scientific Research and Fatwas of Saudi Arabia, for example, issued a *fatwā*, no. 14658, in response to a request for clarification from the Director of the Department of Religious Affairs of the Armed Forces regarding the handling of the bodies of people who had died of “highly contagious diseases” (*ḥālāt mu’diya ǧidda*)—including AIDS (*ḥālat naqṣ al-manāʿ – maraḍ al-īdz*)—and who, for this reason, were sometimes left in the cold rooms of the morgue: should *ḡusl* or *tayammum* be performed on these bodies? And if *tayammum* was allowed, could it be performed on the bag in which the corpse was locked rather than touching the corpse, since it was contagious? The Commission replied that AIDS is an infectious disease that can only be transmitted between living persons, i.e. the sick person who transmits it and the healthy person who is infected must both be alive; on the other hand, transmission between a deceased person and a living person is not possible. Therefore, it said that the body of the person who has died of AIDS must be washed in the same way as any other deceased person. AI-LAĞNA 2005: I,279-280. The Qatari website Islamweb.net, which is Salafi in orientation, published on 19 October 2004 a *fatwā*, no. 88742, entitled *Washing corpse of AIDS victim*, in which it states that AIDS is a disease that is transmitted “through the blood, other bodily fluids, or through sexual intercourse” and not through simple contact with the body of the affected person, thus suggesting that washing of those who have died of/with this disease should be performed regularly. However, the final word rests with the doctors: if they deem it dangerous to perform *ḡusl*, then *tayammum* must be performed. This *fatwā* can be read at the following URL: [urly.it/3p07n](http://urly.it/3p07n) (Last accessed Jan. 12, 2021). For an overview of the performance of *ḡusl al-mayt* in cases of AIDS deaths see al-ŠAHRĪ 1430: 209-226. With regard to the Ebola virus, on the other hand, in 2015 in Morocco, at the request of the Ministry of Health, the section of the Supreme Scientific Council responsible for issuing *fatāwā* issued a response, based on the Māliki doctrine, declaring lawful the burial of those who had died of/with this disease without washing them beforehand. The reason for this decision was the contagiousness of the corpse: it had been scientifically proven that the person who had died of Ebola remained infected after death and continued to spread the virus; those who came into contact with him, for example to provide *ḡusl*, therefore ran a serious risk of becoming infected. In essence, for the Muslim, the prohibition on washing the bodies of those who had died from/with Ebola was an obligation to take all necessary preventive measures to protect life. Some Arabic excerpts of this *fatwā*



categorical: the body of the Muslim infected with Covid-19 must be buried, closed in the body bag (*kīs*) or coffin (*tābūt*) in which it was transported from the hospital to the place of burial, without undergoing either washing or *tayammum*,<sup>78</sup> even if the law permits it (“al-mağlis ... intahā ilā tarğṭh dafn al-mayyit ... bi-l-kīs wa-fī l-tābūt ... dūna tağsīl aw tayammum ḥattā in samuḥa bi-hi qanūn<sup>am</sup>”). There are several considerations on which the Council explicitly based its opinion. The reasoning that led the Mağlis to lean towards the prohibition of *ğusl al-mayt* in times of pandemic began with a brief description of the status that the doctrine accorded to the latter. With regard to the washing of the deceased, two doctrinal orientations have in fact emerged: the first, which reflects the opinion of the majority of jurists, considers it obligatory (*wuğūb*); the second, which reflects the opinion of some Māliki and Ḥanafī *fuqahā*,<sup>79</sup> places it in the category of particularly recommended acts (*sunna mu’akkada*).<sup>79</sup> It would have been enough for the Council to point to the divergence of the jurists (*iḥtilāf bayna l-fuqahā*) on the regulation of the institution in question and the existence of a doctrine (a minority doctrine, of course, but no less valid for that) that identifies *ğusl al-*

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can be read at the following URL: [urly.it/3p0fk](http://urly.it/3p0fk) (Last accessed May 12, 2021). On 2 March 2015, the Assistant to the Grand Muftī (Musā’id al-Muftī al-’āmm) of the Sultanate of Oman, Kahlān bin Nabḥān al-Ḥarūsī, issued a ruling on the burial of people with Ebola. The applicant was a specialist in infectious diseases at the General Directorate of Health Affairs of the Ministry of Health. After recalling the rights of the deceased and the fact that one of the objectives of Islam is the preservation of life, al-Ḥarūsī stated that a balance between the right of the deceased, who had certainly died of Ebola, to be washed and the need to prevent the spread of the virus could be achieved by entrusting the performance of the *ğusl* to a team of doctors who, because of their expertise in infectious diseases, would certainly perform it while taking the necessary precautions to prevent contagion. If for some medical reason it was not possible to wash, it was sufficient to spray the whole body with water, thoroughly. If even that was not possible, the alternative was *tayammum*. The Arabic text of this response can be found in Sultanate of Oman - Directorate General for Disease Surveillance and Control and Department of Infection Prevention and Control 2014: 44-46. On 14 May 2014, the Egyptian Dār al-İftā’, in the person of Grand Mufti Šawkī Ibrāhīm ‘Allām, also expressed its opinion on the washing of Ebola corpses, and was asked whether it is obligatory to wash the bodies of people who have died of Ebola, despite the WHO’s advice that it is not advisable to wash the bodies of those who had died of Ebola in order to prevent the spread of virus. In his long and eloquent response, the Mufti reached a similar conclusion to the Moroccan response: washing the dead is derogatory if it constitutes a source of danger to the life of the person performing it. The Egyptian *fatwā*, however, was notable for one particularly important point that sparked a heated debate: it actually identified the cremation of the bodies of those who had died from/with Ebola as a means of combating the spread of the virus, contrary to the overwhelming majority of jurists who consider it strictly forbidden, even in the event of an epidemic. The *fatwā*, entitled *Tagsīlu al-Mutawaffi bi-Maraḍi al-İbūlā (The Washing of the Ebola-infected Dead)*, can be consulted, in Arabic, at the following URL: [urly.it/3zbgh](http://urly.it/3zbgh) (Last accessed Sept. 7, 2022).

- 78 In general, many jurists consider that *ğusl* is not due for: non-Muslims, Muslims who have died in battle (considered martyrs), the impuberal, the foetus in which the soul has not yet been infused (i.e. died before the fourth month) and the corpse whose condition is such that washing, with water and/or dry cleaning, would damage it (in the case of severe burns, for example) or is not possible (if the corpse is crushed, for example).
- 79 Taking up a well-known doctrinal fact, the Council attributes the divergence among the jurists on the subject of *ğusl al-mayt* to the different value they attach to the traditions concerning it: those *fuqahā* who do not regard it as obligatory consider that the *aḥādīṭ* in question have not a prescriptive but a pedagogical value, i.e. they would only have the function of teaching the manner in which it should be performed. For a concise but effective reconstruction of the legal debate on the status (obligation or recommendation) of washing the dead, see al-AḤMĀDĪ 2020: 236-241.

*mayyit* as an enhanced recommendation, and therefore inherently derogatory rather than obligatory in order to legitimise its opinion; however, this was not the case. In fact, the Mağlis openly expressed its support (*al-rāğih*) for the first opinion, which identified the *gusl/tayammum* of the deceased as a collective obligation.<sup>80</sup> However, it hastened to specify that such a duty must be fulfilled only in normal circumstances (*fī l-aḥwāl al-ṭabīʿiyya*), and may instead be disregarded (*yağūz tark al-tağsīl wa-l-tayyamum*) in the presence of exceptional circumstances (*fī l-aḥwāl al-istiṭnāʿiyya*), such as the spread of a pandemic (*ka-awqāt al-awbiʿa*), and in the specific case of Covid-19, the lethal nature of which it acknowledged (*qātila*) (*Fatwā* no. 14). For the Council, subjecting those called upon to wash to the risk of infection and possible death is a violation of the principles of law (*al-qawāʿid al-fiqhiyya*) and of Qurʾānic and *aḥādīṭ* injunctions (*al-nuṣūṣ al-šarʿiyya*),<sup>81</sup> which give priority to preserving the life of the living and healthy person (*al-muḥāfaẓa ʿalā hayāt al-hayy al-šaḥīḥ*) over (*qad-dama ʿalā*) carrying out the recommendations (*sunna*) or fulfilling the prescriptions (*al-wağāʿib*) laid down for the deceased. The duty of believers to protect life, their own and that of others (“... ḥifāz ʿalā l-nafs wa-l-āḥirīn ...”) (*Fatwā* no. 16), is one of the objectives of the law (“... ḥifāz<sup>an</sup> ʿalā l-nafs allatī hiya maqṣad min maqāṣid al-šarʿa”) (*Fatwā* no. 14) and it is from this theory that the Mağlis draw the grounds for its decision.<sup>82</sup> The *maqāṣid al-šarʿa*, the pursuit of which constitutes a valid basis for the elaboration of a rule, are divided into three categories in descending order of importance: necessities (*darūriyyāt*), needs (*ḥāğiyyāt*) and accessories (*taḥsīniyyāt*). Preserving life falls under the first category, while washing falls under the accessories, hence the priority given to the former over the latter. The indication not to perform the *gusl* of the corpse affected by Covid-19 also derives from the need to give priority to the protection of a public interest, i.e. preventing the spread of the virus among the population,<sup>83</sup> over respect for the rights of an individual, specifically the right of the deceased to be washed.<sup>84</sup>

Another consideration on which the Mağlis based its decision to discourage the performance of *gusl/tayammum*, even if the law of the area in which the Muslim resides permits it, is aimed at protecting the health of those who are called upon to perform these operations: if it is indeed true that the use of PPE reduces the possibility of infection among those who perform the washing, it is also true that not all those called upon to perform these operations know how to use them correctly and thus run the risk of becoming sick. Moreover, if the virus has spread among medical staff who have competently followed strict safety protocols,

<sup>80</sup> An obligation is defined as one that falls on the entire Islamic community (*umma*); it is considered fulfilled when at least one of its members fulfils it, exempting all others from doing so.

<sup>81</sup> The locution *nuṣūṣ al-šarʿa* denotes those verses and *aḥādīṭ* that contain an explicit rule. On the concept of *naṣṣ*, see KAMALI 2013: 123-127.

<sup>82</sup> The Council has used this theory to justify many of its opinions over the years. On the *maqāṣid al-šarʿa* see, among others, KAMALI 1999; OPWIS 2017; DUDERJA 2014; AUDA 2007; IBN ASHUR 2013; NASERY 2018.

<sup>83</sup> The aim is not only to prevent people who do the washing from becoming infected, but also to prevent them, once infected, from passing the virus on to others.

<sup>84</sup> Al-Ğudayʿ clearly expressed himself in these terms in a *fatwā* issued in his personal capacity on 20 March 2020. This opinion, which is essentially the same as that issued by the ECFR, is available at the following URL: [urly.it/3dxfq](http://urly.it/3dxfq) (Last accessed May 15, 2021).

why would it not also spread among those who “prepare” the deceased, given that they do not have the same expertise and preparation as doctors, nurses and paramedics?

The Council then wanted to reassure the relatives of the deceased, and all Muslims in general, that they would not be blamed for not performing *gusl*, so that they would more readily accept its decision and that of the government and health authorities of those countries that had banned the washing of the deceased. In fact, there was a danger that the latter’s instruction would be disregarded by the faithful, who were afraid of becoming sinners by not fulfilling the obligation of *gusl*.

Finally, the Mağlis, relying on a tradition of the Prophet,<sup>85</sup> claimed that the Muslim who died with or for Covid-19 would assume the rank of martyr before God (“annahū bi-manzilat al-šahīd ‘ind Allāh”).<sup>86</sup> Without saying so, the Council ascribed the deceased who died for/with Covid-19 to the typology of the martyr of the other world (“šahīd al-āḥira”), which is accorded to those who lose their lives in certain circumstances, for example during an epidemic, in which it apparently saw an analogy with the coronavirus.<sup>87</sup>

In the second part of *Fatwā* no. 19, the Council deals with issues related to the funeral prayer,<sup>88</sup> which are also dealt with in *Fatāwā* nos. 26, 27 and 28. Before burying the dead, it is obligatory to recite *ṣalāt al-ḡanāza*, which, like washing, is a collective obligation. There are two problems in performing this prayer. First, since it is a congregational prayer, it requires the presence of a number of people (the imam and the worshippers lined up behind him), whose gathering would result in a congregation, which is forbidden by the authorities. Secondly, it must be recited in the presence of the corpse, i.e. before the coffin, in which the remains are placed, is closed and buried; this practice, however, was contrary to the regulations of the authorities, which in many cases required that the infected corpse be immediately closed in a *body bag* or coffin. The Council believes that congregation can be avoided by having the maximum number of people permitted by law participate in the prayer,<sup>89</sup> even if it is only three or even one (in the latter case, it recalls the opinion of the Ḥanafi, Šāfi‘i and Ḥanbali schools of law that the duty of funeral prayer is to be considered fulfilled even if it is performed by a single believer).<sup>90</sup> On the other hand, Muslims who live in places where it was impossible to perform the *ṣalāt al-ḡanāza*—because funeral ceremonies have been banned altogether or because the body of the mourner has been made immediately

85 “... if one in the time of an epidemic plague stays in his country patiently hoping for Allah’s Reward and believing that nothing will befall him except what Allah has written for him, he will get the reward of a martyr”. AL-BUḤĀRĪ 2003: II,171 (*hadīṭ* no. 3474).

86 The ECFR also reiterated this statement in *Fatwā* no. 16, regarding a woman who died of Covid-19.

87 The community must fulfil the same obligations towards these martyrs as it normally does towards any other Muslim deceased; therefore, unless there was no remote possibility that Covid-19 could be transmitted from the dead to the living, the victims of the virus had to be *gusl* anyway. In contrast, for martyrs who died in battle (called “of this world and the next” / “šahīd al-dunyā wa-l-āḥira”) only burial is obligatory. For the definition and the different types of martyrs in the four Sunni legal schools, see al-ĠAZĪRĪ 2002: I,479-481.

88 However, there is no reference to wrapping in the burial shroud (*kafan*). It is easy to assume that it should not be done, as it carries the same risk of infection as washing.

89 In France, for example, the maximum number of people allowed to attend a funeral is 20 (Décret n° 2020-293 du 23 mars 2020, art. 8).

90 This is also the view of some Salafi jurists, e.g. al-‘UṬAYMĪN 2003: XVII,148.

unavailable—may resort to prayer *in absentia* (*ṣalāt al-ġāʿib*). It consists of the prayer that Muslims may recite in exceptional cases when the remains of the deceased are not present. Some jurists base the legitimacy of this prayer on the tradition that the Prophet Muḥammad, upon hearing of the death of the Abyssinian Negus, had the funeral prayer recited for him even though his body was in Africa,<sup>91</sup> where probably no one had performed the *ṣalāt al-ġanāza*.<sup>92</sup> What distinguishes the *ṣalāt al-ġanāza* from the *ṣalāt al-ġāʿib* is that the former must necessarily be performed before burial and in the presence of the deceased, conditions that could hardly be met in the most acute phase of the pandemic, whereas the latter is performed in the absence of the body and possibly even after burial, requirements that are certainly more compatible with anti-Covid-19 measures. What the two types of prayer have in common, however, is their congregational character,<sup>93</sup> so that in both cases the prayer must be performed in compliance with the rules on the prohibition of congregation (*Fatwā* no. 26). In order to circumvent the latter, some Muslims asked the Council for an opinion on the possibility of performing the prayer *in absentia* using the internet. The Maḡlis replied in the negative: prayer offered in this way does not meet some of the conditions considered indispensable for its validity. For example, congregational prayer requires that the imam and the worshippers meet in person in the same place (mosque, prayer hall, etc.) and that the worshippers follow the imam in the tasks to be performed. In virtual prayer, on the other hand, there is no physical co-presence and, above all, there is a risk that imam may find himself following the believers rather than leading them in the performance of the prayer, due to possible problems with the internet connection. Some believers then raised the question of what kind of prayer should be held if the authorities of the country where they lived made cremation compulsory for all those who had died from or with Covid-19.<sup>94</sup> The Council decided that in such a case the *ṣalāt al-ġanāza* should be recited before cremation, in the presence of the dead person, or after cremation in the presence of the ashes. As an alternative to these two options, the *ṣalāt al-ġāʿib* could have been used. In deciding on this possibility, the Maḡlis, while demonstrating the need to abide by the decisions of the authorities, did not fail

91 In this case, therefore, the unavailability of the remains was due to the “physical remoteness” of the remains, whereas in the case of Covid-19, the unavailability was due to health safety reasons.

92 “Allah’s Messenger made them (i.e. the Muslims) stand in rows at the *muṣallā* (i.e. praying place) and led the funeral prayer for the Negus and said four *takbīr*”. Al-Buḥārī 2003: II,252, *ḥadīṭ* no. 3881. On the subject of prayer performed *in absentia* for the Negus, the ECFR refers to another response it issued on the same subject at the second session of its work, held in Dublin from 9 to 11 October 1998; the *fatwā* in question is no. 21, entitled *Prayer in Absentia for the One on Whom the Prayer was Performed in Presence*. In this *fatwā*, the Maḡlis concluded that *ṣalāt al-ġāʿib* is permissible (*ḡawāz*) provided it does not become a custom (“*āda*”), in which case it would be unlawful (*ġayr maṣrūʿ*). Moreover, Muslims do not recite this prayer for all their brethren whose remains are unavailable, but only for those whom they hold in special esteem, such as the Negus, whose esteem was based on the support he gave to Muslims who emigrated to Abyssinia. ECFR 2019: 210-212.

93 Regarding the number of those who should normally be present at the funeral prayer, some jurists hold that the greater the number, the better. IBN BĀZ 1420: XIII,138.

94 This hypothesis was briefly debated in Britain, but ended in deadlock. Isgandarova 2021: 579. This debate was also referred to by a representative of the Birmingham Muslim Burial Council in a request for clarification regarding the *ġuṣl/tayyamum* of the dead, which he addressed to the Islamic Portal website (the request for clarification and its response can be read at the following URL: [urly.it/3p1a4](http://urly.it/3p1a4) (Last accessed Nov. 7, 2022).

to emphasise that cremation is forbidden by Islamic law because of the sacredness accorded to the human body, both living and dead. The dignity of the deceased is only respected by recourse to burial, which has always been practised by Muslims, from the birth of Islam to the present day. Although the Council is aware and pleased that no country in Europe prescribes compulsory cremation, it has nevertheless suggested to Muslims, especially those who have no relatives of their own faith, to leave a legally valid written will (“bi-kitābat waṣīyya qānūniyya”) in which they must explicitly state that their remains are to be treated after their death in accordance with Islamic teachings (washing, wrapping in the burial shroud, prayer and burial).<sup>95</sup>

Burial is the subject of the third and final part of response no. 19. It is also dealt with in *Fatāwā* nos. 21 and 34 and in two recommendations.<sup>96</sup> The Council reiterated that only burial guarantees the dignity of the dead; moreover, it is clearly stated in the Qur’ān: “From it [i.e., the earth] We created you, and into it We will return you, and from it We will extract you another time” (XX:55). This is why the Mağlis replied negatively to those who asked it about the possibility of being buried in niches/holes above ground. The rule is therefore that the Muslim should be quickly buried in the Islamic cemetery<sup>97</sup> of the place where death occurred<sup>98,99</sup>. However, even before the pandemic, it was not always possible to comply with this rule, as there were very few Islamic cemeteries or plots reserved for Muslims in Europe, especially in Italy. This is one of the main reasons why many Muslims living in the Old Continent have chosen to take the remains of their loved ones back to their country of origin for burial.<sup>100</sup> However, the restrictions on international travel imposed by Covid-19 have

95 The ECFR expressed its position on cremation in *fatāwā* nos. 20 and 28.

96 Decision (*qarār*) no. 21, entitled *Dafn al-Muslim fī Maqābir Ġayr al-Muslimīn / The Burial of the Muslim in Non-Islamic Cemeteries*, which the Council adopted at the fifth session of its proceedings, held in Dublin from 4-7 May 2000, was also analysed. ECFR 2019: 52-53.

97 For Islamic rules on cemeteries, see al-SAHIBĀNĪ 2005.

98 However, this rule does not always apply. In Italy, for example, burial must take place in the deceased’s place of residence of the deceased, not in the place where the death occurred.

99 In support of its thesis, the Council cites a tradition that attributes merit to a man who dies in a land far from his birthplace: “A man who had been born in Al-Madinah died there, and the Messenger of Allah prayed for him, then he said: ‘Would that he had died somewhere other than the place where he was born’. They said: ‘Why is that, O Messenger of Allah?’ He said: ‘If a man dies somewhere other than the place where he was born, a space in him equal to the distance between the place where he was born and the place where he died’”. *Al-NASĀ’I* 2015<sup>2</sup>: 258, *ḥadīṭ* no. 1832. In the response of 2021, the Council also expressed a negative opinion on the transfer of corpses to the countries of origin of the deceased, considering it difficult and in any case unnecessarily costly; therefore, the Council reiterated its preference for the burial of the corpse at the place of death. ECFR 2019: 52. Finally, some Salafī jurists make the expatriation of the body depend not only on the will of the deceased, but also on the place where the death occurred: if the Muslim dies in a non-Islamic area where there is no private cemetery (*muqābir ḥāṣṣa*) reserved only for believers in the Islamic faith, then the body must be transported to the (Islamic) country of origin. In fact, the death of a Muslim in a non-Islamic territory (*dār al-kufr*) is one of the cases that requires the repatriation of the deceased, provided it is not financially burdensome. In the absence of an Islamic cemetery and the possibility of repatriating the body, these jurists advise burying the dead in a desolate area. *Al-LAĠNA* 1996: VIII, 450-455.

100 There is a large body of literature on this subject. See for example: CHAÏB 1988; JONKER 1996; KADROUCH OUTMANY 2012-2013; BALKAN 2015; SACCHETTI 2017; KADROUCH OUTMANY 2016; AHADDOUR 2019; BALKAN 2023.

made it impossible to continue this practice. In short, with the outbreak of the pandemic, some Muslims found themselves unable, on the one hand, to bury their loved ones in the European countries where they lived because of the lack of Islamic cemeteries and, on the other hand, to send their remains to their countries of origin because of the restrictions on international travel. In view of this situation, the Council stated that in the absence of Islamic cemeteries, the deceased may be buried wherever possible, even in a non-Islamic cemetery.<sup>101</sup> Moreover, if the situation arose that the number of graves was insufficient to accommodate the large number of dead, it would be possible to bury more than one deceased in a single grave. The Mağlis based its decision on the principle that God does not ask the believers to do more than they are able to do, and on the principle that the believers will be judged in the hereafter by their deeds in life, not by the place where they are buried.<sup>102</sup> However, the Council has repeatedly called on Muslims to take all necessary steps, wherever possible, to obtain cemeteries/burial grounds reserved for them in the countries in which they live, as has been the case for Christians, Jews and pagans; this would help to improve their condition and better preserve their identity.

### National Fatāwā. The responses of the Italian Islamic Association of Imams and Religious Guides on the subject of collective prayers<sup>103</sup>

The main objective of this part of the article is to illustrate and analyse the *fatāwā* with which some Italian *‘ulamā’* or those living in Italy have provided their brothers in faith with solutions to reconcile Islamic precepts in cultic matters with the provisions adopted by the Italian authorities to counter the spread of Covid-19. Specifically, I examined the rulings on the performance of collective prayers and funeral rites issued from the beginning of the pandemic until March 2021 by the Italian Islamic Association of Imams and Religious Guides (al-Ġam‘iyya al-Islāmiyya al-Īṭaliyya li-l-A‘immati wa-l-Muršidīn),<sup>104</sup> founded in 2011. The documents in question are all available on the Association’s Facebook page. In addition to the texts that are explicitly categorised as *fatāwā*, I have also taken into account those

101 If there is a choice between an Islamic and a non-Islamic cemetery, the family must always bury their loved one in the former, even if the latter is further away. The rule is that visiting cemeteries is for the benefit of the visitor, who will receive a warning and learn a lesson, as confirmed by the tradition: “I used to forbid you to visit the graves, but now visit them, for they will remind you ... of the Hereafter”. ECFR 2019: 52. The text of the tradition cited in the Council’s decision is slightly different from the original source to which it refers, namely *ḥadīṭ* no. 13487 of the *Musnad* of Aḥmad bin Ḥanbal, (the version I consulted is the one published in *al-Riyāḍ* by the Dār al-Salām in 2013, p. 903).

102 The position of the Moroccan European Council of the *‘Ulamā’* was different: “Qu’il soit porté à l’intention de tous que la terre ne sacralise personne, mais ce sont les bonnes œuvres qui magnifient le défunt. Par ailleurs, il est légalement permis au défunt de laisser un testament prescrivant le transfert ultérieur de son cadavre dans le lieu de son choix, dès que les circonstances le permettent et la loi relative à l’inhumation l’y autorise”. It therefore authorises the exhumation of the body in order to transfer it to the place indicated by the deceased in his/her will. The opinion of this panel of jurists can be read in French at the following URL: [urly.it/3p5\\_y](http://urly.it/3p5_y) (Last accessed May 15, 2022).

103 For Muslims in Italy during the first months of Covid-19, see GORI 2021.

104 From now on alternatively called Association or AIGR.

documents (declarations, statements, etc.) that, although named differently, are in fact comparable in content to an actual response. Almost all the texts I have analysed are available in both Arabic and Italian. Nevertheless, I have chosen to refer only to those in Arabic. The reason for this choice is due to the quality of the Italian translations, which often proved to be inaccurate and lacking in relation to the Arabic original; inaccuracies and omissions which, as will be seen in the following pages, I have not failed to point out in many cases.

The current Board of Directors of the AIGR was elected on the proposal of the President (Wağīh Sa'īd Ḥasan)<sup>105</sup> by a majority of participants at the ordinary General Assembly of the Association, held on 10 November 2019 at the Islamic Cultural Centre in Bologna. The Board of Directors is composed of six members: Amīn al-Ḥazmī, al-Sayyid al-Daḥḥār, Anwar al-Nahmī, Abū l-Ḥayr Brīgīš, 'Abd al-Ḥāliq Šāliḥ and Suhayr Kathudā. Each of them is in charge of one of the sections that make up the Association, each of which is responsible for carrying out specific functions (interfaith dialogue, treasury, etc.). For the purposes of this work, the figure of *šayḥ* al-Ḥazmī, imam of the Islamic Centre of Brescia and Italy's representative to the European Council for Fatwas and Research, who is entrusted with the leadership of the Association's Commission for Fatwas and Scientific Research (Lağnat al-Fatwā wa-l-Baḥṭ al-'Ilmī), is particularly relevant.<sup>106</sup> Referring to the ECFR's influence in Italy, he said: "[the ECFR] is a point of reference for many, but I cannot give a percentage. It is certainly more in Italy than in other European countries" (PELLEGRINO 2020). Perhaps the ECFR's greatest success in Italy is that its opinions are relied upon by the Union of Islamic Communities and Organisations in Italy (UCOII),<sup>107</sup> which boasts membership from a large number of mosques scattered across the Peninsula, and plays a leading role in the national Islamic leadership.

On 25 February 2020, in the face of a series of measures taken by the competent authorities, both national and regional, to deal with the multiplication of cases of infection, especially in some areas of the north of the country,<sup>108</sup> the Association published a document in Italian and Arabic entitled *Recommendations New Coronavirus*,<sup>109</sup> divided into five points. The first is that Muslims have a religious, moral and civil responsibility (*mas'ūliyya aḥlāqīyya*,<sup>110</sup> *wa-dīniyya, wa-waṭaniyya*), to comply with all the rules (*al-ta'limāt*) and recommendations (*al-naṣā'ih*) against Covid 19 issued by the authorities. Muslims who do not

105 Paolo Naso erroneously attributes the presidency of the Association to Nibras Bregheiche, who is instead one of the members of the General Assembly. NASO 2021: 33. Wağīh is a member of the European Council of Imams. (al-Mağlis al-Ūrūbī li-l-A'imma).

106 Post dated 31 May 2016. All the posts examined showed that the name of this Commission is rather fluid: in addition to the one above, it is also referred to as the "Scientific Section" ("al-Qism al-'Ilmī"), or simply as the "Fatwā Commission" ("Lağnat al-Fatwā").

107 This was explicitly stated by the organisation's current and former presidents, Yassine Lafram and Izzedin Elzir, respectively, in an interview they kindly gave me.

108 This specific logistical reference is present in the Arabic version of the document, but not in the Italian translation produced by the Association. This is a singular omission, given that the document was produced two days after the Prime Ministerial Decree (in Italian DPCM, Decree of the President of the Council of Ministers) of 23 February 2020, which ordered the suspension of religious events in some municipalities in Lombardy and one in Veneto, two regions in northern Italy.

109 This title is only given in the Italian translation, there is no title in the Arabic version.

110 In the Italian translation made by the Association, this term is translated with the adjective *personal*.

abide by them engage in behaviour that risks harming themselves and/or others (family and society),<sup>111</sup> or becoming infected or contagious. Such behaviour is unacceptable from a religious point of view because it violates the general principle—derived by Muslim jurists from the sacred texts, the Qur’ān and the Sunnah—that the believers must not harm themselves or others. Like the ECFR, the Association said that in the case of the Book, this prohibition is based on verse 195 of *sūra* II: “do not throw [yourselves] with your [own] hands into destruction”; in the case of the Prophetic Tradition, however, it is based on the *ḥadīṭ*, reported in the collections of Mālik ibn Anas and Ibn Māḡa, according to which “There should be neither harming nor reciprocating harm” (*lā ḍarar wa-lā ḍirār*). Applied to the present case, these texts indicate that Muslims have a duty not to expose themselves and/or others to the risk of infection, or at least not to do so voluntarily; in order to fulfil this duty, they are required, among other things,<sup>112</sup> to comply with the provisions laid down to contain the spread of the virus. In particular, in point 4 of the document, the Association addresses the leaders (*idārāt*) and imams<sup>113</sup> of Islamic centres (*al-markāz al-islāmī*)<sup>114</sup> located in areas where the official authorities (*al-ḡihāt al-rasmiyya*) have adopted a series of precautionary measures (closure of schools, factories, public meeting places)<sup>115</sup> and urges them to comply with these measures, as they appear to be doing. In particular, they are asked to suspend all activities (*kāffat al-anšīta*), including collective educational, cultural and “missionary” (“al-da‘wī”) activities.<sup>116</sup> From a religious point of view, the AIGR, like the ECFR, legitimised this suspension by referring to the *ḥadīṭ* recorded in Buḡārī and Muslim which narrates that the Prophet allowed people to perform prayers at home instead of the mosque because of the rain: “‘Abd Allāh bin ‘Abbās said to his mu‘aḍḍin on a rainy day: when you utter the words ‘I testify that Muhammad is the Messenger of Allah’, do not say, ‘Come to prayer’ but say ‘Pray at your homes’. By this announcement the people were surprised. He said: One who was better than me has done it. The Friday prayer is an obligatory duty. But I disliked to put you to hardship so that you might walk in mud and rain”.<sup>117</sup> The Association drew an analogy between the Prophet’s decision to allow believers to perform congregational prayer at home and its proposed decision to suspend all activities (including congregational prayer). In fact, the two cases have the same rationale, which is to avert a danger to the believers. In the first

111 The reference to family and society is present in the Arabic version of the document, but not in the Italian translation produced by the Association.

112 For example, in the second point of the document, the Association urges believers to take care of their hygiene (*al-hirṣ ‘alā l-nifāz*), to wash their hands more often (*al-iktār min ḡusl al-yadayn*), and so on. etc.

113 The Italian translation of the document omits the reference to imams.

114 The Italian translation of the document renders this expression as “... association and... mosques”. It is likely that the translator made this choice because Islamic centres in Italy often have the legal status of associations and function as places of worship.

115 In the Italian translation of the document, the reference to specific precautionary measures is omitted in favour of a more general expression “precautionary measures such as the closure of public activities open to the public”.

116 The Italian translation of the document does not mention the activities for which the suspension is sought but uses the term “congregational activities”.

117 The Italian translation of the document does not quote the text of the tradition.



case, the risk is represented by the possible negative consequences of bad weather conditions, while in the second case it is represented by the likelihood of infection (considered more serious—*ašadd*—than rain), which in the case of the centres is to be considered probable due to the diversity of visitors who frequent them (*tanawwu' ruwwād al-markāz*), different in terms of age, state of health, etc.<sup>118</sup>

On 3 March 2020, the Association published a new document, in both Arabic and Italian, entitled *Recommendations and Provisions in the Light of Developments in the Coronavirus*<sup>119</sup> (*Wašāyā wa-Ahkām fī Zill Mustağiddāt Wabā' Kūrūnā*), with which it provided imams, centre leaders and all Muslims in Italy with some instructions (*al-tawğihāt*) on how best to deal with the developing epidemic. The text is divided into seven points.<sup>120</sup> The first point reaffirmed the obligation of all, Muslims and non-Muslims alike, to comply with the health regulations and precautionary restrictions imposed by the competent state and local authorities. On the second point, however, the AIGR clarified that at the local level (regional and provincial) there is no single general rule applicable to all (*lā yūğad hukm wāhid 'amm li-ğamī'*). Therefore, in order to know which regulations to follow, one must refer to the regulations drawn up for the specific area in which one resides, the content of which varies according to the different levels of spread of the virus (*taba<sup>an</sup> li-darağat al-ḥuṭūra bi-sabab kaṭrat intišār al-wabā'*). The Association also emphasised that the anti-Covid regulations were enacted to protect the welfare of citizens (*mašlahat al-muwāṭinīn*) and safeguard their lives (*ḥirṣ<sup>an</sup> 'alā al-insān wa-ṣiḥhati-hi wa-ḥayāti-hi*). Despite their obviousness, these clarifications had a twofold merit: 1. to clarify the reason why some Muslims, especially those living in the areas of northern Italy where the virus was most widespread, were forbidden to carry out certain activities, some of which were culturally relevant and others not, thus removing any possible misunderstanding; 2. to highlight the compatibility between the provisions enacted to combat the coronavirus and those of Islamic law, which give absolute priority to the defence of life, the latter having contributed to greater acceptance by believers of the restrictions imposed on them. The defence of life is explicitly called into question in the third point of the document, the longest of the seven, concerning collective prayer (*ṣalāt al-ğamā'a*) and Friday congregational prayer (*ṣalāt al-ğum'a*). With regard to the latter, the Association has indeed affirmed, similarly to the ECFR, that it is permissible for believers to stop performing congregational prayers (*al-mubīḥ li-tark al-ğamā'a wa-l-ğum'a*) if harm, sometimes very serious (death), could result from such performance. For example, the AIGR reports that fear (*al-*

118 The Association's concern about the spread of infection in the centres was left out of the Italian translation of the document.

119 The Italian translation of the text was published on 5 March 2020; the latter is entitled *Recommendations and Instructions in the Light of Updates Regarding the "Coronavirus" Alert*.

120 The document was issued two days after the Prime Ministerial Decree (DPCM) of 1 March 2020, which not only confirmed the suspension of religious events for some municipalities in Lombardy and one in Veneto, suspended for a week, but also for some regions (Emilia Romagna, Lombardy, Veneto) and provinces (Pesaro and Urbino, Savona), "events in public or private places, including ... religious events, even if they take place in closed places but are open to the public, such as, for example, ... religious ceremonies" (Article 1, lett. c); it also made conditioned "[the] opening of places of worship ... subject to the adoption of organisational measures to avoid crowds of people, taking into account the size and characteristics of the places, and such as to ensure that the participants can maintain a distance of at least one metre between them" (Art. 1, lett. d).

*ḥawf*),<sup>121</sup> sickness (*al-maraḍ*) and rain (*al-maṭar*) are “justifications” (*a’dār*, sing. *’udr*) for exempting believers from going to the mosque to perform congregational prayers, since forcing them to do so would endanger their safety. In support of its position, the AIGR cited both the Qur’ān and the Sunnah. Four Qur’ānic verses were cited: “do not throw [yourselves] with your [own] hands into destruction” (II:195)—already referred to in the document of 25 February—, “God intends for you ease and does not intend for you hardship” (II:185), “He has not placed upon you in the religion any difficulty” (XXII:78),<sup>122</sup> “And God wants to lighten for you [your difficulties]; and mankind was created weak” (IV:28). As far as the first verse is concerned, the considerations already made above in relation to the prohibition of harming oneself, i.e. the preservation of life, apply. The other three, on the other hand, form the *nuṣūṣ al-ṣarī’a*<sup>123</sup> from which emerges the “objective of facilitating people” (*maqṣad al-taysīr ‘alā al-nās*), of freeing them from difficulties. It is no coincidence that one of the most important general principles of law (*al-qawā’id al-fiqhiyya*) is precisely the one which states that “difficulty leads to facilitation” (“*al-maṣāqqa taḡlib al-taysīr*”). With regard to the Sunnah, the Association referred to two traditions. The first is that of rain as an exception to the performance of congregational prayer in the mosque, already mentioned in the document of 25 February, about which the AIGR also reiterates the considerations it had expressed in this regard: if the law (*ṣar’*) allowed the possibility of abandoning congregational prayers (including Friday prayer) in the mosque in case of rain, considering that this could harm the believers, the same exception must *a fortiori* be made for the coronavirus, considering that the consequences of its spread are much more serious. The second *ḥadīṭ*, on the other hand, is the one that forbids (*mana’a*) believers who have eaten garlic or onion from going to the mosque for congregational prayers: the Prophet said, “Whoever has eaten garlic or onion should keep away from us or from our mosque” [BUḤĀRĪ 2003: III,25 (*ḥadīṭ* no. 5452)], “He who eats garlic or onion should remain away from us or from our mosque and stay in his house” [MUSLIM 2004: I,262 (*ḥadīṭ* no. 564bis)]. This tradition—which well illustrates the importance that Islam places on protecting those who pray, even to the extent of protecting them from unpleasant odours—is a valid support for the Association’s thesis: if those who pray in mosques need to be protected from the discomfort of unpleasant odours, despite the usually temporary (*’ābir*) nature of the latter, all the more reason to protect them from the spread of the virus and the nefarious consequences it brings.<sup>124</sup> However, if it is easy to identify believers who have eaten garlic or onions and prevent them from entering the place of

121 In this regard, the AIGR reports the opinion of Ibn Qudāma (1147-1223), probably taken from his *al-Muḡnī*, which recognises the fear (*al-ḥā’if*) as a reason for exemption from the execution of *al-ḡamā’a* and *al-ḡum’a*. The Ḥanbali jurist based this exemption on the Sunnah: According to a *ḥadīṭ* narrated by Abū Dāwūd and Ibn Māḡa, the Prophet said: “If anyone hears him who makes the call to prayer and is not prevented from joining the congregation by any excuse - he was asked what an excuse consisted of and replied that it was fear or illness - the prayer he offers will not be accepted from him”. Ibn Qudāma then adds that there are three types of fear: fear of life, fear of property and fear of family. This part is completely missing in the Italian translation of the document. It is important to note that the Italian translation is not a faithful copy of the Arabic text, but a reasoned synthesis of it.

122 This verse is missing from the Italian version of the document.

123 In the Italian translation of the document, the phrase is incorrectly translated as “texts of authoritative Muslim scholars”.

124 There is no trace of this part in the Italian version of the document.

worship, it is less easy to identify those infected with Covid-19. In fact, in addition to those who know they are infected, there are asymptomatic individuals who are unaware that they have contracted the virus and who, if allowed to attend the congregational prayers in the mosque, risk infecting their fellow believers with whom they come into contact. The only possible solution to this situation is not just to suspend prayers in mosques, but to close them: the closure of places of worship (*iglāq al-masājid*), in which the means of defending life threatened by the spread of the epidemic take precedence (*amām*) over the performance of *al-ḡamā'a* and *al-ḡum'a*; in other words, the preservation of life takes precedence (*al-naḥs, wa-l-ḥifāz 'alayhā ... awwalī*) over the performance of acts of worship. The issue of closing of mosques/centres is dealt with in more detail in point 4 of the document, where the Association clarifies that this measure does not necessarily concern all places of worship, but only those which, due to their characteristics (cramped spaces, lack of resources, excessive numbers of visitors, etc.), are unable to comply with the conditions imposed by the authorities for their opening, the aim of which is to avoid any possible congregation. All the others, on the other hand, can remain open if they are located in areas where this is permitted. In the fifth point of the document, the Association assures believers that the closure mosques/centres and/or the suspension of their activities are absolutely lawful measures for Islam, so they had better not complain about them. They are, in fact, a *ruḥṣa*, i.e. an exception to the rule, which “the Lawgiver has granted with a view to bringing facility and ease in difficult circumstances” (KAMALI 2003: 437). The AIGR also specifies the alternative form of prayers that may not be performed in the mosque: the congregational prayers are to be performed at home, with the other members of the family (spouses and children) and have the same value as if they had been performed in the mosque; on the other hand, the congregational prayer on Friday is to be replaced by the noon prayer (*zuhr*) to be performed at home, following the example of the Prophet and the Companions who used to pray the *zuhr* prayer instead of the *al-ḡum'a* when travelling. The content of the sixth point is negligible, but not the content of the seventh point in which the Association gives a religious justification for the ban imposed by the government and health authorities on entering and leaving the areas where the epidemic is raging; it did so by referring to a tradition reported by Buḥārī and Muslim, viz: “if you learn (lit. hear) that there is plague in a territory, do not enter it; if plague occurs (lit. happens) in the territory in which you are, do not leave it”.

On 10 March 2020, the Association issued a new document simply entitled “Declaration”<sup>125</sup> in which it once again urged Muslim men and women to be united and responsible, i.e. to comply strictly with the decisions and instructions of the competent authorities, in this case the national lockdown. Therefore, like everyone else, they will have to comply with the obligation not to leave their homes except for legitimate reasons (work, health, buying basic necessities), which does not include going to the mosque to pray. When they do go out, they must maintain a social distance of at least one metre, refrain from shaking hands and wash their hands frequently. All this is justified by the principle that human life is worth more than anything else.

The question of prayer is also addressed in the document of 13 March 2020. It is a text that differs from those previously analysed both in the subject that issued it and in its

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125 The Arabic version is no titled.

structure. In fact, it was issued by the Fatwā Commission of the AIGR and has the formal characteristics of a response: a question and an answer. This *fatwā* was published in both Arabic and Italian;<sup>126</sup> the Italian version was entitled *Fatwa Concerning the Failure to Perform Three or More Friday Prayers*, while the Arabic version was entitled *What is the Rule for Those Who, Because of the Coronavirus, Do Not Perform Friday Prayers Three Times [Consecutively]?*<sup>127</sup> Basically, the Muslims of Northern Italy, who were unable to perform the *ḡum‘a* for the third consecutive Friday, were wondering—in view of the fact that they were unable to perform the Friday prayer due to the closure of mosques and Islamic centres, first locally and then nationally—whether the threats that the *nuṣūṣ*, especially some traditions, reserve for those who do not perform *ḡum‘a* three times in a row, that is, that God will put a seal on their hearts and accuse them of hypocrisy, apply to them. The Commission replied that it is permissible to abstain from the Friday prayer as long as the “justification” (“*uḡr*”) preventing its performance lasts, even if the duration of this period is longer than three weeks and thus includes more than three Fridays; the “lawful justification” (“*uḡr<sup>an</sup>* šar‘iyy<sup>an</sup>”) in the present case is the epidemic, as has been emphasised in all the *fatāwā* issued regarding the suspension of *ḡum‘a* following the spread of Covid-19. Therefore, those Muslims who, because of the coronavirus—and in deference to the measures taken by the authorities to limit its spread—have not performed Friday prayers for more than three weeks will not be subject to the moral sanctions imposed on those who, without good reason or through simple negligence, are guilty of their own omission. Those believers who justifiably suspend the *ḡum‘a* must, alternatively, perform the noon prayer at home.

The next document published by the Association on its Facebook page is that of 3 April 2020; this text, of which only the Arabic version is available, is not of its own making. It is, in fact, the *fatwā* issued the day before by the International Union of Muslim Scholars (al-Ittiḥād al-‘Ālamī li-‘Ulāmā’ al-Muslimīn) in response to those who asked whether collective prayers could be performed at home, given the ban on assembly and the consequent impossibility of performing group prayers in mosques. The Union emphasises, firstly, that collective prayer (*ṣalāt al-ḡamā‘a*) is valid even if only two people perform it; therefore, since it does not necessarily require the presence of a large number of worshippers, it can legitimately be performed at home or elsewhere, taking care to respect the instructions of the authorities regarding the number of people who may gather in the same place; all this in accordance with the prescriptions of Islam, which are based on the protection of human life. Secondly, the Friday prayer is one of the most important acts of worship, which has its own pillars, conditions, peculiarities and form (two *rak‘a* and two *ḥuṭba*), all of which cannot be changed except on the basis of irrefutable proofs in the Qur’ān or the Sunnah. The schools of law agree that if the conditions for the validity of the Friday prayer cannot be met, it can be replaced by the noon prayer, as is the case with those who have a “justification”, such as the sick, travellers and prisoners. On the other hand, the idea of performing *ṣalāt ḡum‘a* at home or in private places or on rooftops could conflict with the health authorities’ objective of preventing gatherings to counter the spread of the virus. In light of all this, the Union Fatwā Commission

126 Again, the Italian version of the *fatwā* is not a translation of the latter, but a synthesis.

127 *Mā Ḥukm man Tarak Ṭalāt Ḡuma‘āt bi-Sabab Wabā’ Kūrūnā?*

concluded that in countries where Friday congregational prayer has been banned because of the coronavirus, it should be replaced by noon prayer.

The penultimate document relevant to this article is the *Declaration on the ʿĪd al-Fiṭr Prayer (Bayān bi-Ḥuṣūṣ Ṣalāt ʿĪd al-Fiṭr)*, issued in Arabic only on 19 May, 2020, a few days before the end of the month of Ramaḍān and its associated celebrations, through which the Association intends to provide guidance to the faithful on how to perform the collective prayer of ʿĪd al-Fiṭr, the performance of which, as it involves the participation of many pray-ers, is incompatible with the authorities' ban on assembly. The AIGR recalled, as in the other texts, that one of the most important objectives of the *ṣarīʿa* is the preservation of life; the pursuit of this objective in a pandemic context implies the adoption of all measures that can contribute to reducing the spread the virus, for which a series of concessions (*ruḥṣa*) must be envisaged that would not normally be allowed. In the specific case of the *ṣalāt ʿĪd al-Fiṭr*, the Association recommends that imams, directors of Islamic centres and all Muslims pray this prayer at home, individually or with other people with whom one lives at home, a mode of performance that is normally considered permissible. The AIGR then reminds us of the time frame within which *ṣalāt ʿĪd al-Fiṭr* must be performed, from 20 minutes after sunrise until just before noon. It also specifies the composition of the prayer: two *rakʿa*, the first with seven *takbīr*, the second with five; no *ḥuṭba*.

Another text that deserves a brief mention is the one published by the AIGR, only in Arabic, on 21 May 2020, entitled *al-Tawḡīhāt Ḥawla Faṭḥ al-Marākiz al-Islāmiyya Baʿda al-Ḥazr (Instructions for the Reopening of Islamic Centres after Quarantine)* which refers to the possibility of reopening places of worship, as provided for in the protocol signed by the main Islamic Communities<sup>128</sup> with the Prime Minister (Giuseppe Conte) and the Minister of the Interior (Luciana Lamorgese) on 15 May 2020, which entered into force three days later.<sup>129</sup> The Association recommends that the directors of Islamic centres reopen their premises only if they are actually able to comply with all the conditions laid down in the protocols; otherwise it is better to remain closed, both to avoid legal problems and to prevent the possible infection of those who use the centre. Those that manage to reopen are asked to strictly enforce the rules laid down in the protocols.

On 22 July 2020, the AIGR again issued a favourable opinion on the celebration of the Feast of Sacrifice and the associated prayers, subject of course to the anti-Covid regulations in force at time (end of July – beginning of August).<sup>130</sup>

The last response that is relevant for the purpose of analysing the impact of the pandemic on Islamic prayers is that issued by the Laḡnat al-Fatwā of 8 March 2021, entitled *Declaration Concerning the [Performance of] the Prayers of Maḡrib, ʿIṣāʾ and Tarāwīḥ in View of [lit. in the Shade] the Persistence of the Epidemic*.<sup>131</sup> With this *fatwā*, the Commission responded to the many requests for clarification it had received at the beginning of the month

128 These are the Grand Mosque of Rome, the Union of Islamic Communities and Organisations in Italy, the Italian Islamic Religious Community and, finally, the Italian Islamic Confederation.

129 The text of the Protocol is available on the website of the Ministry of the Interior, at the following URL: [urly.it/3pr\\_2](http://urly.it/3pr_2) (Last accessed Oct. 18, 2021).

130 In Turin, for example, nine different urban spaces have been created with the help of the local administration to avoid congregations and allow all believers to participate (MARTINENGO 2020).

131 *Bayān bi-Ṣaʿn Ṣalāt al-Maḡrib wa-l-ʿIṣāʾ wa-l-Tarāwīḥ fī Zill Istimrār al-Ġāʾiḥa*.

of Ramaḍān<sup>132</sup> regarding the performance (*kayfiyyat iqāmat...*) of the *tarāwīḥ* prayer, which was considered one of the most important cultic practices (*ṣaʿāʿir*) of the time. In fact, the time (late evening/night), place (preferably in the mosque), and manner (preferably in a group) of this prayer did not fit well with the measures [e.g. the curfew (*al-ḥaẓr al-laylī*) from 10:00 p.m. to 5:00 a.m. and the ban on assembly (*al-quyūd al-mafrūḍa ʿalā l-taḡammuʿāt bi-ṣakl ʿāmm*)], which had been enacted to combat the spread of the epidemic, and which, given its persistence, might have remained in force.<sup>133</sup> In order to solve this problem, the Laḡnah proposed four different solutions. The plurality of these solutions was linked to the desire to take into account the possible scenarios that might have arisen, given the impossibility of predicting what the epidemiological trend would be during the Ramaḍān period and the consequent measures that would be taken by the competent authorities.

The first solution is to recite both the evening prayer and the *tarāwīḥ* prayer (or part of it)<sup>134</sup> together in the mosque or the evening prayer in congregation in the mosque and the whole *tarāwīḥ* prayer at home. This position is based on the minority doctrine (Mālik, al-Šāfiʿi, Abū Yūsuf, etc.) according to which, it is preferable to perform the *tarāwīḥ* prayer at home even under normal conditions (and therefore even more so under exceptional conditions, such as in the case of a pandemic). This doctrine is mainly based on a tradition of the Prophet, reported by Buḥārī and Muslim,<sup>135</sup> according to which “So you people, offer this prayer at your homes, for the best prayer of a person is the one which he offers at home, except the compulsory (congregational) prayer”.

The second possibility identified was that of grouping the sunset, evening and *tarāwīḥ* prayers. This grouping can be done in three different ways: 1. to postpone the performance of the sunset prayer until just before the end of the time within which it is to be performed, and then to perform the evening prayer immediately afterwards; 2. to perform the sunset prayer as soon as the time within which it is to be performed begins, and then the evening prayer (which is also brought forward); 3. to perform the sunset prayer—taking care, unlike the previous option, to allow some time to elapse from the beginning of the setting of the sun—and then the evening prayer (which is also brought forward). In all three cases, after the evening prayer, the *tarāwīḥ* prayer is to be recited either in the mosque, in a congregation, or at home, the choice of place depending on the time available (part of it may be recited in the mosque and part at home) and the measures taken to avoid crowds.

The third option suggested, based on a minority doctrine developed by some Ḥanafī and Ḥanbalī scholars, was to anticipate the performance of the *tarāwīḥ* prayer before the evening prayer.

132 This would start the following 13 April and end on 12 May.

133 In fact, the curfew will only change with Decree-Law (DL) no. 65 of 18 May 2021. The curfew will then be immediately abolished for the white zones, while for the yellow zones it will be reduced (by one hour—from 11 p.m. to 5 a.m.—from 18 May; by two hours—from midnight to 5 a.m.—from 7 June) and then completely abolished (from 21 June).

134 The number of *rakaʿāt* (cycles of prayer) to be performed in the case of *tarāwīḥ* prayer is debated; many favour eleven, based on the example of the Prophet. If there is not enough time to perform them all, the missing parts can be performed at home.

135 In the version of the Arabic text, these two names do not appear; instead, the expression *rawāhu al-ṣayḥān* (the two *ṣayḥ*) was used to refer to them.

The fourth option suggested was to perform both the evening and *tarāwīḥ* prayers at home, similar to what was done in 2020. This would have compensated for the fact that the curfew was still in force (a circumstance that prevented Muslims, especially those living in areas where the sun sets later, from going to the mosque to perform the prayer in question) and for the fact that the ban on assembly was still in force (which could be difficult to enforce, especially in larger Islamic centres where more worshippers congregate). The legitimacy of this option stems from the nature of the *tarāwīḥ* prayer, the collective performance of which can be dispensed with in the mosque because it is among the recommended acts (*sunna*) and not among the obligatory ones.

### National Fatāwā. The opinions of the Italian Islamic Association of Imams and Religious Guides on funeral rites

The first response that the Laḡnat al-Fatwā devotes to funeral rites is the one entitled *Funeral and Burial Rules in the Light of Updates [on] Coronavirus / Aḥkām al-Ġanā'iz wa-l-Dafn fī Zill Mustaḡiddāt Wabā' Kūrūnā*, issued in Arabic only<sup>136</sup> on 19 March 2020, before the ECFR issued *Fatwā* no. 19, the one on funeral rites that I analysed earlier. The Commission clearly stated that the issuance of this *fatwā* was necessary in order to respond to the many requests for clarification that it had received from believers on how to apply the funeral rules, i.e. how to reconcile the washing of the corpse, given that direct contact with the corpse can be a source of infection, or how to bury the deceased given that it is not possible to repatriate them to their countries of origin due to the international blockade, and that there are very few cemeteries/plots reserved for Muslims in Italy? Before answering the questions put to her, the Laḡnah—following a scheme very similar to that adopted by the ECFR in *Fatwā* no. 19—not only reiterated the obligation to obey the rules laid down by the authorities, but also stressed the importance of the space-time factor in formulating the content of a *fatwā*: in order to be effective, the *fatwā* must be calibrated to the specific context to which it is applied. The Laḡnah, like the ECFR, also emphasises that Islamic jurisprudence (*al-fiqh al-islāmī*) provides a set of principles drawn from the Qur'ān and the Sunnah, the application of which can be used to deal with exceptional circumstances and emergencies, of which the pandemic is certainly one. In particular, the Laḡnah cites five principles: “necessity makes lawful what is not” (*al-ḍarūrāt tubīḥ al-maḥẓūrāt*), “difficulty leads to facilitation” (*al-maṣāqqa taḡlīb al-taysīr*), “there is no obligation except for that which can be discharged” (*lā taklīf illa bi-maḡdūr*), “there is no obligation in case of incapacity” (*lā wāḡib ma'a l-ʿaḡz*), “one abides by what of a precept can be fulfilled (lett. the possible is not made to fall short of the impossible)” (*al-maysūr lā yasqūṭ bi-l-ma'sūr*). The verses from which these principles are derived are, in addition to II:185 and XXII:78 mentioned above, II:286 (“God does not charge a soul except its capacity”) and LXV:7 (“God does not charge a soul except what He has given it”);

136 The UCOII, in line with its commitment to ensure that Muslims are buried in accordance with Islamic principles, has proposed a translation which is available on its website: <https://ucoii.org/2020/03/19/coronavirus-fatwa-associazione-degli-imamper-i-riti-funebri/> (Last accessed Dec. 16 2021).

however, with regard to the Sunnah, the Laḡnah cites the tradition that the Prophet said, “simplify and do not complicate” (*yassirū wa-lā tu‘assirū*).

After this introductory section,<sup>137</sup> the Commission goes on to outline the solutions it believes will resolve the problems associated with the implementation of the *ahkām al-ḡanā’iz*.

Regarding the washing of the body, it suggests three different ways, all of which aim to avoid direct contact between the body of the deceased and the person purifying it: 1. simply pouring water over the remains, taking care to do so from a reasonable distance, but without rubbing them; 2. if this option is not feasible, dry washing (*tayammum*) can be used;<sup>138</sup> 3. finally, burying the body without washing it. These options are legitimised in the Commission’s reasoning by the principle that between a living person and a dead person priority must always be given to the former; therefore, between the obligation to wash and the obligation to protect the life of the person performing the washing (prevention of infection), the latter prevails.

Also with regard to wrapping the body in the burial clothes, the Laḡnah suggests three scenarios: to perform the *kafan* if it is possible; not to remove the clothes the deceased was wearing at the time of death, but simply to put on the burial clothes; to bury the body in the clothes it was wearing at the time of death. This last option seems to be the one that best protects the health of the funeral workers (or, in any case, of anyone who performs the *kafan*); the first two options, in fact, presuppose direct contact with the deceased or, in any case, the shaking of the deceased, which can lead to the release of fluids or secretions that are potentially contagious.

With regard to the funeral prayer (*ṣalāt al-ḡanāza*), the Commission considered that, although it is a collective duty incumbent upon the entire *umma* (like all other funeral rites), it can be considered fulfilled if it is performed by only three or even one (in the latter case, it recalled the opinion of the Šāfi‘i and Ḥanbali schools of law according to which the duty of the funeral prayer is to be considered fulfilled even if it is performed by only one believer), so that the prohibition of congregating can be fulfilled. On the other hand, if it is impossible for even a very small number of believers to perform *ṣalāt al-ḡanāza*—because funeral ceremonies have been banned altogether or because the body of the mourner has been made immediately unavailable—Muslims may resort to prayer *in absentia* (*ṣalāt al-ḡā’ib*). It consists of the prayer that can be recited (individually or collectively) in exceptional cases, even in one’s own home, when the remains of the deceased are not present. The *ṣalāt al-ḡā’ib* was originally conceived to enable the prayers to be performed for those Muslims who had died in a place far from their homes.

Finally, on the subject of burial, Laḡnah stated that the rule is that Muslims should be buried at the place of death and in an Islamic cemetery. If this is not possible, the *dafn* can take place anywhere, even in a non-Islamic cemetery. The Commission based its decision on the principle that God does not ask believers to do more than they are able to do, and on the principle that believers will be judged in the hereafter by the deeds they have done during

137 It is interesting to note that, with a few exceptions, this part is virtually identical to the introductory part of the ECFR response mentioned above.

138 However, this solution, in which the performer first places his hands on the earth/sand/stones and then runs them over the face, back and palms (up to the wrists) of the deceased, still implies contact with the deceased, albeit reduced.



their lives not by the place where they are buried. To support its argument, Laḡnah referred to a *fatwā* issued by the ECFR in 2000, which ruled that in the absence of Islamic cemeteries, Muslims could be buried in the cemeteries of non-Muslims.

Interestingly, the AIGR sent the response analysed above to ‘Abd Allāh al-Ġuday’, who approved it. This passage, together with other data, confirms the proximity of the Association to the ECFR:<sup>139</sup> al-Ġuday’ is in fact not only the imam of the Grand Mosque in Leeds, but also one of the most important and authoritative members of the Council, of which he was the president, albeit for a short period (2018-2019); he is also the head of the British Commission for Fatwas, which, like its French counterpart institution, represents a dislocated section of the ECFR.<sup>140</sup> The Italian response was published on the website of the Grand Mosque of Leeds and summarised in English.<sup>141</sup>

The Laḡnat al-Fatwā returned to the issue of washing on 30 March 2020 when it issued a new response in Arabic and Italian entitled *Fatwā Ḥawla Mas’alat Ġusl Mawtā Wabā’ Kūrūnā / Fatwā on the Issue of Washing Deceased [from] Coronavirus*.<sup>142</sup> With this new *fatwā*, the Commission sanctioned the prohibition of *ḡusl*, thus revising its previous position on this issue and bringing it in line with that of the ECFR. Laḡnah explained that this change was necessary in view of the position taken by scientists on the contagiousness of the body of the deceased. They categorically did not rule out the possibility that the corpse could infect those who came into contact with it, or those who came into contact with any liquids that might have leaked from it. Therefore, the only solution to prevent the possible transmission of the virus from the dead to the living was to avoid any direct contact between them, making washing, even dry washing (*tayammum*), impossible. The Laḡnah based the exception to the performance of *ḡusl* on the following principles: the interest of the living takes precedence over the interest of the dead (the obligation to preserve the life of the person performing the washing takes precedence over the obligation to satisfy the right of the dead to be washed); the interest of the group takes precedence over the interest of the individual dead person (the interest of the group in preventing the person doing the washing from contracting and transmitting the virus, takes precedence over the interest of the dead person in being washed); between two evils the lesser of the two evils must be chosen (not complying with the obligation to wash is preferable to the possibility of contracting and spreading a deadly virus). The Commission then responds to those who, drawing an analogy between the person responsible for performing the washing and the doctor, have argued that the performance of *ḡusl* is obligatory even during the pandemic: just as the obligation to protect life does not prevent doctors from coming into contact with the sick, it cannot constitute a restriction on the performance of washing by the person who has died from or with Covid-19, provided that it is performed with the same precautions that doctors take when interacting with patients affected by the virus. Laḡnah argues that this is an inappropriate comparison because, firstly, the

139 In addition to the frequent use of its *fatāwā* (thus demonstrating the authority that it recognises to the ECFR), some of its members, besides al-Ḥazmī of course, have participated in some of the ECFR’s activities.

140 <http://fatwacommitteeuk.com/>.

141 <https://www.leedsgrandmosque.com/covid-19/fatwas/a-recent-ruling-of-funerals-and-burials>.

142 The Italian translation of the title proposed by the Association is *Fatwa on the Issue of the Ritual Funeral Preparation of the Corpses of Muslims Infected with the New Coronavirus Covid-19*.

doctor's actions are aimed at saving the patient's life (curing him/her of the coronavirus) and the lives of others (preventing the patient from transmitting the virus); washing, on the other hand, while important—under normal circumstances—is not so important as to endanger the life of the person performing it and possibly those with whom he/she comes into contact and to whom he/she might transmit the virus. In addition, the use of protective equipment does not completely prevent infection. In fact, many doctors have become infected and died, despite being proficient in their use.

To further legitimise the exemption from performing *gusl*, the Commission, like the ECFR, points out that, in the name of protecting life, the Qur'an allows exemption from certain important imperatives such as the prohibition of apostasy (the believer who renounces Islam under duress is not considered a sinner) or the prohibition of eating forbidden food (the believer may eat a forbidden thing if he is in danger of starving). Moreover, as the ECFR had already done, Laḡnah pointed out that there is no unanimous agreement among scholars on the obligatory nature of *gusl*: the majority consider it a duty, while some, especially Māliki, consider it a recommended act ("al-sunniyya").

Laḡnah's rejection of the practice of washing the body also indirectly implies the prohibition of the practice of *kafan*. Indeed, it stated that the body of the deceased must be placed in the coffin wrapped in the *body bag* in which the hospital staff had placed it.

Like the ECFR, the Commission concluded its response by pointing out that the lack of washing did not constitute any harm to the deceased, who should rather be recognised as a martyr.

On 5 April 2020, the AIGR issued a communiqué in which it pointed out that the response of 31 March was fully compatible with the circular of 1 April 2020 in which the Ministry of Health had banned all forms of funeral washing and ordered that contact with the corpse be kept to a minimum.

## Conclusions

An analysis of the solutions adopted by the ECFR to adapt religious practice to the restrictions imposed by the Covid-19 has shown that did its utmost to develop what could be called a jurisprudence of prevention: in fact, in line with the absolute priority that Islam gives to the protection of life, almost all its rulings were aimed at preventing the believer from contracting and/or spreading the infection. This is particularly evident in the case of funeral rites: despite the scientific uncertainty regarding the contagiousness of the corpse, the jurists of the Council opted for the most radical option, that of prohibiting *gusl*, a solution which, on closer examination, is in perfect harmony with the doctrinal orientation that has emerged in recent years, with few exceptions, regarding the treatment of corpses in the context of epidemics.

The solutions adopted by the Council to combat the pandemic were therefore fully compatible with those adopted by European governments, some of which were even more restrictive. The more restrictive nature of the ECFR's solutions is perhaps due to its transnational nature: by reaching out to all European Muslims, it had to develop guidelines that could be useful to all believers, even those who lived where the political and health authorities had enacted the most restrictive regulations. The compatibility between the Council's *fatāwā* and

the rules issued by the European health authorities has undoubtedly enabled some Muslims to accept with greater serenity the prescriptions of the political and health authorities of the European country in which they live. It cannot be ruled out that the *fatāwā* issued by the Council to explain to believers the Islamic approach to the fight against the coronavirus was also influenced, albeit secondarily, by its intention to present itself to the institutions of the European countries as a cooperative and reliable partner, in line with its general objective of becoming for them the main authority of reference on matters relating to Muslim communities.

Finally, a comparison of the ECFR's responses with those of the AIGR revealed a strong similarity, to the point of being completely superimposable in some cases. This similarity can be attributed to the role of Amīn al-Ḥazmī who, both as the representative of Italy within the ECFR and as the head of the Laḡnat al-Fatwā of the AIGR, is likely to convey at the national level (AIGR) what has been decided or at least discussed at the transnational level (ECFR).

It can be assumed that the opinions of the AIGR have been particularly well received by the centres belonging to the UCOII, which, in its circular no. 1 of 5 March 2020, entitled *Coronavirus Emergency Provisions for Islamic Communities*, recalled many of the principles present in the responses of the Association (and therefore also in those of the ECFR): the priority of preserving life over the obligation to perform collective prayers (point 1); self-quarantine (point 2); the closure of the centres and the suspension of all activities taking place there, including the five daily prayers and the Friday prayer (points 3 and 4); the obligation to maintain the social distance prescribed by the authorities (point 6); and the prohibition of "exchanging handshakes during greetings" (point 9). The centres that adhere to the UCOII have thus incorporated indications that have their origin in the AIGR rulings, which in turn are influenced by the doctrine of the ECFR. In essence, this means that those who attend the centres affiliated to the UCOII unknowingly follow the guidelines of the Union, which have been deliberately drawn up on the basis of the indications of the AIGR and, therefore, of the ECFR. In Italy, therefore, the ECFR's influence seems to be twofold: direct, in the case of the UCOII, and indirect, in the case of the believers who belong to the centres affiliated to the UCOII. On the basis of the analysis carried out, it is therefore possible to hypothesise that, at least in the Italian case, global Islam has influenced a part of local Islam.

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