



LO TISHKACH
FOUNDATION
EUROPEAN JEWISH
CEMETERIES INITIATIVE

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

*Austria, Czech Republic, Germany,
Lithuania, Poland & Slovakia*

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The *Lo Tishkach European Jewish Cemeteries Initiative* was established in 2006 as a joint project of the Conference of European Rabbis and the Conference on Jewish Material Claims Against Germany. It aims to guarantee the effective and lasting preservation and protection of Jewish cemeteries and mass graves throughout the European continent.

Identified by the Hebrew phrase *Lo Tishkach* ("do not forget"), the Foundation is establishing a comprehensive publicly-accessible database of all Jewish burial grounds in Europe, currently featuring details on over 8,000 Jewish cemeteries and mass graves. *Lo Tishkach* is also producing a compendium of the different national and international laws and practices affecting these sites, to be used as a starting point to advocate for the better protection and preservation of Europe's Jewish heritage.

A key aim of the project is to engage young Europeans, bringing Europe's history alive, encouraging reflection on the values that are important for responsible citizenship and mutual respect, giving a valuable insight into Jewish culture and mobilising young people to care for our common heritage.

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European Rabbis.*

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1. INTRODUCTION

1.1 *Project Introduction*

Jewish tradition regards burial grounds as sacred sites which must never be disturbed. Jewish cemeteries and mass graves also provide a vivid focal point marking the destruction of Jewish communities and for learning the lessons of the Holocaust. They stand as testimony to the history of Jewish community life across the European continent and are an important part of Europe's diverse cultural heritage.

Opportunities are increasing for the preservation and protection of Jewish cemeteries and mass graves throughout Europe. At the same time, however, thousands of these sites lie unvisited and unprotected, facing new threats to their already parlous existence. Neglect, inappropriate commercial and industrial development, vandalism, theft and well-meaning but inexperienced attempts at restoration are threatening to permanently erase what is often the only surviving reminder of the importance of Europe's pre-war Jewish communities. Without immediate action many may soon be lost forever.

The *Lo Tishkach* European Jewish Cemeteries Initiative was established in 2006 as a joint project of the Conference of European Rabbis and the Conference on Jewish Material Claims Against Germany. *Lo Tishkach* received its official royal decree formally establishing the organisation as a Foundation of Public Utility under Belgian law (no. 899.211.180) in June 2008. It aims to guarantee the effective and lasting preservation and protection of Jewish cemeteries and mass graves throughout the European continent.

This initiative, identified by the Hebrew phrase *Lo Tishkach* ('do not forget'), is establishing a comprehensive publicly-accessible database of all Jewish burial grounds in Europe, currently featuring details on over 8,000 cemeteries and mass graves. The *Lo Tishkach* project is also producing a compendium of the different national and international laws and practices affecting these sites, to be used as a starting point to advocate for the better protection and preservation of Europe's Jewish heritage.

A key aim of the project is to engage young Europeans, bringing Europe's history alive, encouraging reflection on the values that are important for responsible citizenship and mutual respect, giving a valuable insight into Jewish culture and mobilising young people to care for our common heritage. The project uses Jewish cemeteries – a physical legacy of formerly vibrant Jewish communities – as the focus of a practical activity and learning programme to meaningfully transmit to younger generations the lessons of the Holocaust.

Groups of young people trained by *Lo Tishkach* have already begun to visit thousands of Jewish burial sites across Europe. These groups gather vital information on local Jewish life, history and culture, photograph and survey each cemetery, and undertake practical work to help preserve and protect these important sites.

1.2 *Report Objective*

Carried out in the context of research on legislation and practices relating to the protection and preservation of Jewish burial grounds, the ultimate objective of this comparative report is to analyse the effectiveness of the current protection and preservation regime for burial grounds in several European countries 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 various European countries 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.

In examining the situation in Austria, the Czech Republic, Germany, Lithuania, Poland and Slovakia, the report compares countries in relative proximity to each other, but where specific historic and political paths have affected the state of Jewish burial grounds differently.

Germany, unique insofar as it is the country from which the Holocaust was started, has come to a comprehensive solution for the maintenance of its Jewish cemeteries. It is therefore surprising that its southern neighbour, Austria, has not yet found a definite answer to the question of maintenance, despite the relatively low number of Jewish cemeteries located on its territory.

The Czech Republic, Poland and Slovakia share the common experience of several decades of Communist rule, which the report finds affected aspects related to both ownership and maintenance. Restitution of Jewish property in these countries is still partly in progress.

For historic reasons, Lithuania is of particular relevance, for at least half of the Jewish burial grounds located on its territory are mass graves. Ownership is of further interest, since the Lithuanian Jewish community only owns two cemeteries, which contrasts with the situation in all the other countries examined.

1.3 Report Findings

The key points for the *Lo Tishkach Foundation* on the situation for Jewish burial grounds in Austria, the Czech Republic, Germany, Lithuania, Poland and Slovakia are as follows:

- **Numbers:** Approximately 5,202 Jewish burial grounds are known to exist in the countries examined, distributed as follows:
 - Austria: 67
 - Czech Republic: 430
 - Germany: 2,202
 - Lithuania: 400
 - Poland: 1,400
 - Slovakia: 703.

While these figures may be correct, it is highly probable that in all of these countries, there are numerous unrecorded burial grounds that are no longer visible and therefore at risk from future development.

- **Ownership:** Mixed Jewish and non-Jewish ownership prevails in most countries, whereas rather uniform ownership patterns exist only in Germany (almost exclusive Jewish ownership) and Lithuania (almost exclusive municipal ownership).
- **Maintenance:** Ownership structure does not necessarily determine the details of maintenance provision. While in Germany, the Jewish community receives public funding for cemeteries which it owns, in other countries maintenance provisions vary and tend to be tied to ownership. Major differences exist in the level of public and private funding provided for cemetery maintenance and renovation. One of the major difficulties predominant in most countries except for Germany is the lack of long-term funding.
- **Main threats:** Virtually all Jewish burial grounds in the countries examined face one or more of the following threats to varying extents: vegetation overgrowth, erosion, pollution, weather, vandalism, development and inexpert maintenance. Many cemeteries also suffered severe damages during Nazi rule. Theft of gravestones was a common phenomenon during post-war years. Particularly in the countries that experienced Communist rule, cemeteries were erased for more than three decades after the war.
- **Legal instruments:** The legal regime offers a comprehensive response to the threats identified above. Legal provisions that affect the protection and preservation of Jewish cemeteries are typically found within cultural heritage, burial and environmental legislation. In some countries the criminal code and further national and/or bilateral provisions are of further use in this respect.

- General recommendations: An initial step towards better protection and preservation of Jewish cemeteries is to secure **cultural heritage status** for the largest possible number of these sites. Depending on the relevant legislation, local, regional or national authorities need to be approached to extend this designation to monuments. This would afford both increased legal protection and funding to Jewish burial grounds. With regards to heritage legislation provisions pertaining to archaeological finds, efforts should be undertaken in order to require consultation with the Jewish community whenever a Jewish cemetery is discovered.

Regarding **burial legislation**, it is suggested to include provisions requiring the treatment of burial grounds in agreement with the religious group involved. Depending on the country, the responsible authorities can be found at the national or regional level.

Diplomacy and the signing of **bilateral agreements** can be a powerful instrument in improving cemetery protection and preservation whenever changes in national legislation or effective implementation of existing legislation are difficult to obtain.

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 Foundation*, 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*),¹ deriving benefit (*issur bana'ab*) from a corpse or grave, or performing various practices thought to ‘ridicule the helpless’ (*Loeg Prosh*).²

It can also be seen in the requirement for:

- A prompt burial;
- The waiver of various rabbinic restrictions on Shabbat and religious holidays to ensure 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.

¹ 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.

² 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: New York, 2000.

3. SITUATION FOR JEWISH BURIAL GROUNDS IN AUSTRIA, THE CZECH REPUBLIC, GERMANY, LITHUANIA, POLAND AND SLOVAKIA

3.1 Numbers

The countries examined in this report show major differences in the concentration of Jewish burial grounds. While this is partly the result of the specific history of the Jewish community in a given country, it should also be noted that the level and quality of cemetery recording varies greatly both between states and regions. As evidenced by *Lo Tishkach's* recent report on Jewish cemeteries in the Masovian Region of Poland, data for numerous cemeteries is not easily accessible, requiring archival work in order to become available to the larger public.

In **Austria**, there are currently 67 known Jewish cemeteries. 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. Only a small number continue to be used for burials. There are also a number of Jewish mass graves, primarily of Hungarian Jewish forced workers.

In Austria's northern neighbour, the **Czech Republic**, the number of visible Jewish cemeteries stands at 359, whereas past studies cite the figure of 430 cemeteries. About 10 cemeteries are in active use, which corresponds to the number of existing Jewish communities.

A number of long-term documentation efforts have established records for 2,202 Jewish cemeteries in **Germany**, including all of the country's 1,910 visible cemeteries. This figure is expected to grow as research on non-visible Jewish cemeteries in a number of German regions (*Länder*) is still in progress. There are also approximately 82 Jewish mass graves known to exist in Germany, primarily resulting from the death marches during the final months of World War II.

In **Lithuania**, the number of Jewish burial grounds stands at about 400, including at least 202 mass graves and 180 cemeteries, two of which are in use.

A high level of uncertainty exists with regards to the number for Jewish cemeteries in **Poland**. It is commonly thought to stand at 1,200, with the highest estimates being 1,400.³

The primary authorities on Slovak Jewish heritage agree that there are currently 703 known Jewish cemeteries in **Slovakia**, with up to 15 still used for burials. There are also 211 mass graves in Slovakia which contain the remains of 5,304 people murdered between November 1944 and March 1945 by Nazi troops searching for partisans.

3.2 Documentation

Documentation of Jewish burial grounds exists on various levels, among them private local and regional documentation efforts, academic documentation, state or community documentation related to ownership and maintenance issues, as well as publicly-accessible online databases.

Documentation in **Austria** includes the electronic databases created by *Verein Schalom* and the IKG Wien.⁴ Tina Walzer's six-volume *Weißbuch* represents the most comprehensive documentation undertaking, featuring detailed information on 65 Austrian Jewish cemeteries.⁵

³ Chief Rabbi Michael Schudrich of Poland, 11 December 2008.

⁴ Both are available via the IKG Wien website www.ikg-wien.at.

⁵ Walzer, T., *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], IKG Wien, 2002.

In the **Czech Republic**, the Czech Ministry of Regional Developments runs a database of all Jewish cemeteries on the national territory, including GPS co-ordinates.

In **Germany**, the Central Archives for the History of Jews in Germany (*Zentralarchiv*)⁶ has been documenting both visible and non-visible Jewish burial grounds for more than ten years. So far, authoritative records have been established for all Jewish burial grounds in five *Länder*. Documentation in the remaining *Länder* is primarily based on official government and Jewish community lists.

Documentation is rather incomplete in the case of **Lithuania**, where reliable records only exist for the 115 cemeteries and 68 mass graves that are protected as sites of national heritage.

The most authoritative source for information on Jewish cemeteries in **Poland** are the Rabbinic Commission for Cemeteries, which was created eight years ago, as well as the Foundation for the Preservation of Jewish Heritage in Poland.⁷

Although outdated, an extensive survey of Slovak Jewish heritage carried out by Eugen Bárkány in the 1960s remains the most authoritative documentation of Jewish cemeteries in **Slovakia**. The Slovak Jewish community is currently undertaking a comprehensive cemetery documentation project. At present, details of 44 cemeteries are available online.⁸

3.3 Legal Responsibility & Maintenance

3.3.1 Ownership

Ownership of Jewish cemeteries in the countries examined typically reflects specific historic developments since the end of World War II, as particularly evidenced by the process of restitution. The ownership patterns vary significantly from one country to another. Mixed Jewish and non-Jewish ownership prevails in most countries, whereas rather uniform ownership patterns exist in Germany (almost exclusive Jewish ownership) and in Lithuania (almost exclusive municipal ownership).

Of 65 Jewish cemeteries in **Austria** 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 municipality, while 5 cemeteries are under private ownership.

In the **Czech Republic**, three levels of ownership have emerged. While local Jewish communities or the Federation of Jewish Communities own 80% of all known Jewish cemeteries, the state and regional authorities own the majority of the remaining 20%. Private entities are listed as the owners of a very small number of Jewish burial grounds. According to Tomáš Kraus, Executive Director of the Federation of Jewish Communities in the Czech Republic, many cemeteries have already been returned to the Jewish community, but Jewish ownership should be secured for the remainder in order to ensure their lasting protection, even if this increases the burden of care on the Jewish community.

In **Poland**, legislation enabled restitution in 1997. With the relevant law functioning on a case-by-case basis, restitution of former communal property to the Jewish community has not always been successful.

Between 60 and 80% of all Jewish cemeteries in **Slovakia** are owned by the Central Union of Jewish Religious Communities (ÚZŽNO), with the remainder being the property of private individuals. Municipalities usually own the Jewish sections in municipal cemeteries.

After the end of World War II, Jewish Successor Organisations became the owners of Jewish cemeteries in West **Germany**. Throughout the 1950s and 1960s, they restored most of the property to Jewish

⁶ <http://www.uni-heidelberg.de/institute/sonst/aj/FRIEDHOF/ALLGEM/index.html>

⁷ www.fodz.pl

⁸ www.slovak-jewish-heritage.org/slovakia-jewish-cemeteries.php

community federations or individual Jewish communities. Today, the federations usually own unused cemeteries, whereas a given Jewish typically owns the cemetery which it uses. Since German reunification, this ownership model has been progressively transferred to the eastern parts of the country.

In contrast to Germany, all Jewish burial grounds in **Lithuania** are owned by local municipalities, including the cemeteries that are in active use. No comprehensive Lithuanian legislation has been passed with regards to the restitution of Jewish communal property.

3.3.2 Maintenance

Ownership structure does not necessarily determine the details of maintenance provision. While in Germany, the Jewish community receives public funding for cemeteries which it owns, in other countries maintenance provisions vary between different cemeteries and tend to be tied to ownership.

The most uniform and comprehensive cemetery maintenance is provided in **Germany**. Under the terms of the 1957 Maintenance Agreement between the federal level, the *Länder* and the Central Council of Jews in Germany (*Zentralrat*), an annual budget (ca. 6 million Euros in 2007, jointly provided by the Federation and the *Länder*) is allocated to the basic maintenance of all unused visible Jewish cemeteries (ca. 4.5 million square metres, i.e. ca. 1.30 euros/m² p.a.). This form of maintenance extends primarily to access ways, pathways in cemeteries and basic gardening. It excludes care for individual graves and gravestones. Depending on the *Land*, maintenance work is either undertaken by the municipalities or by the Jewish communities. The majority of cemeteries, equally listed as cultural heritage sites, benefit from additional funding and preservation. However, gravestones in both these and the remaining cemeteries suffer from exposure to the negative effects of vegetation, weather, pollution and vandalism.

No comprehensive maintenance agreements have been concluded in the other countries examined in this report.

In **Austria**, individual maintenance agreements with the local municipalities have been secured for the majority of 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. Agreed minimum rules to be respected are: men must cover heads; no work on Shabbat or Jewish holidays; regular grass cutting; maintenance of pathways, gates and walls; re-erection of fallen gravestones. Like in Germany, care for individual graves is the descendants' responsibility.

In the **Czech Republic**, maintenance is the owner's obligation, be it a municipality or the Jewish community. In the case of cemeteries, this includes the reasonable maintenance of boundary walls/fences etc. where these exist. In the event of insufficient care it is possible that the owner would be fined, although in the case of Jewish cemeteries that is rather unlikely. Some Jewish communities receive public subsidies for maintaining the cemeteries which they own.

In **Lithuania**, some cemeteries are maintained by the municipalities and regularly visited by the Jewish community. Others are taken care of by individual initiatives. Many burial grounds are located in rather remote areas and therefore receive no regular visits.

The Union of Jewish Communities in **Poland** can only provide maintenance for a small number of Jewish cemeteries. Many abandoned Jewish cemeteries are cared for by the Provincial Conservationists' Office, others by private individuals. The state is responsible for maintaining military graves as well as concentration and death camps.

The **Slovak** Jewish community maintains between 80 and 85% of the cemeteries which it owns, whereas the remainder is without formal care. A municipality does not contribute to the maintenance of cemeteries of which it is not the owner.

3.3.3 Financing of cemetery maintenance and renovation

Major differences exist in the level of public and private funding provided for cemetery maintenance and renovation. One of the major difficulties predominant in most countries except for Germany is the lack of long-term funding.

While basic maintenance work is often undertaken by **Austrian** municipalities at their own cost, and while there are certain allocations available from the *Länder* in addition to contributions from other organisations, funding for the often significant renovation work needed is insufficient.

Many of the owners of the **Czech Republic's** Jewish cemeteries receive not insubstantial state funding. Nevertheless, more subsidies are necessary to ensure the effective preservation and protection of these often severely damaged sites. While legislation states that owners of cultural heritage items are obliged to maintain them or risk expropriation, this is often not viable for Jewish cemeteries given their level of degradation and the expense of repair. Recently, the Federation of Jewish Communities successfully applied for EU funding for a project related to the creation of infrastructure to support the country's Jewish heritage over a five-year period.⁹

As outlined above, an annual fixed rate of currently 1.30 EUR per square metre of cemetery is provided in **Germany** under the terms of the Maintenance Agreement. Additional funding is provided for designated cemeteries on the basis of cultural heritage protection.

In **Lithuania**, primary responsibility for maintenance, including funding, is vested in local municipalities. The current levels of funding are insufficient.

Further research is required on the financing of cemetery maintenance in **Poland** and **Slovakia**.

3.4 Current State

No uniform system to assess the state of Jewish cemeteries exists in the six countries examined in this report. Therefore, the following information merely allows for very general conclusions on the state of Jewish burial grounds.

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.

In the **Czech Republic** – where only 10 Jewish cemeteries continue to be used for burials –, estimates indicate that 75% of Jewish cemeteries are unfenced and/or in very poor state.

Under the terms of the 1957 Maintenance Agreement, all officially-listed cemeteries in **Germany** are to be equipped with a secure enclosure and a lockable gate. No persistent lack of compliance with these basic criteria has been indicated by any of regional Jewish community associations. However, it can be presumed that a considerable number of graves throughout the country are in a less than satisfactory state, since the Agreement excludes care for those.

No comprehensive up-to-date information exists regarding the current state of Jewish burial grounds in **Lithuania** and **Poland**. The 2008 *Lo Tishkach* report on Jewish cemeteries in the Masovian Region, however, indicates the following: Out of 126 cemeteries, 71 (56.3%) were seriously threatened, 20 (15.9%) were protected and 35 (27.8%) moderately threatened. The report finds that 70 cemeteries are not delineated, while 35 are only partially delineated. A number of cemeteries are used as residential properties or for commercial, industrial or recreational purposes. Some serve as waste dumps.

⁹ Tomáš Kraus, Brussels, 12 & 13 December 2008.

In **Slovakia**, 70% of cemeteries have some form of fence or wall, although often with a broken and gate or no gate at all.

3.5 *Main Threats*

Virtually all Jewish burial grounds in the countries examined face one or more of the following threats to varying extents: vegetation overgrowth, erosion, pollution, weather, vandalism, development and inexpert maintenance. Many cemeteries also suffered severe damages during Nazi rule. Theft of gravestones was a common phenomenon during post-war years. Particularly in the countries that experienced Communist rule, cemeteries were erased throughout three decades after the war.

Austria, the **Czech Republic**, **Lithuania**, **Poland** and **Slovakia** lack comprehensive solutions that tackle maintenance issues. Therefore, numerous cemeteries are particularly vulnerable to 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.

In **Germany**, the 1957 Maintenance Agreement guarantees a sound level of basic maintenance. However, particularly gravestones continue to suffer from negative environmental effects, since their preservation does not feature in the Agreement. Instances of vandalism are more frequent than in the other countries, with 267 known desecrations between the beginning of 2002 and November 2007.

4. LEGAL INSTRUMENTS

The legal regime offers a comprehensive response to the threats identified above. Legal provisions that affect the protection and preservation of Jewish cemeteries are typically found within cultural heritage, burial and environmental legislation. In some countries the criminal code and further national and/or bilateral provisions are of importance.

4.1 *Cultural Heritage Legislation*

In none of the countries examined does cultural heritage status apply to all Jewish cemeteries. Given the protection afforded by the relevant provisions, it should be a priority to secure this status for a high number of Jewish burial grounds. However, cultural heritage legislation and its application to Jewish cemeteries vary from one country to another.

In **Austria**, cultural heritage legislation offers a level of protection from damage, destruction or change without permission, 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 1948 War Graves Act ensures ongoing care for mass graves 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’.

In the **Czech Republic**, about 70% of Jewish cemeteries have been awarded cultural heritage designation to date. Such a designation obliges the owner to inform the authorities of any changes to be made to the site in question, including renovation work and changes of ownership. With regards to threats to burial grounds that are still visibly in existence and are considered to merit the designation of a ‘cultural monument’, Czech cultural heritage legislation offers a broad range of protective measures which covers all of the main threats faced by Jewish cemeteries today. The majority of these place the responsibility squarely on the owners.¹⁰

In accordance with their ‘cultural sovereignty’, cultural heritage legislation in **Germany** is under the sole responsibility of the *Länder*. Although each *Land* has its own cultural heritage preservation law, legislation throughout Germany shares similar guiding principles. Each *Land* maintains lists of cultural heritage sites and distinguishes between built monuments (e.g. a visible Jewish cemetery) and archaeological monuments (e.g. gravestones discovered during excavations). A great number of both used and unused Jewish cemeteries are listed as cultural heritage sites. In Westphalia, for example, about 190 out of all 315 visible Jewish cemeteries enjoy this status, which eases access to funding for restoration and maintenance that go beyond the 1957 National Maintenance Agreement.

In **Lithuania**, the legal regime offers a reasonably comprehensive level of protection to those cemeteries that are protected as objects of cultural heritage. Unregistered burial grounds are not provided legal protection in case of desecration or demolition.

Cultural heritage legislation in **Poland** provides for the following: protection of listed monuments or areas from various hazards including theft, degradation and inappropriate development by requiring maintenance and permission for all activities; the integration of cultural heritage considerations into town and country planning; and the provision of funding opportunities. 233 Jewish cemeteries in Poland are designated cultural heritage monuments.

In **Slovakia**, protection is offered to war graves (including those of Holocaust victims and Jewish soldiers), which are fully maintained by the local authority with state assistance, and cultural heritage monuments (including ‘archaeological sites’), the maintenance of which remains the responsibility of the

¹⁰ Tomáš Kraus, Brussels, 12 & 13 December 2008.

owner. The protection of previously undetected burial grounds uncovered during excavation is provided by cultural heritage and planning legislation – though perhaps only those considered to be of particular ‘archaeological value’.

4.2 Burial Legislation

In some of the countries examined, burial legislation features provisions that may be relevant to the protection of Jewish cemeteries.

Austrian *Land*-level legislation, in sanctioning exhumations, the dissolution of cemeteries and the cancellation of rights to a specific burial plot, is unsuitable for the purpose of the *Lo Tishkach* project.

In **Czech Republic**, the Burial Act has recently been re-drafted and the Federation of Jewish Communities contributed comments to this.¹¹ A copy has yet to be secured by *Lo Tishkach*.

German burial legislation, which is also *Länder*-based, requires that no exhumations be carried out without official municipal approval.

In **Poland**, burial legislation establishes a moratorium on cemetery re-use without the express permission of the religious group involved – although this can on occasion be overruled.

The relevant provision in **Slovak** legislation features in the Funeral Act and addresses neglect of cemeteries that are in use.

4.3 Environmental Legislation

It seems that in all of the examined countries, the legal obligation to undertake an ‘Environmental Impact Assessment’ for large-scale development projects, 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. 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.

4.4 Criminal Code

While further research is necessary to determine all provisions relevant to the protection of cemeteries, it can already be said that in **Austria**, 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.

In the **Czech Republic**, visible/undeveloped cemeteries that are not protected by cultural heritage legislation are protected from vandalism and theft by the Czech penal code.

The **German** criminal code explicitly forbids the unlawful treatment of the dead and their resting places.

¹¹ Tomáš Kraus, Brussels, 12 & 13 December 2008

5. RECOMMENDATIONS

5.1 *General Recommendations*

An initial step towards better protection and preservation of Jewish cemeteries is to secure **cultural heritage status** for the largest possible number of these sites. Depending on the relevant legislation, local, regional or national authorities need to be approached to extend this designation to monuments. This would afford both increased legal protection and funding to Jewish burial grounds. With regards to heritage legislation provisions pertaining to archaeological discoveries, efforts should be undertaken in order to require consultation with the Jewish community whenever a Jewish cemetery is detected.

Regarding **burial legislation**, a suggested further action is to include provisions requiring the treatment of burial grounds in agreement with the religious group involved. Depending on the country, the responsible authorities can be found at the national or regional level.

Diplomacy and the signing of **bilateral agreements** can be a powerful instrument in improving cemetery protection and preservation whenever changes in national legislation or effective implementation of existing legislation are hard to obtain. The 2001 Washington Agreement between Austria and the United States, for example, requires the former to offer additional support for the maintenance and renovation of Jewish cemeteries on its territory. Importantly, this extends to all cemeteries, both known and unknown. To this date, however, the Agreement has not significantly changed the situation on the ground.

5.2 *Country-specific Recommendations*

In addition to the general recommendations, suggestions for further action in individual countries include the following:

In **Austria**, full government participation in the 2001 Washington Agreement relating to the care of all Austrian Jewish cemeteries is needed, including the adoption of appropriate legislation placing responsibility for care firmly in the hands of the federal and other authorities to guarantee this.

With a good level of co-operation existing between the national **Czech** authorities and the Federation of Jewish Communities, funding nevertheless remains the key obstacle to the effective preservation and protection of the often severely damaged cemeteries. While legislation states that owners of cultural heritage items are obliged to maintain them or risk expropriation, this is often not viable for Jewish cemeteries given their level of degradation and the expense of repair. A higher level of co-operation with municipalities is desirable.

The Jewish community in **Germany**, the Federal Government and the *Länder* seem to be satisfied with the current state of legislation and its implementation. The fact that all *Länder* located in former East Germany adopted the 1957 Maintenance Agreement after reunification emphasises its success. However, while the majority of Jewish cemeteries already enjoy protection as cultural heritage sites, it is nevertheless recommended that procedures be initiated to secure this status for the remainder wherever possible, as outlined in the previous section.

More comprehensive measures are indispensable in **Lithuania, Poland** and **Slovakia**, such as the performance of a full survey of all Jewish burial grounds (visible and no longer so) in order to definitively list all areas in need of protection, in addition to the continued monitoring of these sites; the erection of effective fencing and signs/markers at all Jewish cemeteries; the extension of even very basic maintenance to Jewish cemeteries; the requirement for the agreement of the Jewish community in all matters concerning works on any Jewish burial ground (visible or otherwise).

5.3 *Best Practices*

The following provides examples of best practices that go well beyond the basic recommendations outlined above.

In **Austria**, the previously mentioned, six-volume *Weißbuch*¹² can be regarded to be a standard setter, listing exact locations, cadastral documentation, details of maintenance agreements and restoration work, in-depth analysis of the problems faced by each cemetery, suggestions for their resolution, photographs and detailed budgets for maintenance, repair for the vast majority of Austrian Jewish cemeteries. Publications of this kind would be an important contribution to the lasting protection and preservation of Jewish burial grounds elsewhere.

In **Germany**, a unique comprehensive Maintenance Agreement between the Federal Government, the *Länder* and the Jewish community umbrella organisation (*Zentralrat*) has been effective since 1957, providing reliable, long-term care for all visible Jewish cemeteries in Germany. The Agreement's legal value was increased between 1983 and 2007, when 15 out of 16 *Länder* signed similar individual agreements with the representative *Landesverbände* in their region, typically reaffirming their commitment to the 1957 Agreement. Upon acceptance by the respective Land parliament, these Agreements acquired the status of laws. While covering a wide range of issues, these documents contain passages on the Federation's commitment to the 1957 Maintenance Agreement. While highly desirable, it is questionable whether agreements of this kind can be easily concluded in other countries.

The Federation of Jewish Communities in the **Czech Republic** successfully applied for EU funding for a project related to the creation of infrastructure to support the country's Jewish heritage over a five-year period. This is of great interest to the *Lo Tishkach Foundation*, and developments will be followed with interest.

¹² Walzer, T., *op.cit.*

Note on sources:

Unless indicated otherwise, information in this report is based on the findings of *Lo Tishkach's* previous country reports, which include detailed bibliographies.