

*Preliminary Report on  
Legislation & Practice Relating to the  
Protection and Preservation of  
Jewish Burial Grounds*

*Austria*

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## 1. EXECUTIVE SUMMARY

### 1.1 *Project Introduction*

As a result of the ravages of the Holocaust and the subsequent waves of emigration, Europe's Jewish population now stands at around 1.5 million, 8 million fewer than in 1933. Many areas in Central and Eastern Europe with previously vibrant Jewish communities no longer have a single Jewish resident; others have small and ageing Jewish populations, unable to fulfil their duty to care for the graves of those buried in thousands of Jewish cemeteries. Most of these sites lie unvisited and unprotected, severely damaged by the destruction wrought by the Nazis and during the Communist era and at risk from neglect, vandalism, development, theft, inappropriate development and well-meaning but inexpert attempts at restoration. Without immediate action many will soon be lost forever.

The Lo Tishkach Foundation was established in 2006 as a joint project of the Conference of European Rabbis and the Conference on Jewish Material Claims Against Germany to guarantee the effective and lasting preservation and protection of Jewish cemeteries, Jewish sections of municipal cemeteries and mass graves throughout the European continent, estimated at more than 15,000 in 49 countries.

One of the key aims of the project, identified by the Hebrew phrase *Lo Tishkach* ('do not forget'), is to establish a comprehensive, publicly-accessible database of Jewish burial grounds in Europe. This is now available on the project's website ([www.lo-tishkach.org](http://www.lo-tishkach.org)) and currently features 'core data' on over 6,000 Jewish burial grounds. Data collected will be used to both facilitate research into this fundamental aspect of Europe's Jewish heritage, and to provide a starting point for local-level actions to protect and preserve Jewish burial grounds throughout Europe.

In order to afford large-scale, lasting protection to these valuable sites, local-level work, while extremely valuable, is not enough. It is crucial to ensure that there is a sufficiently robust legal environment – encompassing both appropriate legislation and effective enforcement – and a clear set of standards on burial ground protection enshrined in a recognised code of practice incorporating religious, legal and technical considerations.

One of the most important aspects of our work in this sphere is a research project aiming to collate legislation and practice affecting burial grounds throughout Europe, which we believe to be the first of its kind. Reports produced will be used as the basis for high-level advocacy and awareness-raising activities to bring about the development of a more effective normative framework for cemetery protection.

### 1.2 *Report Objective*

Carried out in the context of the second strand of the project's activities as outlined above, the ultimate objective of this research work is to analyse the effectiveness of the current protection and preservation regime for burial grounds throughout Europe and to offer proposals as to how the situation could be improved.

This paper presents the findings of preliminary research on the protection and preservation of Jewish cemeteries in Austria which – in providing an overview of the current situation of cemeteries, the key legislative provisions which are particularly appropriate to them and the enforcement of a number of these provisions – offers a solid foundation for future action and research.

### 1.3 Report Findings

The key points for the Lo Tishkach Foundation on the situation for Jewish burial grounds in Austria are as follows:

- There are currently **67 known Jewish cemeteries in Austria**. The very low number is thought to be a result of the historically urban character of Austria's Jewish communities. While this may be correct, it is highly probable that there are a number of unrecorded Jewish burial grounds in Austria that are no longer visible and therefore at risk from future development. There are also **a number of Jewish mass graves**, primarily of Hungarian Jewish forced workers.
- Of 65 Jewish cemeteries for which the owner is listed, the **Jewish community of Austria is named as the owner of 51**. 9 Jewish sections of municipal cemeteries are owned by the local *Gemeinde*, while 5 cemeteries are under private ownership.
- **Maintenance agreements with the local *Gemeinde* have been secured for the majority of Austria's Jewish cemeteries**, while the Jewish community is responsible for care in some cases and external organisations in others. There remain 9 for which care agreements have not been concluded.
- While many cemeteries receive a good standard of care in accordance with these agreements, **14 are nevertheless in a poor or very poor state**. 70% of the cemeteries have undergone some significant form of renovation work in the past twenty-five years, but **many still require large-scale preservation** after undergoing major damage during the Nazi period and insufficient care over the subsequent years.
- While basic maintenance work is often undertaken by the local *Gemeinde* at its own cost, and while there are certain allocations available from the provincial authorities (*Länder*) in addition to contributions from other organisations, **funding for the often significant renovation work needed is insufficient**. Although assistance with renovation work is appreciated, there is a concern that this may dissuade the Austrian authorities from fulfilling their maintenance and renovation obligations in accordance with the 2001 Washington Agreement with the US.
- According to IKG Wien, **66% of Austria's Jewish cemeteries are in an 'excellent', 'very good' or 'good' state, while 26% are in a 'poor' state and 6% are in a 'very poor' state**. The vast majority are secured with a wall – if damaged – fence or hedge and often a lockable gate. **The principal threats are believed to be the weather, pollution and vegetation damage as a result of neglect, in addition to the effects of inexpertly past inexpert renovation work in certain cases**. Anti-Semitic vandalism is something of a problem although reports are reasonably rare; this is likely to be related to the presence of cemetery walls and/or fences and regular maintenance. Development is not considered to be a current threat, although monitoring of any future re-development of now privately-owned cemetery sites is desirable and research is necessary to discover any non-visible Jewish burial grounds that are not recorded.
- While a reasonable number of Austrian Jewish cemeteries are well-maintained, **the key issue that needs to be tackled in order to ensure their better protection and preservation is primarily the negative effects of vegetation, weather and pollution on the gravestones and structures**. Both regular maintenance and large-scale, high-quality renovation is needed. Action is also needed to tackle instances of vandalism, and to ensure that burial grounds are properly protected from future development.

- **The legal regime offers a comprehensive response** to the threats identified in Section 4: neglect (lack of maintenance and/or renovation), damage through inexpert renovation work, vandalism and possible future development.
- Most important within the current context is the **2001 Washington Agreement with the United States**, which requires Austria to offer additional support for the maintenance and renovation of Jewish cemeteries in Austria. Importantly, this extends to all cemeteries, both known and unknown.
- While the Washington Agreement's coverage of mass graves is unlikely, unless they are located in the area of an existing Jewish cemetery, these are covered, in addition to the graves of Jewish soldiers who fought in the First and Second World Wars, by the **War Graves Act of 1948**. This Act ensures their ongoing care by the federal authorities, the maintenance of the land in which the grave is located by the owner, the extension of protected cultural heritage status to associated monuments, and the punishment of the destruction, damage or dishonouring of a grave or monument 'out of political hatred'.
- **Cultural heritage legislation** also offers a level of protection from damage, destruction or change without permission (including through maintenance work), although the onus lies with the owner to ensure this. **This protected status is currently enjoyed by all Jewish cemeteries (apart from those under private ownership).**
- In addition, it is likely that a Jewish cemetery discovered during development would meet the criteria of '**archaeological find**' and therefore be extended similar protection.
- The legal obligation to undertake an 'Environmental Impact Assessment' for large-scale development projects, in requiring the identification, description and assessment of the direct and indirect effects on 'material assets and the cultural heritage', **may help to prevent such a development from taking place if a known cultural heritage site (a Jewish cemetery) would be affected in the process.** Furthermore, given the requirement to undertake a professional survey of previously-known sites and monuments, it is possible that the EIA may also **uncover a Jewish burial ground that is no longer visible prior to excavation taking place.** However, it should be remembered that this is only related to large-scale projects; non-visible burial subject to smaller-scale excavations would unfortunately only gain protection upon discovery.
- What is crucial in all excavations involving (possible) Jewish burial grounds is that all investigations are carried out with the **guidance of the Jewish community.** Although this should already be carried out in practice, no binding article to this effect is available.
- With regards to the legal protection offered by the **Austrian criminal code**, Jewish burial grounds are protected by various provisions dealing with criminal damage, theft, the disturbance of the dead, the dishonouring of articles of religious importance and hostile action against a religious, racial or ethnic group. Damage to objects of religious importance, graves or memorials and protected monuments is penalised more heavily. As such, **protection is evidently offered from vandalism but could also possibly be extended to disturbance during excavation;** further research is needed on this point.
- *Land*-level burial legislation, in sanctioning exhumations, the dissolution of cemeteries and the cancellation of rights to a specific burial plot, is unsuitable for the purpose of this project.
- In the areas of restitution/compensation and cultural heritage legislation, **the practical effectiveness of the legislation is affected by Austrian government reluctance to implement the Washington Agreement.** This has a knock-on effect on the effective

maintenance of Jewish cemeteries protected in accordance with cultural heritage legislation, as insufficient funds are available to undertake the works necessary to effectively maintain many of these sites. As such, it would not be wise to strictly enforce the owner's cultural heritage obligations, nor to punish those undertaking renovation work with great enthusiasm but little expertise and causing damage as a result; without this work many of Austria's Jewish cemeteries would be in a significantly worse state than at present.

- *Suggested areas for future action include:*
  - Full Austrian government participation in the 2001 Washington Agreement relating to the care of all Austrian Jewish cemeteries, including the adoption of appropriate legislation placing responsibility for care firmly in the hands of the federal and other authorities to guarantee this.
  - The performance of in-depth historical research to ascertain the locations of all non-visible Austrian Jewish burial grounds.
  - The continued monitoring of these and all Jewish burial sites.



## 2. JEWISH BURIAL GROUNDS – AN OVERVIEW

Known variously by the Hebrew *bet kevarot* (house of tombs), *bet olam* (house of eternity), *bet chayyim* (house of the living) and *bet shalom* (house of peace), Jewish burial grounds are sacred sites which, according to Jewish tradition, must remain undisturbed in perpetuity. As such, the term ‘former Jewish cemetery’ is erroneous. This is of the utmost importance for the Lo Tishkach project, meaning that all Jewish burial grounds, visible or otherwise, fall under its remit.

Showing proper respect for the dead (*kevod ha-met*) is intrinsic to Jewish law. The connection between the soul and the human body after death is an essential aspect of Jewish belief in the eternity of the soul. This manifests itself in prohibitions against autopsy, disinterring the dead (*pinui met v'atzamot*)<sup>1</sup>, deriving benefit (*issur hana'ah*) from a corpse or grave, or performing various practices thought to ‘ridicule the helpless’ (*l'oeg l'rosb*)<sup>2</sup>.

It can also be seen in the requirement for:

- A prompt burial;
- The waiver of various rabbinic restrictions on Shabbat and religious holidays to insure proper care of the dead;
- The ritual bathing and dressing of the body (*tabara* and *tachrichim*);
- Laws concerning proper conduct in a cemetery.

Establishing a cemetery is one of the highest priorities for a new Jewish community, as Jewish bodies must be buried in a permanent plot on Jewish-owned land sanctified for this purpose. If this is not possible, burials may take place in a non-Jewish cemetery with a visible separation from non-Jewish graves by a solid barrier or a definite space of no less than four cubits (approximately 1.8 metres).

To ensure that the necessary requirements are properly met and that each member of the community is afforded a proper burial, the Jewish community's burial society (*chevra kadisha*) provides its services free of charge. Participation in the society, performed on a voluntary basis, is considered to be particularly laudable as tending to the dead is ‘true kindness’ (*chesed shel emet*), undertaken without expectation of a reward.

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<sup>1</sup> Generally speaking, Jewish law (*halacha*) sharply condemns the excavation and removal of corpses from their gravesites even if they will be reburied; exhumations are only permitted in exceptional circumstances and under full rabbinical supervision.

<sup>2</sup> Such practices include not only making derogatory remarks or joking in the presence of the dead but also ‘any indulgence in the pleasures and needs of the living’ such as eating, drinking or smoking. Source: Lamm, M. *The Jewish Way in Death and Mourning*, Jonathan David Company Inc.; New York, 2000.



### 3. BACKGROUND ON AUSTRIAN JEWISH BURIAL GROUNDS

#### 3.1 Numbers

##### 3.1.1 Jewish cemeteries

According to information on the current situation of Austrian Jewish cemeteries provided by the Jewish community of Vienna (known hereafter as 'IKG Wien'<sup>3</sup>), there are currently 63 Jewish cemeteries (and Jewish sections of communal cemeteries) known to be in existence in Austria.

A further three cemeteries listed in Mag.<sup>4</sup> Tina Walzer's 2002 six-volume *Weißbuch über Pflegezustand und Sanierungserfordernisse der jüdischen Friedhöfe in Österreich* (White Paper on the Care Situation and Renovation Needs of the Jewish Cemeteries in Austria), in addition to the Jewish section of a communal cemetery featured on the IKG Wien online cemetery database<sup>5</sup> but not elsewhere, can be added to this list<sup>6</sup>, bringing the total to 67. Of this figure, only a small number continue to be used for burials.

Austria has a surprisingly low number of Jewish cemeteries, with a density of only 1 cemetery per 1,249 square kilometres.<sup>7</sup> These are overwhelmingly located in Austria's lower-lying areas; 80% of Austria's Jewish cemeteries and mass graves can be found in just over a quarter of its surface area, the provinces of Wien, Burgenland and Niederösterreich. In comparison with neighbouring countries, which possess an average density of 1 cemetery per 458 square kilometres, the difference is striking.<sup>8</sup>

When questioned on this matter, Mag. Raimund Fastenbauer of IKG Wien<sup>9</sup> stated that this is a result of the historically urban character of Austria's Jewish communities. It is nevertheless highly probable that there are a number of Jewish burial grounds in Austria that are no longer visible, having undergone redevelopment, which lie unrecorded and therefore unprotected from future (re-) development, and for which further research is needed.

Leopold Moses' 1935 publication *Die Juden in Niederösterreich*<sup>10</sup>, for example, named a number of Jewish cemeteries which are no longer visibly present today, including Hainburg, Laa an der Thaya, Perchtoldsdorf, Grafenwörth, Spitz and Tribuswinkel. Moses also suggests a number of additional possible cemetery locations, the existence of which was already questionable in 1935: Achau, Bockfließ, Ebenfurth, Eggenburg, Gobelsburg, Groß-Schweinbarth, Nieder-Absdorf and Schönbühel bei Melk (the parcel of land belonging to house no. 41 is called 'Judenfriedhof').<sup>11</sup>

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<sup>3</sup> Full title: *Israelitische Kultusgemeinde Wien*.

<sup>4</sup> Magister (abbreviated 'Mag.') is an honorary title used in Austria and Germany given to those with a 'Master of Arts' degree.

<sup>5</sup> Accessible from [www.ikg-wien.at](http://www.ikg-wien.at).

<sup>6</sup> A full list of Austria's Jewish cemeteries and mass graves can be found on the Lo Tishkach database, accessible at [www.lo-tishkach.org](http://www.lo-tishkach.org).

<sup>7</sup> On the basis of a surface area of 82,444 sq km (land only). *CIA World Factbook – Austria*.

<sup>8</sup> Slovakia has 1 cemetery/69.4 – 117.6km<sup>2</sup> (number of cemeteries still to be confirmed); Hungary, 1 cemetery/75.2 km<sup>2</sup>; Germany, 1 cemetery/162.7 km<sup>2</sup>; Czech Republic, 1 cemetery/231.4 km<sup>2</sup>. This figure also includes Switzerland, which is also an unusual case with 1 cemetery/2,093km<sup>2</sup>; otherwise the figure would be 1 cemetery/131km<sup>2</sup>. All calculated using land area figures from the US government's *CIA World Factbook*.

<sup>9</sup> Interviewed by the author on 4 March 2008.

<sup>10</sup> Moses, L. *Die Juden in Niederösterreich*, Wien 1935, pp. 113-117. Cited in Walzer, T. *Weißbuch über Pflegezustand und Sanierungserfordernisse der jüdischen Friedhöfe in Österreich*, IKG Wien, 2002.

<sup>11</sup> Walzer 2002.

### 3.1.2 Jewish mass graves

There are a number of Jewish mass graves in Austria, primarily related to the Mauthausen-Gusen concentration camp and its 'sub-camps', located throughout Austria and southern Germany. While the death toll remains unknown, most sources place it between 122,766 and 320,000 for the entire complex. Individual mass graves, primarily of Hungarian Jews, 18,000 of whom were deported to the Groß-Wien and Nieder Donau 'Gau' to work as forced labourers in the agricultural and industrial sectors, listed in the IKG Wien records include Deutsch Schützen, Rechnitz and Schattendorf in Burgenland<sup>12</sup>, and Felixdorf and Göstling in Niederösterreich. There are also a number of cemeteries listed above which also contain mass graves, including Deutschkreutz, Eisenstadt (alter Friedhof) and Mattersburg in Burgenland; Bruck an der Leitha and Sankt Pölten in Niederösterreich; Steyr in Oberösterreich; and Graz in Steiermark.

While all Jewish burial grounds are clearly of equal importance to the Lo Tishkach project, due to time and space constraints the principle focus of this preliminary report is Jewish cemeteries (including Jewish sections of municipal cemeteries). Individual (i.e. non cemetery located) mass graves will be addressed in detail in a later update. The legislative provisions appropriate to their protection will, however, be featured.

### 3.1.3 Documentation

While there have been a number of laudable cemetery documentation efforts, including the creation and management of an electronic burials database by the 'Schalom' Association (*Verein Schalom*)<sup>13</sup> and a number of websites specific to individual cemeteries, the most notable was that carried out by Jewish heritage specialist Mag. Tina Walzer in 2001-2, which resulted in six volumes entitled *Weißbuch jüdische Friedhöfe in Österreich* (White Paper on Jewish Cemeteries in Austria).

This unique publication, which can certainly be seen to provide a model of best practice for undertakings of a similar type in other countries, features information on 65 Austrian Jewish cemeteries<sup>14</sup>, including their exact locations, copies of cadastral documentation, details of maintenance agreements and restoration work, in-depth analyses of the problems faced by each cemetery and suggestions for their resolution, and photographs wherever possible. It also provides detailed budgets for the maintenance, repair and other works deemed necessary by the authors.

Information on 57 Austrian Jewish burial grounds also features on a user-friendly online database, available in both German and English at the IKG Wien website. This database, however, does not contain the same level of detail as that featured in Mag. Walzer's *Weißbuch*, which at present appears to be available only in paper form and in German. As such it is accessible only to a small percentage of those with an interest in Austrian Jewish cemeteries. As the majority of the information contained within has been translated into English for the purpose of this report, permission will be sought to feature this data on the Lo Tishkach database.

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<sup>12</sup> Austria comprises nine federal provinces (*Bundesländer*): Burgenland, Kärnten/Carinthia, Niederösterreich/Lower Austria, Oberösterreich/Upper Austria, Salzburg, Steiermark/Styria, Tirol/Tyrol, Vorarlberg and Wien/Vienna. This report features the German-language designations.

<sup>13</sup> This is now available via the IKG Wien website [www.ikg-wien.at](http://www.ikg-wien.at).

<sup>14</sup> Volume 1 of the publication mentions that a similar volume has been prepared on mass graves; a copy of this publication is yet to be secured by the Lo Tishkach project.

## 3.2 *Legal Responsibility & Maintenance*

### 3.2.1 Austrian Jewish community

The Jewish community of Austria is estimated at around 10,000 out of a total population of 8 million. It is the fourth largest religious community in Austria, and enjoys ‘public corporation’ status as an officially recognised religious society.<sup>15</sup> The present community, mostly located in Vienna, is made up of several groups, the most numerous being returnee Austrians and their families, as well as former refugees from Eastern Europe, and most registered members of the community are affiliated to IKG Wien. There are also registered Jewish communities in Baden (Niederösterreich), Graz (Steiermark, Kärnten and the Burgenland districts of Oberwart, Güssing and Jennersdorf), Linz (Oberösterreich), Innsbruck (Tirol and Vorarlberg) and Salzburg.<sup>16</sup> A Jewish primary school and high school, as well as several Jewish publications, such as the monthly *Die Gemeinde* and *Aufbau* and the quarterly *David*, serve the needs of the community.<sup>17</sup>

### 3.2.2 Ownership

Of 65 Jewish cemeteries for which the owner is listed<sup>18</sup>, the Austrian Jewish community is named in 51 cases – primarily IKG Wien (40 cemeteries). This figure includes the Jewish cemeteries at Gänserdorf, Hohenau, Hollabrunn, Horn, Klosterneuburg, Korneuburg, Krems, Mistelbach, Neunkirchen, St. Pölten, Stockerau, Wiener Neustadt, Deutschkreuz, Eisenstadt, Frauenkirchen, Kittsee, Kobersdorf, Lackenbach and Mattersburg, which were given back to the IKG Wien as the successor organisation to the destroyed communities in these areas. Cemeteries are also owned by IKG Graz (8 cemeteries), IKG Linz (2 cemeteries) and IKG Salzburg (1 cemetery).

With regards to non-Jewish community ownership, 9 Jewish sections of municipal cemeteries are owned by the *Gemeinde* (local authority), while 5 are under private ownership:

- *Bad Aussee (Steiermark)*: Owned by the Church of St Leonhard (*very poor state*).
- *Großpetersdorf (Burgenland)*: Forcibly sold to the local *Gemeinde* in 1940 and then sold on to a private buyer. A warehouse was erected on the site in 1951. The *Gemeinde* paid compensation to IKG Graz for the site in 1953 and covered the cost of the exhumation and re-burial of all remains at Oberwart Jewish cemetery. The cemetery area was then destroyed and built upon. Today a petrol depot belonging to a warehouse co-operative can be found on this site.
- *Hohenems (Vorarlberg)*: Owned by the *Verein für Erhaltung des jüdischen Friedhofes in Hohenems* (Association for the Preservation of the Jewish Cemetery in Hohenems). The Jewish cemetery of Hohenems survived the Nazi regime intact. It was bought from IKG Innsbruck by a group of returning Hohenems families who had moved to Switzerland, who founded the Association in 1954. It is still in use today (*good state*).
- *Stadtschlaining (alter Friedhof) (Burgenland)*: Seized by the local *Gemeinde* in 1938 and returned to IKG Graz in 1952. The area was sold to a private buyer in 1953; it is now used as an orchard and garden with the tombstones forming a decorative wall around it. The Jewish community attempted to buy back the land in 2001, without success (*good state*).

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<sup>15</sup> US State Department, *International Religious Freedom Report 2007 – Austria*.

<sup>16</sup> Further details about Austria’s Jewish communities can be found at the following websites: <http://www.ikg-wien.at/>, <http://www.juedishegemeinde.at/>, <http://www.ikg-graz.at/>, <http://www.ikg-innsbruck.at/>, <http://www.padl.ac.at/LuF/be/synagoge/default.htm>, <http://www.ikg-salzburg.at/>.

<sup>17</sup> Stephen Roth Institute for the Study of Contemporary Anti-Semitism, *Austria 2006*.

<sup>18</sup> The information used in sections 4.2 – 4.4 is taken from Walzer, T. *Weißbuch jüdische Friedhöfe in Österreich*, 2002 unless stated otherwise, and is thus accurate up to 2002 only. This figure does not include individual mass graves that are not located in cemeteries.

- *Ybbs*: Forcibly sold to the local *Gemeinde* in 1940 and then sold on to a private buyer. The *Gemeinde* paid compensation to IKG Wien as the successor to IKG Amstetten for the site in 1951. Today this is a private wooded area.

### 3.2.3 Maintenance

Written or oral maintenance agreements with the local *Gemeinde* have been secured for the majority<sup>19</sup> of Austria's Jewish cemeteries, a number which made a commitment after large-scale renovation work was carried out in the framework of the Aktion 8000 scheme as explained below. The Jewish community has been engaged in discussions with a number of additional communities regarding such agreements, although not all have reached a positive resolution.<sup>20</sup>

Such maintenance agreements contain the requirement to abide by certain rules. Men must cover their heads upon entry, work must not take place on Shabbat or on Jewish holidays, and it is forbidden to leave paths and to step on or climb on the gravestones.<sup>21</sup> Minimum levels of care are also specified: regular grass cutting (between once and four times annually), the maintenance of pathways, gates and walls and the re-erection (or placement on top of the appropriate graves) of fallen stones. Agreements may also include clauses with regard to the maintenance, repair or demolition, if necessary, of ceremonial halls or mortuary buildings. The care of individual graves is, however, often the responsibility of descendants. In a number of cases the Jewish community has erected a memorial plaque in honour of the efforts of particular local *Gemeinde* in accordance with such agreements.

With regards to the maintenance of the remaining cemeteries, the Jewish community is listed as being responsible for care in four cases (although this figure may possibly be higher). A further four cemeteries were listed in 2002 as receiving maintenance from *Verein Schalom* (Shalom Association for the Reconstruction and Preservation of Jewish Cemeteries), established with the support of the IKG Wien in November 1991 by the late Mag. Walter Pagler, a Viennese businessman, together with historian Erika Weinzierl and architect Friedrich Rollwagen. The organisation's founding aim was to secure the sponsorship of Jewish graves by individuals, companies, schools and organisations in order to ensure their renovation, and played a significant role in the maintenance and renovation of Austria's Jewish cemeteries during the 1990s.<sup>22</sup>

According to IKG Wien, however, while external organisations are listed as providing maintenance and/or monitoring in a number of cases – including the 'Helikon' Association Gänserdorf<sup>23</sup> – *Verein Schalom* receives no mention. This is particularly striking given the organisation's prior level of involvement (in many cases, for instance, maintenance agreements with the local *Gemeinde* were signed with *Verein Schalom* as opposed to the IKG), and requires further research.

The Brooklyn-based Heritage Foundation for the Preservation of Jewish Cemeteries (HFPJC), is also (preliminarily) involved in the preservation of Kobersdorf and Lackenbach cemeteries<sup>24</sup>,

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<sup>19</sup> As of 2002, maintenance agreements were held between the local *Gemeinde* and the appropriate representative of the Austrian Jewish community in 43 cases. More recent information from the IKG Wien website suggests that this number has risen to 47.

<sup>20</sup> Lind, C. 'Die Letzten Zeugnisse', in Keil, M., Forisch, E. & Scheiber, E. *Denkmale: Jüdische Friedhöfe in Wien, Niederösterreich und Burgenland*, Institut für Geschichte der Juden in Österreich/Club Niederösterreich; St. Pölten/Vienna, 2006: p. 110.

<sup>21</sup> Weinzierl, E. 'Verantwortung und Moralische Pflicht' in Keil, M. et al, 2006: p. 42.

<sup>22</sup> *Ibid*, p. 44.

<sup>23</sup> Other organisations listed in 2002 as providing such assistance include Güssing agricultural college, Mauthausen Aktiv Steyr Association, the ÖBB allotment association, *Behindertenförderungsverein Neusiedl am See, Kittsee Hauptschule, Strafanstalt Stein, Verein für Erhaltung des jüdischen Friedhofes in Hohenems* and the Jewish Museum of Hohenems.

<sup>24</sup> Heritage Foundation for the Preservation of Jewish Cemeteries (HFPJC) *Status Report*, December 2007.

both of which are owned by IKG Wien, maintained by the *Gemeinde* and currently considered by IKG Wien to be in a poor state.

Finally, a number of cemeteries are not maintained at all. While there is no exhaustive, up to date list, using information gained from the 2002 *Weißbuch* and IKG Wien it would appear that there are no existing maintenance agreements for Währing, Deutsch Wagram or Marchegg cemeteries, in addition to those private cemeteries previously listed and the Amstetten *Grundstück* (piece of land). All are currently in a poor or very poor state apart from Hohenems and Stadtschlaining (alter Friedhof).

With regards to the application of such maintenance agreements, there are a number of cemeteries which can be seen to provide a model for good practice. In Walzer's 2002 publication the cemeteries at Korneuburg, Mödling, Mistelbach and Gänserndorf are listed, all of which are maintained by the local *Gemeinde*. With regards to their current state, both Gänserndorf and Mödling remain in an excellent condition. They are joined in this category by Bad Sauerbrunn, Floridsdorf, Götttsbach an der Ybbs and Salzburg. The current state of Korneuburg is unknown, but it is likely that it remains good.

Maintenance and renovation works can also be seen to be successful at the Jewish cemeteries of Deutschkreutz, Baden, Mattersburg, Frauenkirchen, Klosterneuburg, Tulln, Wiener Neustadt, and Neulengbach. Labelled '*zu verbessern*' (to improve; the lowest possible category) in 2002, these cemeteries are now considered to be in a good state.

Mistelbach, however, is now rated as 'poor', apparently as a result of a dispute with the *Gemeinde* over maintenance.<sup>25</sup> Other Jewish community-owned cemeteries listed as receiving care that were considered to be in a poor or very poor state in a recent IKG Wien update<sup>26</sup> include:

- Dürnkrot, Oberstocksall, Rechnitz, Güssing, Eisenstadt (alter Friedhof), Hohenau, Großenzersdorf, Kittsee, Lackenbach and Waidhofen an der Thaya (*maintenance agreements with the local Gemeinde*).
- Zentralfriedhof Tor 1<sup>27</sup>, Kobersdorf and Gattendorf (*maintained by the Jewish community and others*).

### 3.2.4 Renovation and other large-scale projects

In addition to regular basic maintenance, it is essential that periodic renovation work is also undertaken. According to Walzer's *Weißbuch*, over 70% of those cemeteries listed have undergone some significant form of renovation work in the past twenty-five years – although in many cases this took place at least 10 years ago and additional work is now needed.

The most important organisation with regards to the renovation of Austrian Jewish cemeteries has historically been *Verein Schalom*. Its work has included significant structural repairs to a number of cemeteries and the general cleaning and renovation of many others, in addition to the erection of memorial plaques and symbolic gravestones. Most notable about the organisation's work was its mobilisation of volunteers from a broad range of institutions and organisations to actively participate in the protection and preservation of Austrian Jewish cemeteries. These included secondary school pupils and university students from Austria and abroad, members of a US Mormon organisation, members of the Armed Forces, trainee police officers and fire fighters, construction workers, Viennese citizens, stonemasons and the Federal Monuments Agency (*Bundesdenkmalamt*).

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<sup>25</sup> Robert Fraser, cited in <http://www.jewishgen.org/cemetery/w-europe/austria.html>.

<sup>26</sup> Received from Mag. Fastenbauer in March 2008.

<sup>27</sup> 'Tor' means gate. The designations 'Zentralfriedhof Tor I' and 'Tor IV' are used throughout this report for Gates 1 & 4 of the Viennese Central Cemetery.

The work of *Verein Schalom* at the Viennese Zentralfriedhof was particularly impressive, including the renovation of over 3,000 graves, the renewal of 20,000 inscriptions and the creation of a burial database by volunteers, primarily students. As a result this 26-hectare Jewish cemetery, which for five decades had been completely abandoned and overgrown with vegetation, was again made accessible.

Also of great significance was the work carried out in the framework of the 'Aktion 8000' programme, devised to give 8,000 new work places to the long-term unemployed, unemployed young people and those with insufficient work experience.<sup>28</sup> More than 25 Austrian Jewish cemeteries received assistance via this programme, incorporating the re-building of cemetery walls, gravestone cleaning and preservation, the re-assembling and re-erection of broken and toppled stones, building repair and renovation, general clearing of vegetation and rubbish, tree cutting, painting and the replacement of gates and locks.

### 3.2.5 Financing of cemetery maintenance and renovation

According to Mag. Fastenbauer<sup>29</sup>, there is insufficient funding for a proper programme of care. While basic maintenance is paid for by many local *Gemeinde*, the work carried out in this context is generally very limited and does not cover the care and renovation of gravestones or significant structural work needed in many cemeteries. According to the budgetary projections prepared in 2001 and available in Walzer's *Weißbuch*, the total cost of the necessary renovation works came to 657,279,661.84 Austrian Schillings; over 47 million euros.

While there is some financial support available for this type of undertaking, this is limited; according to Mag. Fastenbauer, for instance, the province of Burgenland contributes 11,000€ a year, while the City of Vienna gives 300,000€ a year. The Jewish community has also financed renovation works, but has been evidently unable to make up the very significant shortfall. As such, funding has been secured on occasion from organisations including the Austrian National Fund for the Victims of National Socialism (*Nationalfonds der österreichischen Republik für die Opfer des Nationalsozialismus*), the International Society of Burgenland Jews (*Weltverein burgenländischer Juden*), the Ronald Lauder Foundation, the Federal Monuments Agency (*Bundesdenkmalamt*), the Newspaper Publishers' Association (*Zeitungsberausbegerverband*), the Bank of Austria, former residents of particular towns now living abroad and various individual Austrian sponsors. A large amount of renovation work was also carried out by volunteers, primarily in the context of the work of *Verein Schalom*.

While this non-governmental assistance has enabled some important works to be carried out and is greatly appreciated by the Jewish community, the majority of cemeteries nevertheless continue to require significant renovation. Furthermore, both Mag. Fastenbauer and Mag. Walzer emphasise the importance of the Austrian federal, provincial and local authorities' taking on their responsibility to properly care for Austrian Jewish cemeteries as stipulated in the 2001 Washington Agreement (to be discussed in Sections 5 & 6).

### 3.3 *Current State*

While the authors of *Denkmale* state that it is 'downright shameful to see the state of the majority of Jewish cemeteries in Vienna, Lower Austria and Burgenland'<sup>30</sup>, according to a recent IKG Wien update, 15% of Austria's Jewish cemeteries are in an 'excellent' or 'very good' state, 51% are in a 'good' state, 26% are in a 'poor' state and 6% are in a 'very poor' state.

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<sup>28</sup> Lind, C. 'Die Letzten Zeugnisse', in Keil, M. et al, 2006: p. 110.

<sup>29</sup> Vienna, 4 March 2008.

<sup>30</sup> Pröll, E & Scheiber, E. 'Wider die Gleichgültigkeit' in Keil, M. et al, 2006: p. 8.



At least nine cemeteries have no original gravestones, twelve have fewer than twenty gravestones and ten have between twenty and fifty gravestones. A number of cemeteries have only or predominantly symbolic gravestones, including Güssing, Mattersburg and Tulln.

In relation to the actual size of the enclosure, Walzer's *Weißbuch* states that a large proportion of the gravestones at the Jewish cemeteries in Baden, Großenzersdorf, Klosterneuburg, Neulengbach, Tulln, Wiener Neustadt, Floridsdorf, Währing and Zentralfriedhof Tor I are toppled.

The boundaries of a number of cemeteries are thought to have shrunk in size over time, including Leoben, Waidhofen an der Thaya, Marchegg.

The vast majority of Jewish cemeteries in Austria – 46 out of 65 mentioned – are secured with a wall and often a lockable gate. While the walls show signs of damage in many cases – significantly in some – they are often intact and provide a good measure of security. A further 10 cemeteries have a fence or hedge. In 9 cases there is no mention of any form of delineation, although this does not necessarily indicate that this does not exist.

### **3.4 Main Threats**

#### **3.4.1 Background**

Austria's Jewish cemeteries were badly damaged during the Nazi period. More than 70% were damaged during the pogrom of 9/10 November 1938, with the cemeteries at Deutsch Wagram, Großpetersdorf, Marchegg, Ybbs and Leoben totally destroyed after this.

As part of the 'aryanisation' of Jewish cemeteries in the early 1940s, in which the property was seized from the Jewish community and sold on, gravestones from the Jewish cemeteries of Göttsbach an der Ybbs, Waidhofen an der Thaya, Zwettl, Bad Sauerbrunn, Deutschkreuz, Großpetersdorf, Güssing, Mattersburg, Rechnitz, Stadtschlaining (old as well as the new cemetery), Judenburg, Knittelfeld and Leoben were destroyed, sold to stonemasons for re-use and/or removed. For example:

*Most of the gravestones from the Jewish cemetery at Deutschkreutz were destroyed during the Nazi period and either built into houses, used to build a terrace in front of Schloss Nikitsch or as a fortification for its south-east walls'.<sup>31</sup>*

A number of cemeteries also sustained damage as a result of fighting and defence measures. At Währing, for instance, an area of the cemetery was excavated upon the orders of the Nazi authorities to create a pool of water for fire fighting in the event of a bomb attack. An area of 2,500 metres squared and three metres deep was dug out and the soil, together with gravestones and bones, was spread over the streets and squares of Vienna. The representatives of the IKG were powerless to resist, and even had to sign their agreement. They then worked in life-threatening circumstances for two weeks to collect the remains of 2,000 people, which were then buried in a mass grave in the Zentralfriedhof.<sup>32</sup>

Bomb damage was sustained in a number of cemeteries; Floridsdorf was bombed as a result of its proximity to nearby industry, and was severely damaged<sup>33</sup>, and Zentralfriedhof Tor I was left with craters and destroyed gravestones.<sup>34</sup>

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<sup>31</sup> Lind, C. 'Die Letzten Zeugnisse', in Keil, M. et al, 2006: p. 110.

<sup>32</sup> Keil, M. 'Der Währinger Jüdische Friedhof', in Keil, M. et al, 2006: p. 56.

<sup>33</sup> Keil, M. 'Jüdische Friedhöfe in den Außenbezirken', in Keil, M. et al, 2006: p. 60.

<sup>34</sup> Ibid, p. 64-70.

In addition to the damage described above, the Jewish cemetery at Währing was also subject to a series of exhumations between 1941 and 1943 for the purposes of so-called ‘ethnogenic research’ under the supervision of a member of the Anthropology Department of the Natural History Museum. The exhumed remains of more than 200 people were put in large boxes and were taken to the Natural History Museum in Vienna. The planned ‘research’ never took place, and in April 1947 the IKG brought the exhumed skeletons back for re-burial at the Zentralfriedhof.<sup>35</sup>

As a result of the significant damage sustained by Austria’s Jewish cemeteries as described above, coupled with the decimation of Austrian Jewish communities in the Holocaust, in which over 65,000 are thought to have perished and more than 112,000 expelled, Jewish cemeteries experienced a precarious existence in the post-war years, including a number of high-profile desecrations.<sup>36</sup>

The first renovation works were carried out by the Jewish community at the end of the 1940s/beginning of the 1950s and took place together with the restitution process, in which much cemetery land was returned to the Jewish community – although the reinstatement of the gravestones was more difficult and often took a number of years.<sup>37</sup>

However, in the light of such serious damage the severely diminished Jewish community was unable to provide all of the necessary maintenance and renovation work, even with the assistance of the local *Gemeinde* which committed themselves to caring for their Jewish cemeteries, for example those of Mödling (1971), Gänserdorf (1974) and Mistelbach (1978).<sup>38</sup> As seen in the previous section, although some significant maintenance and renovation work was carried out from the 1980s onwards, associated with the significant rise in interest in Jewish culture in Austria<sup>39</sup>, in certain cases this situation has continued to the present day. As such, according to Dr Ariel Muzicant, IKG Wien President, ‘18 partially-destroyed cemeteries have been abandoned for 70 years.’<sup>40</sup>

#### 3.4.2 Effects of weather, pollution and vegetation

According to Mag. Fastenbauer<sup>41</sup>, the biggest problem facing Austrian Jewish cemeteries is neglect; ‘Austrian Jewish cemeteries will be destroyed if this continues for another fifty years’. The damage sustained during the Nazi period has been exacerbated by long-standing insufficient care, leaving gravestones (particularly those made from softer materials such as sandstone), walls and fences and buildings extremely vulnerable to the deleterious effects of rain, frost, pollution and vegetation. This is particularly well-documented at Währing cemetery, but is to a greater or lesser extent a problem for all of Austria’s Jewish cemeteries.<sup>42</sup>

#### 3.4.3 Overzealous/misguided restoration work

Also of some concern with regards to the ongoing preservation and protection of Austrian Jewish cemeteries is the quality of the renovation work that has taken place. As stated in Walzer’s *Weißbuch*:

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<sup>35</sup> Keil, M. ,Der Währinger Jüdische Friedhof, in Keil, M. et al, 2006: p. 56.

<sup>36</sup> Weinzierl, E. ,Verantwortung und Moralische Pflicht’ in Keil, M. et al, 2006: p. 42.

<sup>37</sup> Lind, C. ,Die Letzten Zeugnisse’, in Keil, M. et al, 2006: p. 108.

<sup>38</sup> Ibid, p. 110/112.

<sup>39</sup> Busek, E. ,Hinter dem Vorhang der Idylle’, in Keil, M. et al, 2006: p. 36.

<sup>40</sup> *European Jewish Press*, ‘Cemeteries: Austrian Jewish leader deplores government ‘laxity’’, 17 November 2007.

<sup>41</sup> Vienna, 4 March 2008.

<sup>42</sup> Die Grünen Wien, *Der Währinger jüdische Friedhof: Rundgang durch ein verfallenes Kulturdenkmal*, date unknown.

*The renovation actions that were, in the past, carried out with great enthusiasm and commitment by volunteers and/or laypeople were very much appreciated and, in many cases, saved cemeteries from final deterioration. However, often they were not sufficient for long-term preservation. When considering the poor state of gravestones it can be seen that the lifting and re-erection of gravestones in the past was mostly carried out in improvised ways, under which the stone suffered. Higher quality standards are desirable for future renovation work; the commissioning process should set out differentiating criteria. The care standards set out by the IKG Wien offer assistance with this'.<sup>43</sup>*

Damage sustained as a result of renovation work is cited at a number of cemeteries, including Währing<sup>44</sup> and Bad Sauerbrunn.

#### 3.4.4 Vandalism

According to Mag. Fastenbauer<sup>45</sup>, while much less serious than in certain other countries, there is something of a problem with vandalism. The authors of the 2006 publication *Denkmale* concur, stating that 'cemetery desecrations are unfortunately not only the invention of sensationalist journalists'.<sup>46</sup>

According to Austrian and international sources on anti-Semitic vandalism and cemetery desecration, including the Austrian Jewish community's *Forum Gegen Antisemitismus*, incidences of vandalism are reasonably rare – likely to be related to the presence of cemetery walls and/or fences and regular maintenance in the vast majority of cases.

There has so far been one instance of Jewish cemetery desecration in 2008, in which the perpetrators vandalised over 100 graves in the Viennese Zentralfriedhof, 25 of which were in the Jewish section, in early January.<sup>47</sup> The other recent reported instance was the daubing of a swastika at Währing Jewish cemetery on 13 March 2007.<sup>48</sup> Prior to this there were four recorded instances between 2000 and 2006. Cemetery desecration was more common in the mid 1990s, however, with six desecrations between September 1995 and April 1997.

Certain desecrations can clearly be seen to be without primarily anti-Semitic motivation, such as the recent vandalism of both Jewish and non-Jewish graves in the Zentralfriedhof (gravestones were toppled but there was no graffiti) and the toppling of stones in Mattersburg cemetery in 1997 by four children aged 9 to 13 who had been playing there.

The majority, however, have anti-Semitic elements including graffitied Nazi slogans and symbols, which fit into a broader trend. According to official Austrian sources there were reports of 8 anti-Semitic criminal actions in 2006, mostly propaganda, verbal offences (threats) and damage to property (graffiti), while the *Forum Gegen Antisemitismus* registered 214 anti-Semitic incidents compared to 143 in 2005, including one physical assault and three incidents of vandalism'.<sup>49</sup> The European Network Against Racism (ENAR) cites 'increasing revisionist activities on the internet, which correspond to increases in young, Neo-Nazi and extreme right groupings'.<sup>50</sup> In 2005, almost 15% of the population of Vienna voted for the extreme right wing party, the FPÖ; the 2006 parliamentary elections also showed over 14% of the vote for the right wing parties, the FPÖ and the BZÖ.<sup>51</sup>

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<sup>43</sup> Walzer 2007.

<sup>44</sup> Die Grünen Wien, date unknown.

<sup>45</sup> Vienna, 4 March 2008.

<sup>46</sup> Pröll, E & Scheiber, E. 'Wider die Gleichgültigkeit' in Keil, M. et al, 2006: p. 8.

<sup>47</sup> *Die Presse*, 'Vandalen: Grabsteine auf Wiener Zentralfriedhof umgeworfen', 4 January 2008.

<sup>48</sup> <http://www.fga-wien.at>

<sup>49</sup> Stephen Roth Institute for the Study of Contemporary Anti-Semitism, *Austria 2006*.

<sup>50</sup> European Network Against Racism, *Responding to Racism in Austria*, 2006.

<sup>51</sup> Council of Europe/ERICarts, *Compendium of Cultural Policies and Trends in Europe, 8th edition: Austria*, 2007.

Worthy of mention at this point is that Muslim cemeteries in Austria are also subject to desecrations. In October 2006 graffiti crosses were painted on the walls of the Muslim cemetery under construction in Vienna's Liesing district, and it was the target of an arson attack in April of the same year.<sup>52</sup>

#### 3.4.5 Development

With regards to the re-development of cemetery sites upon which construction has already taken place, the Jewish cemetery at Großpetersdorf lies beneath an industrial development and while there is no current threat, the site should be monitored for possible future re-development requiring excavation. As mentioned in Section 4.1.1, given the surprisingly low number of Jewish cemeteries, it is probable that there are a number of additional Jewish burial grounds in Austria that are no longer visible, having undergone re-development, which lie unrecorded and therefore unprotected from future (re-) development. Further research is needed to both ascertain the extent of such a threat and to inform monitoring action.

With regards to the first-time development of cemetery sites, this is not a serious threat as the majority are under the ownership of the Austrian Jewish community. The 9 Jewish cemetery sites that are *Gemeinde*-owned tend to form part of communal cemetery complexes and therefore receive a certain measure of protection as a result. Those under private ownership are more vulnerable to development. At present, however, no threat has been recorded.

#### 3.4.6 Theft

According to Mag. Fastenbauer<sup>53</sup> there are no longer any instances of the theft of stone or of other materials.

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<sup>52</sup> US State Department, *International Religious Freedom Report 2006 - Austria*.

<sup>53</sup> Vienna, 4 March 2008.

## 4. LEGAL INSTRUMENTS

A sound legislative environment is crucial in order to guarantee lasting protection to Europe's Jewish burial grounds. As outlined in the previous section, reasons for the threats currently facing Jewish burial grounds in Austria include insufficient or inexpert current maintenance and/or renovation, criminal action by vandals (some of whom have a link to extremist groups). The possible future development of non-visible cemetery sites is also a potential threat.

This section aims to investigate the extent to which Austrian legislation is able to provide an effective response to these issues. The usefulness of international and European legal instruments, outlined in brief below, will be discussed at greater length in a forthcoming paper produced by the *Lo Tishkeach* project.

### 4.1 *International and European Conventions*

International and European support for the protection and preservation of Jewish burial grounds can most clearly be found in the cultural heritage sphere. Austria has ratified a number of key UNESCO<sup>54</sup>- and Council of Europe<sup>55</sup>-monitored legal instruments as detailed below. These Conventions have been excellent standard-setters and are invaluable in terms of encouraging the development of effective cultural heritage policy. They are, however, essentially unenforceable in spite of their legally binding nature.

As such, while the signatories of binding legal instruments make a commitment to bringing their national legislation in line with their conditions, these instruments cannot be used to either demand changes to legislation or to guarantee that such legislation is properly applied. Furthermore, as will be discussed in the later section dealing with Austrian legislation (and as can be seen from earlier reports on Poland, the Czech Republic and Slovakia prepared by this project), 'cultural heritage monument' status (particularly that associated with the 1972 World Heritage Convention) is generally only awarded to a certain percentage of areas considered to be of exceptional heritage value, leaving many unprotected.

International and European human rights instruments guaranteeing religious freedom, the right to privacy and family life and the right to private property are also of interest with regard to the protection of Jewish burial grounds. These provisions can be found in the International Covenant on Civil and Political Rights (ICCPR)<sup>56</sup>, and in the European Convention on Human Rights (ECHR).<sup>57</sup> Both instruments are legally binding on States Parties; the ICCPR is monitored by the Human Rights Committee<sup>58</sup>, while the ECHR is enforced by the European Court of Human Rights.<sup>59</sup>

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<sup>54</sup> Accessible from <http://portal.unesco.org>.

<sup>55</sup> Accessible from <http://conventions.coe.int>.

<sup>56</sup> Accessible from <http://www2.ohchr.org/english/law/ccpr.htm>.

<sup>57</sup> Accessible from <http://conventions.coe.int>.

<sup>58</sup> States that have signed the First Optional Protocol to the ICCPR agree to allow persons within the member state to obtain an opinion from the Committee regarding violations of that Covenant. For those countries, the Human Rights Committee can thus function as a mechanism for the international redress of human rights abuses, similar to the regional mechanisms afforded by the Inter-American Court of Human Rights or the European Court of Human Rights. It remains disputed, however, whether the Human Rights Committee's in principle non-binding final views qualify as decisions of a quasi-judicial body or simply constitute authoritative interpretations on the merits of the cases brought before them for the members of the Optional Protocol of the Covenant on Civil and Political Rights.

<sup>59</sup> Any person who feels his rights under the Convention have been violated by a State Party can take a case to the Court in accordance with Protocol 11, which states the jurisdiction of the Court to rule over cases brought against States Parties by individuals. Recognition of the right of individual application was, however, optional and it could therefore be exercised only against those States which had accepted it, until

Of particular interest in relation to the former is the case of *Hopu & Bessert v France*<sup>60</sup>, which concerned the construction of a hotel complex on the site of a pre-European burial ground in Tahiti, French Polynesia, that was dispossessed from their ancestors in 1961. The Views of the Committee, adopted on 29 July 1997, stated that there had been an arbitrary interference with the authors' right to family life and privacy in violation of articles 17(1) and 23(1), although a number of Committee members dissented.<sup>61</sup>

#### 4.1.1 International Conventions

- 1966 *International Covenant on Civil and Political Rights*: Signed 10/12/1973; Ratified 10/09/1978; 1966 *Optional Protocol*: Signed 10/12/1973; Ratified 10/12/1987.
- 1972 *Convention on the Protection of the World Cultural and Natural Heritage*: Ratified 18/12/1992.
- 1970 *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export & Transfer of Ownership of Cultural Property*: Not signed.
- 1954 (*Hague*) *Convention for the Protection of Cultural Property in the Event of Armed Conflict*: Ratified 25/03/1964; *First Protocol*: Ratified 25/03/1964; *Second Protocol*: Ratified 01/03/2002.

#### 4.1.2 Council of Europe Conventions

- 2005 *Framework Convention on the Value of Cultural Heritage for Society*: Not signed.
- 2000 *European Landscape Convention*: Not signed.
- 1998 *Convention on the Protection of Environment through Criminal Law*: Signed 7/5/1999.<sup>62</sup>
- 1992 *European (Valletta) Convention on the Protection of the Archaeological Heritage (revised)*: Not signed.
- 1985 (*Granada*) *Convention for the Protection of the Architectural Heritage of Europe*: Signed 3/10/1985. Reservation registered to Article 4, paragraphs c) and d).<sup>63</sup> Not ratified.<sup>64</sup>
- 1985 *European Convention on Offences relating to Cultural Property*: Not signed.
- 1969 *European Convention on the Protection of the Archaeological Heritage*: Signed 20/4/1971; Ratified 27/2/1974.
- 1954 *European Cultural Convention*: Signed 13/12/1957; Ratified 4/3/1958.
- 1950 *European Convention for the Protection of Human Rights and Fundamental Freedoms*: Signed 13/12/1957; Ratified 3/9/1958; 1952 *Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms*: Signed 13/12/1957; Ratified 3/9/1958.<sup>65</sup>

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the acceptance of Protocol 11 was made compulsory. The decisions of the Court are legally binding, and the Court has the power to award damages.

<sup>60</sup> In relation to Communication No. 549/1993 submitted to the UN Human Rights Committee under the Optional Protocol of the ICCPR.

<sup>61</sup> Communication No. 549/1993: France. 29/12/97. CCPR/C/60/D/549/1993/Rev.1. (Jurisprudence). Views of the Human Rights Committee under Article 5, paragraph 4, of the Optional Protocol to the ICCPR – Sixtieth Session.

<sup>62</sup> At the time of writing, this Convention had not yet come into effect as a result of insufficient ratifications (3 are needed, but only one had been received).

<sup>63</sup> 4 (c) permits public authorities to require the owner of a protected property to carry out work or to carry out such work itself if the owner fails to do so, while 4 (d) allows compulsory purchase of a protected property.

<sup>64</sup> At the time of writing.

<sup>65</sup> With the reservation that that there shall be no interference with the provisions of Part IV 'Claims arising out of the War' and Part V 'Property, Rights and Interests' of State Treaty of 15 May 1955 for the Restoration of an Independent and Democratic Austria.

## 4.2 *European Union Legislation*

European Union legislation is binding upon all member states by common consent and is enforced by the European Court of Justice. This includes Austria, a member since 1995. While it is impossible for effective, comprehensive legislation on all aspects of the protection of cultural heritage to be advanced by the EU (as the organisation does not have complete ‘competency’ in the cultural field), the organisation can have quite an impact on cultural policy through subsidies, trade policy and tourism.<sup>66</sup>

There are a number of binding directives and regulations that have cultural heritage implications. While these primarily address the theft and export of cultural property, there are also several environmental regulations which affect the treatment of the immovable cultural heritage.

The most important of these is *Council Directive 85/337/EEC (amended by Council Directive 97/11) on the assessment of certain private and public projects on the environment*. This Directive requires that the EIA identify, describe, and assess the direct and indirect impacts of proposed development on human beings, flora, fauna, soil, water, air, climate, landscape, and the interaction between them, and material assets and the cultural heritage.<sup>67</sup> The Austrian law fulfilling these criteria and affecting Jewish cemetery protection and preservation is discussed in Section 5.4.3.

## 4.3 *Bilateral Agreements*

The most important bilateral agreement in the context of this project is the *Agreement between the Government of the United States of America and the Government of the Republic of Austria on the Settlement of Questions of Restitution and Compensation for Victims of National Socialism* (17 January 2001) – more commonly known as the Washington Agreement.<sup>68</sup> Amongst other provisions, the Agreement requires that single one-off payments be made to all surviving victims of Nazi persecution, that a General Settlement Fund of \$210 million plus interest for a claims-based and equity-based process be established and that an *in rem* restitution process be introduced both for individual claims and those of Jewish communal organisations.

The most important provision within the context of this project, however, is the obligation to ‘provide additional support for the restoration and maintenance of Jewish cemeteries, known or unknown, throughout Austria’ contained in Article 8 of the Agreement. Given the existing level of *Gemeinde* involvement in the basic maintenance of Austrian Jewish cemeteries, this provision suggests assistance with larger-scale renovation and restoration work.

## 4.4 *Austrian Legislation*

The following sections will outline the key Austrian legal provisions that affect the protection and preservation of Jewish cemeteries. These can be found within the following legislative areas: burial, cultural heritage, environmental, the Criminal Code and the ‘*Verbotsgesetz*’ banning the National Socialist Party of Germany. While planning legislation is also of importance, the appropriate legislative instrument currently remains unidentified and will be included in future updates.

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<sup>66</sup> Tzanidaki, J-D., *The European Cultural Heritage: Community and National Legislation for Heritage Management in the E.U.*, Southampton 1999.

<sup>67</sup> Goldberg, *A Comparison of Six Environmental Impact Assessment Regimes: The United States, Romania, Bulgaria, The Czech Republic, Slovakia, The European Community, The World Bank, The European Bank for Reconstruction and Development*, The Centre for International Environmental Law, 1995.

<sup>68</sup> German-language title: *Abkommen zwischen der Österreichischen Bundesregierung und der Regierung der Vereinigten Staaten von Amerika zur Regelung von Fragen der Entschädigung und Restitution für Opfer des Nationalsozialismus*. Available in both English and German from [www.lo-tishkach.org](http://www.lo-tishkach.org).

Prior to the legislative analysis it is important to briefly acknowledge the nature of the Austrian system. As Austria is a federal state with relatively independent *Bundesländer*, certain legal powers are held at a provincial (*Land*) level as opposed to a federal level. Within the current context of this project this only applies to burial law as discussed in the following section; the remaining legislative provisions lie within the competence of the federal government.

#### 4.4.1 Burial (-related) Legislation

*Vienna Burial Act 34/2007*<sup>69</sup> & *Niederösterreich Burial Act 2007*<sup>70</sup>

While burial acts exist for each of the nine *Bundesländer* as discussed above, due to the constraints of time and space the following section will examine only those currently in effect in the City of Vienna and in Niederösterreich, the *Länder* in which over half of Austria's Jewish cemeteries are located including its two largest, Zentralfriedhof Tor I and Tor IV.

Both Acts contain a number of provisions of interest to the Lo Tishkach project related to the permissibility of exhumation and burial rights – if only to emphasise the inappropriateness of this legislation for the protection of any form of Jewish burial ground.

Of particular interest is the lack of a provision in either Act expressly forbidding the handling of human remains in such a way as to offend the dignity of the dead – such can only be found in the Austrian Criminal Code (discussed in Section 5.4.4).

Exhumation from active and inactive burial grounds is permitted under both Acts with the agreement of the appropriate authorities. Article 18 of the first Act covers the exhumation of corpses from active burial grounds, permitted under the agreement of both the *Magistrat* and the owner of the burial ground unless it would pose a significant health risk, and from inactive burial grounds upon the agreement of the *Magistrat*. Article 19 of the second Act states that the agreement of the *Gemeinde* is necessary for the exhumation of a corpse. Exhumation may only ordinarily take place after a minimum period of ten years, although it is also possible beforehand by an authorised funeral authority and with permission. No agreement is necessary for exhumations ordered by the local authorities or by the cemetery owner in the case of reburial within the cemetery after the expiry of the minimum period.

With regards to burial rights, it is clear that such rights are finite and will end in the event of expiry, through written consent, if the grave is abandoned or if the cemetery is closed. Such rights are given in ten year increments; it is therefore possible that a burial place can be re-used after 10 years, necessitating the exhumation of the remains within and their re-burial in a communal-owned grave. In the event of the closure of a burial ground, any human remains that are buried in a cemetery to be dissolved are to be re-buried at the cost of the cemetery authorities.

With regards to the maintenance of the cemetery, Articles 32 and 33 of the second Act state that if the use of the cemetery or the right to use other graves is infringed upon by overgrown vegetation at a certain burial plot, or if a grave or vault is dilapidated, the *Gemeinde* can order the works to be carried out and, in absence of sufficient measures being taken, either the work will be carried out and charged to the right holder or user rights will be removed. A similar provision is not present in the first Act.

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<sup>69</sup> German-language title: *Wiener Leichen – und Bestattungsgesetz* 34/2007. A copy of this Act is available from [www.lo-tishkach.org](http://www.lo-tishkach.org) in German only.

<sup>70</sup> German-language title: *Niederösterreich Bestattungsgesetz* 2007. A copy of this Act is available from [www.lo-tishkach.org](http://www.lo-tishkach.org) in German only.



*Federal Laws of 1948 regarding the Protection and Care of War Graves and War Memorials from the Second World War for Members of the Allies, United Nations and for Victims of the Struggle for a Free, Democratic Austria and Victims of Political Persecution*<sup>71</sup>, and regarding the Care of War Graves from the First and Second World Wars<sup>72</sup>

Also appropriate to the protection of Jewish burial grounds are the two Federal Acts of 1948 listed above.

Article 1 of the first Act defines war graves as ‘the graves of members of the Allied armies, members of the United Nations who fell in the struggle for the liberation of Austria, and all other victims who were killed in the struggle for a free democratic Austria that are located in the territory of Austria.’ These graves are to be treated equally to the graves of members of the Allied powers, United Nations; the victims of the struggle for a free, democratic Austria; and the victims of political persecution, whether as prisoners of war, civilian internees, forced workers or concentration camp prisoners, who died and were buried in the territory of the Republic of Austria.

Article 6 of the second Act is far broader, defining war graves as ‘a) the graves of all those buried in the territory of the Federal Republic of Austria after 28 July 1914, who at the time of their death were members of the armed forces of the former Austro-Hungarian Empire, allies or enemies or were in their retinue; b) the graves of all those buried in the territory of the Federal Republic of Austria after 1 September 1939 who at the time of their death were members of the armed forces of those states participating in the war or who belonged to their retinue; c) the graves of any person who was buried in the federal lands after the stated point in time and was a prisoner of war, civilian internee, combatant or victim of this war.’

Certain Jewish graves – primarily those of victims of the Holocaust but also of Jewish soldiers of the First and Second World Wars – are clearly covered by the provisions of the Acts.

Both Acts state that the war graves located on the territory of the Republic of Austria will be constantly cared for by the federal authorities and other organisations as appropriate. They specify that the owner of land on which a war grave is located is obliged to retain the land, to ensure that it remains accessible and to ensure that it is kept in accordance with its status. War graves may be moved if it is in the public interest to do so, but only with the permission of the Federal Interior Ministry.

The most significant difference between the two Acts can be found in the definition of the destruction, damage or dishonouring of such a grave or a monument ‘out of political hatred’ as a crime with a specified punishment for the perpetrator, and the extension of protected cultural monument status to monuments erected to honour those buried.

While the first Act provides both, the second, broader Act incorporates neither of these provisions. As such, the protection extended by the first Act can be seen to be significantly more effective to ensure the preservation of both the graves of Holocaust victims and of Jewish soldiers of the Second World War. Those of the First World War, however, would be extended a lesser level of protection.

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<sup>71</sup> Full German-language title: *Bundesgesetz vom 1948 über die Fürsorge und den Schutz der Kriegesgräber und Kriegsdenkmäler aus dem zweiten Weltkrieg für Angehörige der Alliierten, Vereinten Nationen und für Opfer des Kampfes um ein freies, demokratisches Österreich und Opfer politischer Verfolgung*. A copy of this Act is available from [www.lo-tishkach.org](http://www.lo-tishkach.org) in German only.

<sup>72</sup> Full German-language title: *Bundesgesetz vom 1948 über die Fürsorge für Kriegesgräber aus dem ersten und zweiten Weltkrieg*. A copy of this Act is available from [www.lo-tishkach.org](http://www.lo-tishkach.org) in German only.

#### 4.4.2 Cultural Heritage Legislation

*Federal Law relevant to the Protection of Monuments due to their Historical, Artistic or other Cultural Significance (Federal Monument Protection Law) 1999*<sup>73</sup>

According to the above Act, cultural heritage monuments are man-made movable and immovable objects of historical, artistic or other cultural significance, the protection (from destruction, change or export) of which is in the public interest. The protection of a monument is seen to be in the public interest if its loss would have an adverse effect on the quality, number, diversity and/or distribution of Austrian cultural goods, and if the monument can be seen to provide a form of historical documentation. Protected status is either provided on the basis of 'legal supposition' (*gesetzliche Vermutung*) until a final decision has been taken on its cultural heritage value, through an order (*Verordnung*) of the Federal Monuments Agency (*Bundesdenkmalamt – BDA*) if it is considered likely that the criteria for public interest will be fulfilled, or by final decision (*Bescheid*), which necessitates the addition of the designation to the land registry. Sanctions are applicable for the infringement of the provisions of the Act according to Article 37.

As Austria's Jewish cemeteries are predominantly covered under this Act by '*gesetzliche Vermutung*', at least until 31 December 2009, we can investigate the various aspects of this Act safe in the knowledge that it is appropriate for their protection.

The designation 'cultural heritage monument' ensures the wide-ranging protection of the item or site so classified. This includes protection from damage, destruction or change without permission (unless such a change is necessary for religious observance); and the possible designation of a protective zone around an immovable monument.

The onus for maintaining cultural heritage monuments lies with the owner, who is obliged to protect the cultural heritage monument at his/her own expense; seek permission for its any changes (for example through maintenance work); notify the authorities of any potential or actual danger, damage, theft or destruction to the cultural heritage monument or any change of ownership; allow access to the appropriate authorities; and erect a marker.

The listing does provide some direct benefits to owners, including the availability of financial support for the securing or maintenance of the monument and for the purposes of investigative research, in addition to the possibility of assistance for measures that seek to protect the monument from change or destruction from the 'Monument Fund'. A further discussion of state support for monument restoration in the context of Jewish cemeteries can be found in Sections 4 and 6.

In the event that the owner fails to fulfil these obligations, the district authorities will decide upon the necessary corrective measures. In the event of imminent danger, they can order the prohibition or restriction of any unauthorised activity threatening the cultural heritage monument. The owner may be liable for the costs of any such work.

A further area in which protection may be awarded to a Jewish burial ground according to this Act is in the event of its discovery during excavation work. It is possible that this site would be awarded protected status in accordance with Article 8, which defines archaeological finds as those which, 'because of their situation, form or nature' evidently fall under the limitations of the Act – under the ground or water and found either accidentally or uncovered as a result of the action of rain etc.

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<sup>73</sup> Full German-language title: *Bundesgesetz, mit welchem das Bundesgesetz betreffend Beschränkungen in der Verfügung über Gegenstände von geschichtlicher, künstlerischer oder kultureller Bedeutung (Denkmalschutzgesetz - DMSG) geändert wird*. A copy of this Act is available from [www.lo-tishkach.org](http://www.lo-tishkach.org) in German only.

According to Article 9, the ‘find’ is awarded provisional protection by *Bescheid* for up to 6 weeks while its value is ascertained. The individual who discovers the find must notify the authorities immediately, leaving it unchanged until official inspection. Until this point, the finder must take all necessary measures to preserve the find and, in particular, to protect it from damage, devaluation, destruction or theft. It can only be investigated by an authorised and properly qualified person.

In summary, the Federal Monument Protection Law ostensibly offers comprehensive protection to those Jewish cemetery sites that are considered to be of cultural heritage value. The onus is placed strongly on the owner – often the Jewish community – to take measures to ensure this. This is not to say that all cemeteries that fall under the protection of the Act are permanently protected; ‘cultural monument’ status may be changed by the declaring authority if it is no longer considered to be in the public interest to maintain it.

#### 4.4.3 Environmental Legislation

##### *Environmental Impact Assessment Act 2000*<sup>74</sup>

The 2000 EIA Act, which requires an environmental assessment to be made (‘with public participation and on the basis of expertise’) of the effect of certain public and private projects, acts as a useful complement to other legislative provisions with regards to the protection of Austria’s Jewish burial grounds.

According to this law, the purpose of the EIA is to ‘identify, describe and assess the direct and indirect effects that a project will or may have on:

- a) human beings, fauna, flora and their habitats,
- b) on soil, water, air, and climate,
- c) on the landscape, and
- d) material assets and the cultural heritage, including interactions of several effects.’

It also seeks to examine measures that prevent or mitigate harmful, disturbing or adverse effects of a project on the environment or that enhance its beneficial effects, and to document the advantages and disadvantages of the alternatives examined by the project applicant as well as the environmentally relevant advantages and disadvantages of not proceeding with the project at all.

According to this law, developments that may need an Environmental Impact Assessment (EIA) before permission is given include the following industries: mining, power generation, metallurgy, chemical, pharmaceutical, timber, paper, construction, machinery, glass, ceramics and food. Other developments requiring an EIA include the construction of transport, communications, water or military infrastructure; agriculture; forestry; and changes in land use.

While ostensibly environmentally-focused, the criteria of the EIA are broad and, importantly for the purpose of this study, cover the assessment of impacts on cultural monuments in addition to areas of environmental importance<sup>75</sup> – not only at the proposed development site but also in the general vicinity. The EIA also takes into consideration the impacts which result from both the finished development and the construction process. Prospective developers must then describe the ‘proposed measures to prevent, eliminate, minimise or compensate’ these impacts, necessitating as a minimum a professional survey of previously-known sites and monuments encompassing an archival search for past excavations.

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<sup>74</sup> Full German-language title: *Bundesgesetz über die Prüfung der Umweltverträglichkeit und die Bürgerbeteiligung (Umweltverträglichkeitsprüfungsgesetz — UVP-G)*. A copy of this Act is available from [www.lo-tishkach.org](http://www.lo-tishkach.org) in both German and English.

<sup>75</sup> Many Jewish burial grounds are valuable natural habitats with a broad range of flora and fauna.

Particularly useful for the purposes of this project is that the definition of a ‘monument’ according to the EIA is thought to be very broad (although this requires confirmation). ‘A suggested guideline is to assume that it includes archaeological sites, standing stones, monuments and statues of any age, churches, cemeteries, listed monuments, châteaux and all buildings over 150 years old’.<sup>76</sup>

In summary, in necessitating the assessment of the impact of large-scale development, proposed legislation, territorial planning, development policies on a broad range of cultural monuments – both on and in the vicinity of the site, the EIA Act is useful for the protection of Jewish cemeteries in Austria. Particularly useful is the obligation to investigate sites prior to development, which would hopefully ensure that the presence of burial grounds, visible or otherwise, is ascertained before any damage can be done – especially in the case of burial grounds that are no longer visible.

What is crucial in this context is to ensure that all investigations of areas believed to contain Jewish graves are carried out under the guidance of the local Jewish community. Although this should already be carried out in practice, no binding article to this effect is present in the Act.

Also positive is the high level of public participation that is encouraged throughout the process, allowing the Jewish community and other interested citizens to present any concerns about a particular development project.

In a final point, while this Act is important and broad-ranging in scope, it clearly does not require an EIA to be carried out prior to all building work. As such, in smaller-scale projects it would not signal the existence of a previously undiscovered Jewish burial ground prior to excavation, or underline the possible deleterious effects of such a development. Given the cost of such investigations, it would be unreasonable to expect such a law to ever be introduced.

In addition, the EIA is only one of a number of tools at the disposal of decision-makers deciding upon development projects. However, cultural heritage and planning regulations do seem to allow for the protection of many, if not all Jewish burial grounds uncovered during excavation work (although only when they have already been disturbed, not before), as discussed in the appropriate sections.

#### 4.4.4 Criminal Code

*Federal Criminal Code of 23 January 1974*<sup>77</sup>

The Austrian Criminal Code, as of 1 May 2004, contains various provisions that are appropriate to the protection of Austrian Jewish cemeteries. These include articles prohibiting:

- Criminal damage, including the destruction, damage, disfigurement or rendering unusable of someone else’s property (Article 125). Article 126 punishes damage to the following objects (amongst others) more severely:
  - Objects of religious importance to a church or other officially recognised religious institution;
  - Graves or other burial places, gravestones or memorials located in a cemetery or in a building used for religious purposes;

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<sup>76</sup> Millar, A. ‘A Cultured Environment? Construction, Heritage and EIAs’ in *The Czech and Slovak Construction Journal*, 1998.

<sup>77</sup> Full German-language title: *Bundesgesetz vom 23. Jänner 1974 über die mit gerichtlicher Strafe bedrohten Handlungen (Strafgesetzbuch-StGB) BGBl 1974/60 idF BGBl I 15/2004*. A copy of this Act is available from [www.lo-tishkach.org](http://www.lo-tishkach.org) in German only.

- Public monuments or objects that are officially protected under monument protection legislation.
- Theft (Article 127). Article 128 more severely punishes the theft of objects of religious importance to a church or other officially recognised religious institution, and those of particular scientific, folkloric, artistic or historical importance.
- Intentional public dishonouring of an article of religious importance to a church or other officially recognised religious institution (Article 188).
- Disturbance of the dead, including the desecration of memorials (Article 190).
- Breach of the peace, including participation in or leadership of a group that has gathered with the purpose of committing serious criminal damage as defined in Article 126 (Article 274).
- Incitement to hostile action against a religious, racial or ethnic group (Article 283).

Furthermore, Article 33 (5) states that in cases of offences committed for racist or xenophobic reasons, the motivation is to be investigated in court and considered as an aggravating factor in determining the particular sentence.

#### 4.4.5 'Verbotsgesetz'

The Constitutional Act prohibiting the German National Socialist Party (*Verbotsgesetz*), enacted in order to comply with the international obligation resulting from Article 9 of the Vienna Treaty forms the legal basis for sanctions against racist actions and incitement within the context of (neo-) Nazi ideology and is therefore possibly applicable to certain cases of cemetery desecration.



## 5. LEGISLATION IN PRACTICE

### 5.1 Introduction

As outlined in the previous section, Austrian legislation certainly offers comprehensive protection to a proportion of the country's Jewish burial grounds.

Legislation serves no real purpose unless the provisions within it are adhered to and any transgressions penalised. The following sections will examine state action in the areas governed by the 2001 Washington Agreement and cultural heritage legislation. An investigation of the practical application of other appropriate legislation will appear in a future update.

### 5.2 2001 Washington Agreement

As explained in Section 5.3, the Austrian government has undertaken the responsibility to 'provide additional support for the restoration and maintenance of Jewish cemeteries, known or unknown, throughout Austria' in the context of the 2001 'Washington Agreement' with the United States.

However, this responsibility has, to this date, remained unfulfilled. The primary reason for the lack of action on this matter is disagreement over the responsibility for covering the costs of such work; whether this should be undertaken at a solely federal level or whether the *Länder* should also be required to contribute. This has been exacerbated by the Austrian political situation, with a Conservative-Far Right coalition in power from 2000 until early 2007.

A recent high-profile initiative of the Viennese Green Party demands that the Austrian federal government (and other parties as appropriate) take responsibility for their obligations under the Washington Agreement. The campaign, led jointly by Green Party and IKG Wien with the assistance of the Educult Institute, has centred on Währing Jewish cemetery – 'a jewel unequalled in Central Europe' according to Mag. Tina Walzer<sup>78</sup> – as a particularly poignant example of the great historical and cultural significance of Austria's Jewish cemeteries and of the awful state that a number are now in as a result of neglect. The rift between regional and national government is also particularly clear here; the City of Vienna provides assistance with the removal of trees and vegetation, but is not prepared to take on a greater financial responsibility. This, Viennese Mayor Michael Häupl argues, is the responsibility of the state, with any possible contribution from the federal provinces to be, at most, a 'voluntary contribution'. 'The City of Vienna has called on the state several times to shoulder its responsibilities, but in vain.'<sup>79</sup>

The issue has now also begun to receive significant coverage in the media. Journalist Alexandra Förderl-Schmid, writing in March 2008 in the Austrian national newspaper *Der Standard*, has for example denounced as a 'disgrace' the fact that the fourth richest country in the EU was unable to pay for the maintenance and renovation of its Jewish cemeteries.<sup>80</sup> Often cited is the comparison with the situation in Germany, which has taken care of all of its Jewish cemeteries since 1953, in addition to the legal responsibility to maintain and preserve the graves of all of those who fought in the Second World War, including the perpetrators of the murders which decimated the Austrian Jewish community.

Recent developments have, however, offered more hope for change. Barbara Prammer, speaker of the Austrian parliament, told *Der Standard* in early 2007: 'We not only have a basic

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<sup>78</sup> Schwab, P. 'One of Europe's oldest Jewish cemeteries awaits salvation', *European Jewish Press*, 7 September 2007.

<sup>79</sup> Ibid.

<sup>80</sup> [http://www.parlament.gv.at/PG/DE/XXIII/J/J\\_04008/fnameorig\\_105956.html](http://www.parlament.gv.at/PG/DE/XXIII/J/J_04008/fnameorig_105956.html)



responsibility to maintain Jewish cemeteries; there is also a legal commitment.<sup>81</sup> In mid-July 2007 she announced that preliminary studies would be launched that autumn with a view to beginning restoration work on Währing cemetery ‘in two to three years.’ A working group would also be created of federal, provincial and *Gemeinde* representatives for the formation of an Austria-wide solution for 66 cemeteries, possibly financed through the Austrian National Fund.

Mag. Fastenbauer, however, remains cautious: ‘The gesture is encouraging, but only results matter: until now, declarations of this sort have had no follow up’, while Mag. Walzer emphasised the importance of action over new studies.<sup>82</sup> IKG Wien President Dr Ariel Muzicant was more critical, stating in November 2007 that he was ‘losing patience....If we don’t have a solution, we are going to open legal proceedings and call for arbitration.’<sup>83</sup>

The latest available update on the situation is that, in January 2008, third Nationalratspräsidentin Eva Glawischnig presented a piece of draft legislation<sup>84</sup> that is based on the 1948 federal law for the protection of war graves and monuments, drafted with the help of IKG Wien, which would oblige the federal government to take full responsibility for the care and maintenance of all Jewish cemeteries in Austria. While maintenance would remain with the local *Gemeinde* as is already the case for most cemeteries, the federal government would be responsible for larger-scale renovation work.<sup>85</sup> News of its reception, and of any other developments since early 2008, is not currently available.

### 5.3 Cultural Heritage Protection

According to Mag. Paul Mahringer of the BDA<sup>86</sup>, two Austrian Jewish cemeteries are specifically protected as cultural monuments, although these were not named. According to Walzer’s *Weißbuch*, these cemeteries are Kittsee and Hohenems. In addition to this protection, information available from IKG Wien states that Kittsee is the only Jewish cemetery that is under the protection of the UNESCO Convention for the Protection of Cultural Goods in the Event of Armed Conflict (Hague Convention). According to the 2000 Federal Monument Protection Act, such a designation is only awarded to monuments of ‘the highest significance’. It can therefore be assumed to have a particularly special status.

A number of buildings at Währing cemetery also enjoy protected status according to Walzer’s *Weißbuch*. While Stadtschlaining (alter Friedhof) was listed as a protected monument until 1938, the cemetery was destroyed and this special status was revoked.

The remaining cemeteries – with the exception of Großpetersdorf, Stadtschlaining (alter Friedhof), Amstetten and Ybbs, all of which are under private ownership and contain no remaining gravestones – are covered by the Monument Protection Act by ‘*gesetzliche Vermutung*’ until the end of 2009. At this point they will be placed under monument protection by decree in order to ensure their ongoing protection. A complete list of immovable monuments with this designation will be published by the BDA in 2010.

As mentioned in Section 4, while almost 70% of Austria’s Jewish cemeteries are considered by IKG Wien to be in a ‘good’, ‘very good’ or ‘excellent’ state, the state of the remaining cemeteries was classified as ‘poor’ or ‘very poor.’ Of particular concern is that, while Hohenems cemetery is well maintained by the Association for the Preservation of the Jewish cemetery in Hohenems and

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<sup>81</sup> *Der Standard*, ‘Highest priority for Währing Cemetery’, 13 March 2007.

<sup>82</sup> Schwab 2007.

<sup>83</sup> *European Jewish Press*, ‘Cemeteries: Austrian Jewish leader deplures government laxity’, 17 November 2007.

<sup>84</sup> Available from [www.lo-tishkach.org](http://www.lo-tishkach.org) in German only.

<sup>85</sup> *Die Grünen*, ‘Grüne nehmen sich jüdische Friedhöfe an’, 17 January 2008.

<sup>86</sup> E-mail correspondence with the author dated 18 and 21 April 2008.



the local Jewish museum, Kittsee cemetery is in a poor state. It can therefore be seen that even special cultural monument status is certainly no guarantee of protection from the effects of neglect.

The key issue with regards to the neglect of cultural monuments is the ability of the owners to cover the costs for the care they are obliged to provide, as the responsibility for the protection of sites designated as cultural heritage monuments falls largely on the owner. As discussed in both Section 3 and the previous item on the Washington Agreement, the Austrian Jewish community, which owns the majority of the country's Jewish cemeteries, is both entirely unable and quite unwilling to provide the necessary funds for the renovation and maintenance work so sorely needed in a number of cemeteries – particularly in the context of the Austrian government's legal commitment to the preservation of its Jewish cemeteries.

As such, it would not be wise to strictly enforce the owner's cultural heritage obligations, nor to punish those undertaking renovation work with great enthusiasm but little expertise and causing damage as a result; without this work many of Austria's Jewish cemeteries would be in a significantly worse state than at present.



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## APPENDIX 2 – ACKNOWLEDGMENTS

This preliminary report was written with the considerable assistance of publications by Jewish heritage experts Dr Martha Keil and by Mag. Tina Walzer, whose excellent 2002 six-volume *Weißbuch über Pflegezustand und Sanierungserfordernisse der jüdischen Friedhöfe in Österreich* (White Paper on the Care Situation and Renovation Needs of the Jewish Cemeteries in Austria) forms the basis of Section 4. These volumes were kindly donated to the Lo Tishkach project by the IKG Wien.

Further desk-based research was carried out using the broad resources available on the internet from institutions and organisations including the Viennese Jewish Community (*Israelitische Kultusgemeinde/IKG Wien*), JewishGen and the US State Department. Materials produced by the Viennese Green Party (Die Grüne – Wien) to support their campaign for the better treatment of Austria's Jewish cemeteries were also particularly useful.

Copies of the appropriate German-language Acts were accessed via the Government's official legislative repository (*Bundeskanzleramt Österreich Rechtsinformationssystem* – available at <http://ris.bka.gv.at/auswahl/>). In general analysis was performed from the German-language originals, which are available to download from the Lo Tishkach website, although an unofficial English-language translation of the 2000 Environmental Impact Assessment Act was obtained.

The above findings were supplemented by an interview conducted by the author with Mag. Raimund Fastenbauer, General Secretary for Jewish Affairs at IKG Wien, in Vienna on 4 March 2008. Worthy of mention is the helpfulness of the IKG Wien main office in providing the details of a number of contacts, including Mag. Tina Walzer, who was unfortunately unable for interview in Vienna in March.

Mag. Paul Mahringer of the Austrian Federal Monuments Authority (*Bundesdenkmalamt*) was also most helpful in providing details of the Austrian Jewish cemeteries protected under cultural heritage legislation.



### APPENDIX 3 – MAP OF AUSTRIA



Source: © flagspot.net

