

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

*Slovak Republic*

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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 5,000 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 Slovakia 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 Slovakia are as follows:

- There are thought to be over 700 Jewish burial grounds in Slovakia, the majority of which are owned by the Slovak Jewish community. Over 50% are thought to have fewer than 20 gravestones, and the majority have no sign/marker or effective fencing. Between 80 and 85 are nominally maintained by the Jewish community, with some restoration projects undertaken by foreign and local organisations and individuals. Many receive no care at all.
- The main threats faced by these sites are vandalism, vegetation, pollution and erosion, with planned development and theft also of some concern. The key issues that need to be tackled in this context are insufficient current maintenance including a lack of effective fencing or signposting; the development of cemetery land with impunity; and criminal action by polluters, thieves, vandals (some of whom have links to extremist groups).
- The legal regime offers a reasonably comprehensive level of protection. The greatest 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 owner.
- Vandalism of and theft from all sites are addressed by the Criminal Code, while neglect of ‘active’ burial grounds is covered by the Funerals Act.
- 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’.
- Environmental Impact legislation requires the assessment of the possible deleterious effects of large-scale development, proposed legislation and planning documentation on both environmentally important areas and cultural monuments, employing a particularly broad definition which, it is suggested, includes both cemeteries and archaeological sites. The requirement for a survey prior to development is particularly useful as it may signal the presence of a Jewish burial ground prior to excavation beginning.
- Of particular concern are:
  - The possible lack of coverage of the neglect and/or excavation of ‘inactive’ burial grounds not considered to be of cultural heritage or archaeological value;
  - The lack of provisions requiring the permission of the Jewish community for any work involving Jewish burial grounds;
  - The discovery of ‘non-visible’ Jewish burial grounds only after excavation has already begun.
- The practical effectiveness of the legal regime is affected by:
  - The fact that only very few Jewish cemeteries (7-12% of those in Slovakia) fall under the most protected categories outlined above. While a cultural heritage designation does not provide complete protection from neglect or vandalism, it is likely to offer protection from development under both planning and EIA legislation. (*Evidence of*

*the level of care extended to war graves, and of the effectiveness of such a designation against development, theft or pollution, has not yet been obtained);*

- The ability of the site's owners to undertake effective maintenance; in the case of the Jewish community this is severely attenuated by a lack of funds, meaning that the legislation cannot be properly enforced in this case;
  - The continuation of acts of desecration in spite of the effective enforcement of appropriate legislation in this area.
- Suggested areas for possible action include:
    - The performance of a full empirical survey of all Jewish burial grounds (visible and no longer so) in the Slovak Republic 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 burial sites with the assistance of the Slovak government;
    - The extension of even very basic maintenance to all Slovak Jewish cemeteries with the assistance of Slovak and foreign institutions, organisations and individuals – particularly, for instance, the adoption of Jewish cemeteries by local schools or civic organisations;
    - The extension of the cultural heritage (or a similar) designation to include all Jewish burial grounds so as to ensure their protection from (first-time or re-) development – or at least the extension of legislation governing discoveries during excavation to include all Jewish burial grounds, if this is not already the case;
    - The requirement for the agreement of the Slovak Jewish community in all matters concerning works on any Jewish burial ground (visible or otherwise).





## 2. ACKNOWLEDGMENTS

This preliminary report was written with the considerable assistance of publications by Jewish heritage experts Dr Maroš Borský and Ruth Ellen Gruber. Further desk-based research was carried out using the broad resources available on the internet from institutions and organisations including the Slovak Monument Protection Authority, whose database of protected items and areas (available at [www.pamiatky.sk](http://www.pamiatky.sk)) was most helpful, JewishGen, which currently offers the most comprehensive (if often outdated) publicly-available treatment of Slovak Jewish cemeteries, and the US State Department.

The English-language newspaper *The Slovak Spectator* was also particularly useful. Copies of the appropriate Slovak-language legislation were accessed via the Government's official legislative repository (available at [www.zbierka.sk](http://www.zbierka.sk)). The unofficial English translation of the 2005 Burial Act, the original Slovak text of which was provided by the Jewish community, was arranged by the Lo Tishkach project; others were obtained from the excellent UNESCO Cultural Heritage Law Database and elsewhere on the internet.

The above findings were supplemented by an interview conducted by the author with Dr Fero Alexander, Executive Chairman of the Central Union of Jewish Religious Communities in the Slovak Republic, and Mr Juraj Turčan, Member of the Board of Directors, in Bratislava on 5 March 2008. Dr Maroš Borský of the Slovak Jewish Heritage Center was approached for an interview and subsequently for his views on the Slovak Jewish heritage situation but was unfortunately unable to participate.

Dr Katarina Kosova of the Slovak Monuments Authority was contacted on the recommendation of Czech cultural heritage expert Jiří Fiedler, but a response has not yet been received. Mr Robert Lindenthal, legal advisor to the Slovak Permanent Representation to the European Union, was also approached for English-language copies of Slovak legislation, and was most helpful in providing the contact details of Mr Jan Juran, Director of the Religions Department at the Ministry of Culture, and specialist Mr Jan Hevera.



### 3. 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'rosh*).<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 (*tahara* 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.



## 4. BACKGROUND ON SLOVAK JEWISH BURIAL GROUNDS

### 4.1 Numbers

The primary authorities on Slovak Jewish heritage<sup>3</sup> agree that there are currently 703 known Jewish cemeteries in Slovakia, with up to 15 still used for burials including Bratislava's Neolog<sup>4</sup> and Orthodox cemeteries<sup>5</sup>, Galanta and Košice New Jewish Cemetery.<sup>6</sup> These figures were recently updated to include ten additional cemeteries; many otherwise accurate sources still list the prior figure of 693.<sup>7</sup> This figure corresponds roughly to the number of Jewish communities that have at some point inhabited the territory of today's Slovakia, echoing the words of architect and Jewish heritage specialist Eugen Bárkány:

*There was hardly a village without mysteriously yet appropriately built ritual baths, a bet-olam, a house of eternity, a cemetery where the mortal remains of the forefathers decayed under gravestones of granite, sandstone or marble.*<sup>8</sup>

If correct<sup>9</sup>, this total gives the country one of the highest national densities of Jewish cemeteries in Europe. Even based on the 415 cemeteries for which details have currently been obtained by the Lo Tishkach project<sup>10</sup>, the density of Jewish cemeteries in Slovakia is still significantly higher than all other European countries studied, apart from Hungary.<sup>11</sup>

In addition, there are a number of Jewish sections of municipal cemeteries which are thought not to feature on this list – for instance Bratislava Rača and Turčianske Teplice in central Slovakia.<sup>12</sup>

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. The largest can be found at a former limekiln in the village of Nemecká, close to Banská Bystrica in Central Slovakia, where 900 were killed, a number of whom were Jewish. Victims were shot on the edge

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<sup>3</sup> Including Dr Fero Alexander, Executive Chairman of the Central Union of Jewish Religious Communities in the Slovak Republic (Ústredný zväz židovských náboženských obcí v Slovenskej republike – ÚZŽNO), Mr Juraj Turčan, Member of the Board of Directors (both interviewed by the author in Bratislava in March 2008) and Slovak Jewish heritage expert Dr Maroš Borský.

<sup>4</sup> A reform movement within Judaism, mainly in Hungarian-speaking regions of Europe, which began in the late 19th century.

<sup>5</sup> 28 burials took place between September 2006 and June 2007, according to Peter Salner of the Bratislava Jewish community. Source: *Prague Daily Monitor*, 'Jewish cemeteries part of Czech Jewish history', 23 July 2007.

<sup>6</sup> [www.slovak-jewish-heritage.org](http://www.slovak-jewish-heritage.org); Gruber, R. E., *Jewish Heritage Travel: A Guide to Eastern Europe*, National Geographic; Washington D. C., 2007: p 195.

<sup>7</sup> For instance Ruth Ellen Gruber's excellent *Jewish Heritage Travel*, published in 2007.

<sup>8</sup> Bárkány, Eugen-Dojč, *Ľudovité Židovské náboženské obce na Slovensku*, Bratislava 1991 (English language résumé).

<sup>9</sup> While the Slovak Jewish Community agreed to provide the list of 703 cemeteries at a meeting in Bratislava at the beginning of March 2008, at the time of writing this list had not yet been received by the author and this figure cannot therefore be confirmed.

<sup>10</sup> See [www.lo-tishkach.org](http://www.lo-tishkach.org) for details.

<sup>11</sup> At 703, Slovakia's Jewish cemeteries can be found every 69.4 km<sup>2</sup> (based on a land area of 48,800 km<sup>2</sup>). At 415, the density is still high at 1 cemetery per 117.6 km<sup>2</sup>. In comparison with other countries for which we have data, Hungary contains 1 cemetery per 75.2 km<sup>2</sup>; the Netherlands, 1 cemetery/147.3 km<sup>2</sup>; Germany, 1 cemetery/162.7 km<sup>2</sup>; Poland, 1 cemetery/217.48 km<sup>2</sup>; and the Czech Republic, 1 cemetery/231.4 km<sup>2</sup>; and Romania, 1 cemetery/337.2 km<sup>2</sup>. Austria is significantly lower than the rest at 1 cemetery/1,268.4 km<sup>2</sup>. All calculated using land area figures from the US government's CIA World Factbook.

<sup>12</sup> Dr Alexander & Mr Turčan (March 2008).

of the furnace so that they fell directly into the flames. As a result, only a very small percentage (5-10%) were identified. A memorial has been erected at the site.<sup>13</sup>

Another can be found at Kremnička in Western Slovakia, where 747 people were killed – 400 of whom were thought to be Jews – and buried in an anti-tank trench. Three-quarters of the names of the victims are known, and a monument was added to the site in the late 1990s.<sup>14,15</sup> According to information available on JewishGen's cemetery database, others exist at the cemeteries of Kolbasov<sup>16</sup>, Topoľčany, Tvrdošín and Zvolen.<sup>17</sup> Ruth Ellen Gruber also notes that 500 Hungarian Jews were massacred at a concentration camp in Petržalka (a suburb of Bratislava) on Good Friday 1945; a memorial for the victims stands in Petržalka municipal cemetery.<sup>18</sup>

The first known extensive survey of Slovak Jewish heritage, containing details of many Jewish cemeteries, was carried by Eugen Bárkány as early as the 1960s<sup>19</sup>. While outdated, this survey – carried out when the cemeteries were 'less overgrown by vegetation or plundered by... locals' – remains one of the most authoritative and is often consulted.<sup>20</sup> Other more recent surveys include a report on the Jewish monuments of Czechoslovakia by the US Commission for the Preservation of America's Heritage Abroad<sup>21</sup> and one privately carried out by the Slovak Jewish Community.<sup>22</sup>

According to Dr Alexander and Mr Turčan of the Slovak Jewish Community<sup>23</sup>, there was a plan to fully document all Slovak Jewish cemeteries, but this was such a huge undertaking that it remains unfinished. Having recently completed a 6-year project to document all of Slovakia's synagogues (culminating in an excellent monograph published in 2007<sup>24</sup>), project director Dr Maroš Borský reportedly plans to undertake a similar project focusing on Jewish cemeteries – particularly those in the rural areas of Eastern Slovakia – including regular monitoring.<sup>25</sup> At present, details of 24 cemeteries are available on a publicly-accessible online database<sup>26</sup>, to be expanded in due course, funding permitting.

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<sup>13</sup> Heyes, R. 'A nation divided against itself' in *The Slovak Spectator – Spectacular Slovakia 2005*.

<sup>14</sup> Dr Alexander & Mr Turčan (March 2008).

<sup>15</sup> *The Slovak Spectator*, 'Slovenské Národné Povstanie - the Slovak national uprising', *Spectacular Slovakia 2002* & Heyes, R., 2005.

<sup>16</sup> Jewish leaders unveiled a plaque in the Slovak town of Kolbasov in 1996 in remembrance of 11 Jewish citizens who were killed there by Ukrainian nationalists in December 1945. Source:

<http://www.jewishgen.org/Cemetery/e-europe/slov-g-l.html>.

<sup>17</sup> <http://www.jewishgen.org/cemetery/e-europe/slovakia.html>.

<sup>18</sup> Gruber, 2007: p. 188.

<sup>19</sup> Bárkány, 1991.

<sup>20</sup> [www.slovak-jewish-heritage.org/documentation-project.php](http://www.slovak-jewish-heritage.org/documentation-project.php).

<sup>21</sup> This is often cited, for instance on the website of the Slovak Jewish Heritage project and in Maroš Borský's *Synagogue Architecture in Slovakia: A Memorial Landscape of a Lost Community*, Jewish Heritage Foundation – Menorah, Bratislava, 2007. US Commission report numbers are also cited in the Slovak section of the JewishGen cemeteries database (<http://www.jewishgen.org/Cemetery/e-europe/slov-s-t.html>). It is not available in the Commission's web archives, however, and requests for a copy have so far been fruitless.

<sup>22</sup> <http://www.slovak-jewish-heritage.org/documentation-project.php>

<sup>23</sup> Interviewed in March 2008 by the author.

<sup>24</sup> Borský, 2007.

<sup>25</sup> Intention expressed in paper delivered at 'The Future of Jewish Heritage in Europe: An International Conference', Prague, Czech Republic, 24-27 April 2004: 'Synagoga Slovaca: Documentation Project of Slovak Synagogue Architecture (May 2004)'.

<sup>26</sup> Accessible at [www.slovak-jewish-heritage.org](http://www.slovak-jewish-heritage.org).

## 4.2 Legal Responsibility & Maintenance

Slovakia has some 3,000 Jews out of a total population of around 5.35 million.<sup>27</sup> The majority of Jews live in Bratislava and in Košice, while other communities can be found in Prešov, Nové Zámky, Komarno, Dunajská Streda, Galanta, Nitra, Trnava and other towns.<sup>28</sup> Ten organised Jewish communities exist under the umbrella of the Central Union of Jewish Religious Communities in Slovakia (ÚZŽNO), which runs social welfare and cultural programmes.<sup>29</sup>

Between 60% and 80% of Slovakia's Jewish cemeteries are in the possession of ÚZŽNO. Jewish sections of municipal cemeteries are under the ownership of the local municipality, as are several Jewish cemeteries that are directly adjacent to other cemeteries. The rest are owned by private individuals.<sup>30</sup>

Initial restitution efforts were made after the split of Czechoslovakia in the early 1990s. The US State Department's *International Religious Freedom Report 2006* notes that there were some problems with the return of property that was developed after seizure. The fact that property was returned with no compensation available for the damage done to it during the previous regime proved most problematic. The Report states that the main obstacles to the resolution of outstanding restitution claims were the Government's lack of financial resources and bureaucratic resistance on the part of those entities required to vacate restitutable properties. In 2005 a new restitution law permitted religious organisations to claim property taken between 8 May 1945 (2 November 1938 for the Jewish community) and 1 January 1990, and established 30 April 2006 as the filing deadline. With the exception of the Reformed Christian Church, religious groups had few remaining claims for unreturned property.<sup>31</sup>

In spite of the poor state of many Czechoslovak Jewish burial grounds devastated by the Nazis during the Second World War, very few were the object of restoration efforts in the immediate post-war years. Since 1989 – which brought a significant improvement in the situation of the Jewish community, increased awareness of the importance of Jewish heritage sites and greater opportunities for involvement – restoration efforts have been stepped up. As Ruth Ellen Gruber notes of Slovak Jewish heritage in general: 'A number of important restoration and repair projects have been carried out since the early 1990s, with funding from private individuals or families as well as from Slovak Jewish and public sources.'<sup>32</sup>

The Jewish community currently provides regular, if nominal, maintenance<sup>33</sup> for between 80 and 85 of the sites that it owns<sup>34</sup> – a number that increases by 5-10 every year – through the 'SOS' committee, founded in 1997 to care for cemeteries and synagogues in Slovakia and directed by Juraj Turčan.

The Jewish community also contributes, both financially and logistically, to externally-funded efforts with approximately 70,000€<sup>35</sup> allocated on an annual basis for the protection and preservation of cemeteries owned by the community.<sup>36,37</sup> To give this some perspective, the Austrian Jewish community carried out a survey of its 60-plus Jewish cemeteries in 2001/2002 and produced an estimate as to the full cost of the necessary maintenance and renovation work

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<sup>27</sup> <http://www.tau.ac.il/Anti-Semitism/asw2006/slovakia.htm>.

<sup>28</sup> Hegedus, M. 'Jews in Slovakia', accessed from <http://www.slovakia.org/society-jews.htm>.

<sup>29</sup> Gruber, 2007: p. 182.

<sup>30</sup> Dr Alexander & Mr Turčan (March 2008).

<sup>31</sup> US State Department, *International Religious Freedom Report 2007: Slovak Republic*.

<sup>32</sup> Gruber 2007: pp. 182-3.

<sup>33</sup> The grass is cut and the fences are maintained. Source: Dr Alexander & Mr Turčan (March 2008).

<sup>34</sup> A list of these sites has not yet been obtained from the Slovak Jewish community (April 2008).

<sup>35</sup> Approximately \$110,000.

<sup>36</sup> Dr Alexander & Mr Turčan (March 2008).

<sup>37</sup> <http://www.jewishgen.org/cemetery/e-europe/slov-e-h.html>.

needed at that time. This came to 47 million euros in total.<sup>38</sup> Given the Slovak Jewish community's many other responsibilities, a significant increase in the sum currently allocated should not be expected in the near future. This leaves up to 490 Jewish community-owned cemeteries without any formal (Jewish community) care, with the rest primarily receiving only basic maintenance.

Work is primarily financed from the interest gained from a fund established in 2002 to partially compensate the Jewish community for the lost assets of Slovak Jews during the Holocaust. A Joint Commission of Government and Jewish representatives estimated that the value of heirless Jewish property and real estate (excluding agricultural lands) could be valued at some \$185 million, or about 8.5 billion Slovak Crowns. The government agreed to allocate ten percent of this sum toward compensation for the unrestituted property. Funds were to cover the healthcare of 1,450 Holocaust survivors in Slovakia and to help renovate Jewish historical sites, including cemeteries.<sup>39</sup>

Details of the care given to the 140-300 Slovak cemeteries owned by private individuals and local municipalities are not currently known. With regards to cemeteries not, at present, under its ownership, the Slovak Jewish community expressed concern that burial grounds that have been 'out of use' for a period of time can legally be cancelled, with the land being used for other purposes (see Section 5.4 for more details). It was also noted that if the Jewish community owns the property then the local municipality will not contribute to its care.<sup>40</sup>

Aside from ÚŽŽNO, the most important organisation for the protection and preservation of Jewish cultural heritage in Slovakia is the Slovak Jewish Heritage Center.<sup>41</sup> A non-governmental and non-profit institute, the Center was established in 2006 as a joint project of the Bratislava Jewish Community and the Jewish Heritage Foundation – Menorah, in Bratislava.

Headed by Dr Maroš Borský, the Center is engaged in research, documentation and site monitoring, education, promotion and consulting work to further the cause of Jewish heritage preservation in Slovakia. Having recently completed a comprehensive study of all of the Slovak Republic's synagogues, the results of which are available in the beautifully-presented *Synagogue Architecture in Slovakia*, one of the organisation's current focuses is to document other Slovak Jewish built heritage sites including cemeteries, with information to appear on an online database. Representatives also return to previously-documented heritage sites and monitor their current situation.<sup>42</sup>

There are very few foreign organisations involved with the protection of Slovak Jewish cemeteries. Of these, most notable is the Brooklyn-based Heritage Foundation for the Preservation of Jewish Cemeteries (HFPJC), which enjoys an excellent relationship with the Slovak Jewish community.<sup>43</sup> According to its latest update<sup>44</sup>, the HFPJC, also active in Hungary, Romania, Serbia and Western Ukraine, has partly or completely restored the fences, gravestones and grounds of 11 cemeteries, re-built the walls of 3 and has arranged for the maintenance of 9 cemeteries for one year. The professional evaluation of 20 cemeteries has been requested or already completed. Examples of their recent work include the restoration of tombstones at cemeteries in Bardejov (1,230 tombstones), Stropkov-Tisinec (900) and Secovce (almost 500), the construction of a wall in Humenné cemetery and the completion of a large concrete gate at

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<sup>38</sup> Approximately \$72.5 million using the April 2008 rate of exchange. Source: Walzer, T. *Weißbuch über Pflegezustand und Sanierungserfordernisse der jüdischen Friedhöfe in Österreich*, Band 1, IKG Wien, August 2001 – April 2002; p. 53

<sup>39</sup> <http://www.claimscon.org/index.asp?url=slovakia>.

<sup>40</sup> Dr Alexander & Mr Turčan (March 2008).

<sup>41</sup> [www.slovak-jewish-heritage.org](http://www.slovak-jewish-heritage.org)

<sup>42</sup> <http://www.slovak-jewish-heritage.org/slovak-jewish-heritage-center.php>.

<sup>43</sup> Dr Alexander & Mr Turčan (March 2008).

<sup>44</sup> Heritage Foundation for the Preservation of Jewish Cemeteries (HFPJC) *Status Report*, December 2007.



Veličná cemetery. Ruth Ellen Gruber also praises the organisation's work in Pezinok which, she says,

*'represents a success story of recovery and preservation. The cemetery had been privatised after World War II and on my first visit I found it a very disturbing sight. Most stones had been uprooted and piled up. A remaining few formed part of the backyard of a suburban home; they poked up amid fruit trees and garden sheds....One was used as a bench. Thanks to the efforts of the Brooklyn-based Heritage Foundation for the Preservation of Jewish Cemeteries, the cemetery has been restored to some extent and now forms a meditative enclave... With the co-operation of the owner of the property, the stones were patched together and re-erected in one part of the grounds. It was impossible to place them in their original positions, but even in a symbolic form, the reconstructed cemetery now preserves the memory of the destroyed community.'*<sup>45</sup>

There are also many foreigners, primarily those with a family link to the country, who work alone or form groups of like-minded individuals to take care of particular cemeteries. In this case, the interested party donates a certain amount of money for the completion of particular maintenance or renovation works, with the Jewish community and/or the HFPJC often looking after the logistical issues. Dr Alexander gave the example of Kolta cemetery; American descendents have promised a certain sum, to which the community will also add its own contribution and oversee the works.<sup>46</sup> Further examples are the work of groups lead by Bert Gross in Humenné<sup>47</sup>, by Emil Fisch in Bardejov<sup>48</sup>, and by Arnold Klein in Košice.<sup>49</sup>

In Humenné in the late 1990s there were some differences of opinion between the American donors interested in the restoration of the cemetery and representatives of the Slovak Jewish community over the allocation of the proceeds of the sale of a former synagogue in the town. The Americans felt that most, if not all, of the proceeds should go into fencing and maintenance of the cemetery. The Slovak Jewish Community, on the other hand, were committed to spending up to a quarter of the money for this purpose, with the rest to be pooled for the benefit of Slovak Holocaust survivors and for the care of cemeteries and synagogues throughout Slovakia.<sup>50</sup>

Local individuals also become involved in the protection and preservation of their local cemeteries – the efforts of Mr Meyer Špíra<sup>51</sup> and Dr Tomáš Stern<sup>52</sup> are particularly worthy of note – as do local authorities, communities and organisations. In Humenné, for instance, Július Levický, the town's Cultural Affairs director for many years, oversaw the fencing and restoration<sup>53</sup>; Šaľa Jewish cemetery, while no longer serving its original purpose, 'remains a dignified place for commemoration thanks to maintenance by the local civic association Maceva<sup>54</sup>; and in Kecerovce, the Jewish cemetery was cleared out overnight by members of the

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<sup>45</sup> Gruber 2007: p. 190.

<sup>46</sup> Dr Alexander & Mr Turčan (March 2008).

<sup>47</sup> Former Humenné resident Bert Gross has been involved in the maintenance and restoration of the town's Orthodox cemetery for over a decade. Source: <http://www.shtetlinks.jewishgen.org/humenne/humenne.htm>.

<sup>48</sup> An association has been formed by former Bardejov resident Emil Fisch to lobby for the better preservation of the town's Jewish heritage, covered in part by a UNESCO World Heritage designation. Source: <http://www.bardejov.org>.

<sup>49</sup> 'The cemetery has been maintained by me for the last 8 years. Every year, I raise money from relatives of people buried at the cemetery and business associates. There is no problem accessing any of the graves. When the cemetery was vandalized about two years ago. I raised about half of the money needed for restoration.' (August 2005) Source: <http://www.jewishgen.org/cemetery/e-europe/slov-g-l.html>.

<sup>50</sup> <http://www.jewishgen.org/cemetery/e-europe/slov-e-h.html>.

<sup>51</sup> Mentioned at <http://www.jewishgen.org/Cemetery/e-europe/slov-e-h.html> and <http://www.bardejov.org> among others.

<sup>52</sup> Mentioned at <http://www.slovak-jewish-heritage.org/documentation-project.php>.

<sup>53</sup> <http://www.jewishgen.org/cemetery/e-europe/slov-e-h.html>.

<sup>54</sup> Database at <http://www.slovak-jewish-heritage.org>.

local community to make good on town manager Anna Bombarova's pledge to maintain it.<sup>55</sup> In Košice, however, Arnold Klein notes that he receives 'very little help from the locals'.<sup>56</sup>

Dr Alexander also notes that local municipalities sometimes get involved, as do some local schools, for example one in Sered' which initiated a project to restore the local Jewish cemetery.<sup>57,58</sup>

### 4.3 Current State

The JewishGen cemetery database features information on almost 400 Slovak Jewish cemeteries<sup>59</sup> taken from a survey carried out by the US Commission on America's Heritage Abroad in the early 1990s, in addition to recent updates. This information contains a number of inconsistencies, is often dated, and covers only 342 of more than 700 cemeteries. It nevertheless offers a useful overview of the general state of Jewish cemeteries in Slovakia for the purpose of this study, as follows:

- Only 3% contain no gravestones at all or only fragments;
- 48% have between 1 and 20 gravestones, (underlined by Dr Fero Alexander<sup>60</sup>, who remarked that many cemeteries have very few stones and often there is very little left of a visible cemetery 'footprint');
- 31% of cemeteries have between 20 and 100 gravestones;
- 13% have between 100 and 500 gravestones;
- 5% have between 500 and 5,000 gravestones.

The information suggests that the remaining stones are mainly in their original positions, although this is certainly not the case for every cemetery. They are made of marble, sandstone, granite and limestone, and display inscriptions primarily in Hebrew, but also in Hungarian, German, Slovakian and Yiddish. Often the last known burials took place in the 1930s or early 1940s. Some individual graves, particularly in the large and well-maintained cemeteries, are surrounded by metal fences.

While the overwhelming majority of cemeteries are listed as having no sign or marker, almost 70% have some form of fence or wall – although very often broken and without a gate. Access is often via private property.

The main threats to the cemeteries, to be examined in more detail in the following section, were considered to be vandalism (over 40% of all cemeteries), vegetation (36%), pollution (19%) and erosion (10%, with many more listings as a minor problem). Planned development was cited as a threat for 6 cemeteries, and theft was also mentioned on a number of occasions.

144 cemeteries, (42% of the total listed), were noted as receiving some form of care in the JewishGen data. It can be assumed that the 80-85 Jewish cemeteries nominally maintained<sup>61</sup> by the Jewish community (a number which increases by 5-10 per year)<sup>62</sup> are included in this figure. 41 were listed as having caretakers (80% of all cemeteries with over 500 stones, 27% of those

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<sup>55</sup> <http://www.jewishgen.org/cemetery/e-europe/slov-g-l.html>

<sup>56</sup> Ibid.

<sup>57</sup> Dr Alexander & Mr Turčan (March 2008).

<sup>58</sup> US State Department, *International Religious Freedom Report 2006: Slovak Republic*.

<sup>59</sup> <http://www.jewishgen.org/cemetery/e-europe/slovakia.html>.

<sup>60</sup> Interviewed by the author in March 2008.

<sup>61</sup> The grass is cut and the fences or walls are maintained according to Dr Alexander & Mr Turčan (March 2008).

<sup>62</sup> Dr Alexander & Mr Turčan (March 2008).

with 100-500 stones and 5% of those with fewer than 100 stones) providing regular care and maintenance. The remainder were often listed as receiving only very occasional and *ad hoc* care.

Nevertheless, the majority of cemeteries listed as receiving any form of attention – even of a relatively low level – were primarily free of the major threats as outlined above, or these were considered to be less serious. Well-maintained cemeteries, as noted recently by Ruth Ellen Gruber<sup>63</sup> and by the Slovak Jewish Heritage Center<sup>64</sup>, include Bardejov, Bratislava (Neolog & Orthodox), Galanta, Komarno, Martin (now a park), Nitra, Prešov (all 3 cemeteries), Pezinok, Pribenik (Jewish section of the municipal cemetery), Šaľa, Trenčín and Trnava (Nitrianska cesta).

According to information available on the cultural heritage database of the Slovak Monuments Authority (*Pamiatkový úrad Slovenskej republiky*)<sup>65</sup>, 37 Jewish cemeteries are protected as cultural monuments, although ÚZŽNO cited a figure of up to fifty<sup>66</sup> (see Section 6 for further details).

## 4.4 Main Threats

### 4.4.1 Background

As in other Central and Eastern European countries, Jewish cemeteries in Slovakia suffered at the hands of the Nazis, with the assistance of the Slovak Fascist government. Cemeteries were affected by vandalism (Nitrianske Pravno and Huncovce, for instance)<sup>67</sup>, construction ‘for defence purposes’ (the old Jewish cemetery in Bratislava was partly destroyed to build a tunnel)<sup>68</sup> and fighting (the Orthodox cemetery at Nitra served as a strategic base for German soldiers fighting against the progressing Soviet army).<sup>69</sup> Tombstones were stolen for use as building materials, primarily for the construction of paths and roads (for example at Pezinok).<sup>70</sup>

According to the census of 1 December 1930, 137,000 Jews lived in 2,262 out of a total of 3,589 Slovak localities<sup>71</sup>; by the eve of the dissolution of independent Czechoslovakia in 1939, this number had grown to 150,000. The wartime government of independent Slovakia oversaw the deportation of Slovak Jews to German death camps in Poland (paying the Nazis 500 Reichsmarks for each deportee), and the occupying Hungarian authorities played a similar role in southern Slovakia. Only 25,000 Jews survived the Holocaust. The Jewish community was re-established, but it gradually shrank due to aging, assimilation and the waves of emigration that followed the war, the 1948 Communist *coup d'état* and the Soviet occupation of 1968. It now stands at around 3,000.<sup>72,73</sup>

Jewish cemeteries, mostly bereft of the communities that once cared for them, experienced a precarious existence in the post-war years – particularly in rural areas, where Jewish settlement was often not resumed and cemeteries were maintained by the elderly or not at all.<sup>74</sup> Although it was known for local non-Jewish communities to take care of the cemeteries in their area<sup>75</sup>, this

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<sup>63</sup> Gruber 2007.

<sup>64</sup> Database at [www.slovak-jewish-heritage.org](http://www.slovak-jewish-heritage.org).

<sup>65</sup> <http://www.pamiatky.sk/pamiatky/fondy>.

<sup>66</sup> Dr Alexander & Mr Turčan (March 2008).

<sup>67</sup> <http://www.jewishgen.org/cemetery/e-europe/slov-m-z.html>.

<sup>68</sup> Salner, P. ‘História Židovského Cintorína v Bratislave’, *Slovenský Národopis*, Vol. 51, 2003, No. 3.

<sup>69</sup> Database at [www.slovak-jewish-heritage.org](http://www.slovak-jewish-heritage.org).

<sup>70</sup> <http://www.jewishgen.org/cemetery/e-europe/slov-m-z.html>.

<sup>71</sup> Bárkány 1991.

<sup>72</sup> Gruber 2007: p. 181.

<sup>73</sup> [http://www.eurojewcong.org/ejc/print.php?id\\_article=113](http://www.eurojewcong.org/ejc/print.php?id_article=113).

<sup>74</sup> Ehl, P., Fiedler, J. & Pařík, A., *Old Bohemian and Moravian Jewish Cemeteries*, Prague 1991; p. 21.

<sup>75</sup> According to an exhibition held at the Old Jewish Cemetery in Prague, visited by the author on 11 June 2007, local non-Jewish populations in some areas took care of their local Jewish cemeteries.

was not common, and there were many instances of the theft of stone for building purposes, such as at Kolta<sup>76</sup>, Lipiany<sup>77</sup>, and Čirč:

*In 1994, we were led to the cemetery where tombstones have been reused as pathways, thresholds, etc. We uncovered what we could in a short time, but many tombstones were unreachable with the tools available.*<sup>78</sup>

While officially protected (for propaganda reasons) under the socialist regime, Jewish monuments in general received only a minimum of care, and many cemeteries fell into serious disrepair. Encroachment from surrounding developments was a serious problem, including the enlargement of a Catholic cemetery (Bánovce nad Bebravou), housing development (Gabčíkovo, Nesvady, Zavod), agriculture (Kolinany, Gabčíkovo), road construction (Bratislava (Old), Kolinany, Komarno, Kostolany pod Tribecom, Martin) and commercial/industrial development (Kosuty).<sup>79</sup> A number of cemeteries were also entirely taken by individuals for use as private gardens or as farm land.

A number of Jewish cemeteries were 'abolished' during the Communist period. Examples include Bratislava-Rusovce and Liptovský Mikuláš, destroyed by the authorities during the 1980s and now used as parks. Gravestones from the former were saved by a local man, who relocated them next to a nearby church, those from the latter were sold to a stonemason for re-use.<sup>80, 81</sup> This is not always the case: after the dissolution of Jewish cemeteries in Martin and Ružomberok in the 1960s and 1980s respectively, the gravestones from both were re-located to other cemeteries.<sup>82</sup> A further example of 're-development' is Biel, now a railway station.<sup>83</sup>

The 'abolition' of cemeteries was ostensibly carried out because of their state of disrepair, and/or the need to give way to large-scale development projects. This often took place in the context of both anti-Semitism – even constituting 'targeted cleansing of the last traces of former Jewish presence'<sup>84</sup> – and a 'selective' cultural heritage policy which prioritised certain 'histories' over others.<sup>85</sup> As Phyllis Myers<sup>86</sup> notes, 'monument policies were ideologically and professionally biased towards the majority culture and too often indifferent to modest, vernacular buildings and sites associated with multi-ethnic history.'

Many of the cemeteries that survived did so as a result of their remote location. However, what was once primarily responsible for their continued existence is also sadly to blame for their deterioration. The poor quality of the land – often hilly or poorly drained – and their distance from settlements, and particularly the areas with Jewish communities, has caused many to be almost completely forgotten.

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<sup>76</sup> 'The neighbor has taken many gravestones for use by his pigsty.' Source: <http://www.jewishgen.org/cemetery/e-europe/slov-g-l.html>.

<sup>77</sup> 'The cemetery is about 2 km into the forest, with traces of a stone wall, but no tombstones. They were used to construct a railway line.' Source: <http://www.shtetlinks.jewishgen.org/Lipany/>.

<sup>78</sup> Lenni Kramer. Source: <http://www.jewishgen.org/cemetery/e-europe/slov-a-l.html>.

<sup>79</sup> <http://www.jewishgen.org/cemetery/e-europe/slovakia.html>.

<sup>80</sup> Database at [www.slovak-jewish-heritage.org](http://www.slovak-jewish-heritage.org).

<sup>81</sup> <http://www.jewishgen.org/cemetery/e-europe/slov-g-l.html>.

<sup>82</sup> Database at [www.slovak-jewish-heritage.org](http://www.slovak-jewish-heritage.org); <http://www.jewishgen.org/cemetery/e-europe/slov-m-z.html>.

<sup>83</sup> <http://www.jewishgen.org/cemetery/e-europe/slov-m-z.html>.

<sup>84</sup> Borský 2004.

<sup>85</sup> Ehl et al 1991; p. 21; Pařík, A., *The Reconstruction of Synagogues and Jewish Cemeteries in the Czech Republic*, report delivered at the international conference 'The Jewish Patrimony in Europe', held in Paris, January 1999.

<sup>86</sup> Gruber, S. & Myers, P., *Survey of Jewish Historic Monuments in the Czech Republic: A Report to the United States Commission for the Preservation of America's Heritage Abroad*, New York 1994; p. 63.

As a result, as Ruth Ellen Gruber notes:

*Many Jewish heritage sites – including the overwhelming majority of Jewish cemeteries – are in badly neglected, dilapidated or ruinous condition*.<sup>87</sup>

The following sections detail the key threats faced by Slovakia's Jewish cemeteries.

#### 4.4.2 Erosion, vegetation growth and pollution

The combined effects of erosion, vegetation growth and pollution<sup>88</sup> are felt by many of Slovakia's Jewish cemeteries, primarily as a result of neglect which generally began in the Communist period and has continued to the present day in many cases. According to Dr Alexander, this is the primary problem faced by Jewish cemeteries in Slovakia.<sup>89</sup> At Bojná, for instance, 'The remnants of a Jewish cemetery still exist, on a hill above the town...a few standing tombstones submerged in high weeds and undergrowth'<sup>90</sup>, while the Jewish cemetery at Raslavice is noted as being without maintenance for a long period and therefore overgrown with vegetation.<sup>91</sup>

The Jewish cemetery at Zborov is a particularly sad case of neglect; although it is of great historical value and holds protected status, it is only sporadically maintained by the local municipality. 'It is surrounded by a disintegrating old wall, overgrown with trees, bushes and grass, and the gravestones are in bad condition, particularly those made from sandstone – many have collapsed and the inscriptions have been washed away'.<sup>92</sup>

Location can play a key role in ameliorating or exacerbating the effects of neglect: many sites are precariously located on hillsides, while others are on flat land and have problems with water drainage (Veľké Zálužie and Zemianske Kostol'any, for example).<sup>93</sup>

In spite of the usual correlation between neglect and damage from erosion, vegetation growth and pollution, even a number of the sites cared for by the Slovak Jewish community are negatively affected by these threats as a result of the high costs involved in providing proper maintenance. At Humenné cemetery, for instance, while the community cuts the grass 2 – 3 times a year, this needs to be done 4 or 5 times annually to properly control the vegetation, but the cost is prohibitive.<sup>94</sup>

#### 4.4.3 Development

In contrast to the Czech Republic, which is well-known for the periodic re-discovery of ancient urban Jewish cemeteries hidden under years of construction work, often having been voluntarily ceded by the local Jewish community when no longer actively in use<sup>95</sup>, there been no recent discoveries of a similar nature in Slovakia.<sup>96</sup> As a number of cemeteries have reportedly suffered from encroachment or even full-scale re-development (with the possibility of many other sites

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<sup>87</sup> Gruber 2007: pp. 182-3.

<sup>88</sup> Slovakia has a problem with air pollution from metallurgical plants. This both presents human health risks and causes acid rain, which is particularly damaging to stone. Source: CIA World Factbook – Slovakia profile. Other forms of pollution are also likely; for instance, a number of those cemeteries listed on JewishGen were thought to have been used as possible rubbish dumps. Source: <http://www.jewishgen.org/cemetery/e-europe/slovakia.html>.

<sup>89</sup> Dr Alexander & Mr Turčan (March 2008).

<sup>90</sup> Gruber 2007, p. 201.

<sup>91</sup> Database at [www.slovak-jewish-heritage.org](http://www.slovak-jewish-heritage.org).

<sup>92</sup> Ibid.

<sup>93</sup> <http://www.jewishgen.org/cemetery/e-europe/slov-u-z.html>.

<sup>94</sup> Dr Alexander & Mr Turčan (March 2008).

<sup>95</sup> 'When no longer protected as monuments, [cemeteries] are ultimately abolished and liquidated with the approval of the Jewish community, as restoration would be too costly' (Ehl et al 1991, p. 21).

<sup>96</sup> Dr Alexander & Mr Turčan (March 2008).

having suffered a similar though undocumented fate), there is a certain risk of such a threat in the event of future excavations of these areas.

There is also, by extension, an associated risk of the ‘first time’ development of sections of burial grounds or even the entire area. This is likely to be presented as a result of the land, or a proportion of it, being used or sold by the owner (possibly the Jewish community, but more probably the municipality or a private individual) for such a purpose.

According to JewishGen, there are threats from planned development to the Jewish cemeteries at Jelsava (serious), Kmet’ovo (serious), Kremnica (serious), Radvan, Skalica and Stupava.<sup>97</sup> Since some time has elapsed since this information was gathered, however, further research is needed on this point. Worthy of note is that cultural heritage protected status is held by both Radvan and Skalica, hopefully guaranteeing their safety from future development (see section 5.4 for a discussion of Slovak cultural heritage legislation).

#### 4.4.4 Vandalism

Many of Slovakia’s Jewish cemeteries have been desecrated; vandals regularly spray-paint anti-Semitic slogans and topple or break gravestones.<sup>98,99</sup>

While cemetery desecration has been a problem for many years, the lowest point was reached in September 2001 when the Jewish community released a statement calling for a nationwide crackdown on attacks against the country’s Jewish cemeteries. The campaign followed attacks in which five recently-restored rare tombstones at the Jewish cemetery in Zvolen were destroyed and six others were seriously damaged; 50 tombstones were damaged in Levice, southern Slovakia; and seven were destroyed in Vranov nad Topľou, eastern Slovakia. The Levice cemetery had been vandalised six times in recent years while the Vranov nad Topľou cemetery – declared a cultural heritage site in 1963 – was also the target of an attack in 1999.<sup>100,101</sup>

The desecrations continued in spite of the community’s efforts, with the vandalism of 135 tombstones at Košice Jewish cemetery in April 2002, causing an estimated Sk3 million of damage. Local officials called this the country’s worst attack on the Jewish community since the second world war. Pavol Sitár, head of the Košice branch of the Union of Jewish Religious Communities (ÚZŽNO) at the time, said that a similar, though smaller attack had taken place in the same cemetery in 1997 causing damages of Sk530,000 (\$11,000).<sup>102</sup>

Desecrations continued into 2003, with the vandalism of Jewish cemeteries in Bánovce nad Bebravou in January (the fourth such incident in the cemetery’s recent history), Michalovce in July; Púchov and Nové Mesto Nad Váhom (for the second time) in October and Hummené in November; graffiti on the entrance gate read ‘Achtung, Jude’ (watch out, Jews) with a swastika below the writing. Swastikas and inscriptions, such as ‘Heil Hitler’, ‘Adolf Hitler’ and ‘Mein Kampf’ appeared on three graves.<sup>103,104</sup>

Recent incidents include the vandalism of the Chatam Sofer memorial in Bratislava on 27 April 2008 by three teenagers<sup>105</sup>, the toppling of gravestones in Ružomberok in August 2006 (also

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<sup>97</sup> <http://www.jewishgen.org/cemetery/e-europe/slovakia.html>.

<sup>98</sup> <http://www.slovak-jewish-heritage.org/slovakia-jewish-cemeteries.php>.

<sup>99</sup> US State Department, *International Religious Freedom Report 2007: Slovak Republic*.

<sup>100</sup> <http://www.jewishgen.org/cemetery/e-europe/slov-g-l.html>.

<sup>101</sup> <http://www.tau.ac.il/Anti-Semitism/asw2001-2/slovakia.htm>.

<sup>102</sup> Pisárová, M. ‘Košice’s Jewish cemetery vandalised’, *The Slovak Spectator* 29 April 2002.

<sup>103</sup> [http://slovakia.usembassy.gov/text\\_041215.html](http://slovakia.usembassy.gov/text_041215.html).

<sup>104</sup> *The Slovak Spectator*, ‘Vandals of Jewish cemetery caught’, 3 February 2003.

<sup>105</sup> *Haaretz*, ‘Three youths accused of vandalizing Jewish memorial in Slovakia’, April 29 2008.

vandalised in January 2005), and the painting of swastikas on graves in Rajec in the same month.<sup>106</sup>

April of the same year witnessed the destruction of five tombstones in a Jewish cemetery in Rimavská Seč and the placing of posters of Hitler on a monument to Jewish Holocaust victims in Rimavská Sobota. The same monument was previously vandalised in July 2005, when it was both damaged and covered in painted and carved graffiti claiming that the Holocaust was a lie.<sup>107</sup> This formed part of a spate of attacks in June and July 2005 in which Jewish cemeteries in Bratislava, Rimavská Sobota and Michalovce were also desecrated.<sup>108,109</sup>

According to the Slovak Jewish community<sup>110</sup>, while vandalism does take place, it is not a serious problem. However, according to information available on JewishGen, vandalism is the most serious problem affecting Slovakia's Jewish cemeteries, with more than 150 cemeteries (over 40% of the cemeteries listed) moderately or severely threatened. This discrepancy could be explained in a number of ways.

There could be an underestimation of the problem by the Jewish community, who are perhaps only aware of the situation in the cemeteries they care for and not in the hundreds of small, remotely located and non-maintained sites that are ordinarily most at risk from vandalism.

It is also possible that it is no longer considered useful to concentrate on vandalism, as police efforts are believed to be appropriate.<sup>111</sup> Perhaps vandalism is also not a particularly useful fundraising focus, as while non-maintained cemeteries are most at risk, all types of cemetery are affected, maintained or not. In fact, sometimes vandals even appear to target those cemeteries that are well-maintained, in order to make a greater impact.<sup>112,113</sup>

Finally, in the context of massive infrastructural decay, it is perhaps unsurprising that the 'minor acts of vandalism'<sup>114</sup> suffered by Jewish graveyards in Slovakia are not considered to be the most serious threat to their ongoing existence.

It is also possible that the information available on JewishGen is not accurate; as previously mentioned, there are a number of issues with the use of this data which need to be acknowledged. Of particular interest would be the classification of a 'severe threat' from vandalism and the accuracy of the reporting. However, as a number of surveys were carried out by Czech Jewish heritage expert Jiří Fiedler, it seems unlikely that the latter would be a large-scale issue. Furthermore, the suggestion that vandalism is a serious problem for Jewish cemeteries in Slovakia is supported by various sources including the Slovak Jewish Heritage centre.<sup>115</sup> A firm conclusion cannot be reached without further research.

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<sup>106</sup> US State Department 2007.

<sup>107</sup> [http://www.adl.org/Anti\\_semitism/anti-semitism\\_global\\_incidents\\_2005.asp#slovakia](http://www.adl.org/Anti_semitism/anti-semitism_global_incidents_2005.asp#slovakia).

<sup>108</sup> US State Department 2006, *International Religious Freedom Report 2006: Slovak Republic*.

<sup>109</sup> [http://www.adl.org/Anti\\_semitism/anti-semitism\\_global\\_incidents\\_2005.asp#slovakia](http://www.adl.org/Anti_semitism/anti-semitism_global_incidents_2005.asp#slovakia).

<sup>110</sup> Dr Alexander & Mr Turčan (March 2008).

<sup>111</sup> See Section 6 for a discussion of the authorities' reaction to cemetery desecration.

<sup>112</sup> An example of this type of behaviour can be found at the Jewish cemetery in Banská Štiavnica, central Slovakia. The cemetery, which had been in a terrible state, began to receive care from the municipal authorities, and members of the environmental group *Strom života (Tree of Life)* mowed the grass and trimmed the hedges. The vandals moved in shortly afterwards. Source: *The Slovak Spectator*, 'US Jews aim to repair cemetery', 27 September 2004.

<sup>113</sup> The JewishGen data does suggest, however, that while cemetery desecration is widespread, it is a more serious problem in non-maintained cemeteries – in clear contrast to the media coverage of the phenomenon, which primarily focuses on the desecration of large, well-maintained, high profile cemeteries. Source: <http://www.jewishgen.org/cemetery/e-europe/slovakia.html>.

<sup>114</sup> Liptáková, J. 'Tiso's gravestone vandalised', *The Slovak Spectator*, 10 March 2008.

<sup>115</sup> '693 identified Jewish cemeteries have been preserved in Slovakia. Unfortunately, many of them have been desecrated and vandalized.' Source: <http://www.slovak-jewish-heritage.org/slovakia-jewish-cemeteries.php>.

Dr Alexander of the Jewish community<sup>116</sup> believes that cemetery desecration is not on the whole racially motivated, with Christian cemeteries facing similar problems. This is supported by a recent article in *The Slovak Spectator*, which emphasises that ‘other resting places [are not] immune from attack.’<sup>117</sup> However, some NGOs believe much of the vandalism to be organised by anti-Semitic groups.<sup>118</sup> Daniel Milo, a legal expert working with ‘The People Against Racism Association’, noted in December 2003 that the perpetrators of cemetery desecrations are often young teenagers influenced by older members of extremist groups<sup>119</sup>, who are said to take advantage of the fact that people under 15 cannot be legally prosecuted.<sup>120</sup>

According to the US State Department’s *International Religious Freedom Report 2007*, anti-Semitism in Slovakia persisted among some elements of society, manifesting itself occasionally in incidents of violence and vandalism, as emphasised by Daniel Milo: ‘I would say that majority of Slovak population is not anti-Semitic but there is a certain percentage of population that still has some anti-Semitic attitudes.’<sup>121</sup> Peter Salner of the Bratislava Jewish Community stated in 2003 that anti-Semitism is much less prevalent in Slovakia than in neighbouring countries: ‘I have never experienced any manifestation of anti-Semitic attitude in my close environment. I have seen aggressive graffiti and posters but I wouldn’t say that this is a principle of this country’.<sup>122</sup>

#### 4.4.5 Theft

As mentioned in the background to this section, theft of tombstones and other materials has, in the past, been a serious problem. The Slovak Jewish Heritage website states:

*‘Tombstones have often been stolen by unscrupulous people, and the peace of the dead has been disturbed by vandals who have succumbed to naïve stories about treasures buried in Jewish graves.’<sup>123</sup>*

While this is now less problematic, there are reportedly still some instances of theft. There are problems in certain areas with the theft of metalwork which has led local communities to forgo such fencing due to the cost of replacement<sup>124</sup>, while black marble, a favourite material for tombstones in the 19<sup>th</sup> and 20<sup>th</sup> centuries, is a favourite target for thieves as it can be re-cut for new stones or provide very valuable building material.<sup>125</sup>

*‘Despite care by the local community, both [the Orthodox and Neolog cemeteries in Prešov] have suffered....the theft of precious black marble gravestones over the years’.<sup>126</sup>*

*‘Jewish gravestones were damaged in Levice and Vranov nad Topľou. One tombstone dating back to the 19th century, valued at about \$1,500, was stolen.’<sup>127</sup>*

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<sup>116</sup> Interviewed in March 2008.

<sup>117</sup> Liptáková 2008.

<sup>118</sup> US State Department 2006.

<sup>119</sup> Three 15-year-olds and one 16-year-old, who admitted to police that they sympathised with skinhead groups, were charged with hooliganism, damaging private property and promoting fascism for damage caused to a Jewish cemetery in Bánovce nad Bebravou, where 34 tombstones were kicked down and swastikas drawn in the snow. The attack on the cemetery took place in the evening of January 17 and the vandals revisited the site the next day. Source: *The Slovak Spectator* 2003.

<sup>120</sup> Grenova, M. ‘Jewish cemeteries attacked by vandals in Slovakia’, *Insight Central Europe*, 5 December 2003.

<sup>121</sup> Ibid.

<sup>122</sup> Ibid.

<sup>123</sup> <http://www.slovak-jewish-heritage.org/slovakia-jewish-cemeteries.php>.

<sup>124</sup> Dr Alexander & Mr Turčan (March 2008).

<sup>125</sup> Gruber & Myers 1994, p. 48.

<sup>126</sup> Gruber 2007: p. 199.

<sup>127</sup> <http://www.jewishgen.org/cemetery/e-europe/slov-g-l.html>.



While the risk of theft is higher in non-maintained cemeteries without effective fencing, it is likely that many of these sites have already surrendered their most profitable contents to thieves. This is supported by the low numbers of gravestones that are found in these areas. As such, it is likely that the well-maintained cemeteries with high numbers of gravestones would be more attractive for thieves, although increased security in these cases would ordinarily act as a deterrent.

#### 4.4.6 Overzealous/misguided restoration work

While this is a problem in various countries, for instance in the Czech Republic, there have been no reports of a similar issue in Slovakia.

### 4.5 *Conclusion*

The Slovak Republic is reported to contain over 700 Jewish cemeteries, mass graves and Jewish sections of municipal cemeteries, between 60% and 80% of which are owned by the Central Union of Jewish Religious Communities in the Slovak Republic (ÚZŽNO). The rest are owned by the local municipality and by private individuals – lightening the Jewish community's burden of care but giving no guarantee of maintenance or protection from development. Over 50% are estimated to contain fewer than 20 gravestones, the vast majority have no sign or marker, and while many have some form of fence or wall, this is often in disrepair.

Between 80 and 85 Jewish cemeteries are nominally maintained by the Jewish community, a number which increases by 5-10 per year, primarily financed from a compensation fund established by the Slovak government in 2002. General estimates suggest that over 40% of Slovakia's Jewish cemeteries receive some form of care, if only occasional and *ad hoc*, from their owners but also from some local and foreign individuals and organisations. The majority of these sites were primarily free of the major threats as outlined below, or they were considered to be less serious. Between 10 and 15 Slovak Jewish cemeteries are still in use, and up to 50 are thought to be protected as cultural monuments.

The main threats faced by Slovakian Jewish burial grounds are reported to be vandalism, vegetation, pollution and erosion, with planned development and theft also of concern, as a result of the following issues:

- Mistreatment under the Fascist and Communist regimes (exacerbated by the Slovakian government's return of seized property in its existing state without any restoration);
- Poor environmental quality (including location);
- Insufficient current maintenance including a lack of effective fencing or signposting;
- The development of cemetery land with impunity;
- Criminal action by polluters, thieves, vandals (some of whom have a link to extremist groups).



## 5. 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 Slovakia include insufficient current maintenance, the development of cemetery land with impunity and criminal action by thieves, polluters and vandals (some of whom have a link to extremist groups). Others are mistreatment under the Communist regime and poor environmental quality. While it is no longer possible to address the latter, the former remain within the possible jurisdiction of the Slovak state.

This section aims to investigate the extent to which Slovakian 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 Tishkach* project. Furthermore, while the importance of the bilateral agreement between the US and Slovakia is acknowledged in Section 5.3, further research is required to ascertain its practical application.

### 5.1 *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. The Slovak Republic has ratified a number of key UNESCO<sup>128</sup>- and Council of Europe<sup>129</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 Slovak legislation (and as can be seen from earlier reports on Poland and the Czech Republic 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>130</sup>, and in the European Convention on Human Rights (ECHR).<sup>131</sup> Both instruments are legally binding on States Parties; the ICCPR is

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<sup>128</sup> Accessible from <http://portal.unesco.org>.

<sup>129</sup> Accessible from <http://conventions.coe.int>.

<sup>130</sup> Accessible from <http://www2.ohchr.org/english/law/ccpr.htm>.

<sup>131</sup> Accessible from <http://conventions.coe.int>.

monitored by the Human Rights Committee<sup>132</sup>, while the ECHR is enforced by the European Court of Human Rights.<sup>133</sup>

Of particular interest in relation to the former is the case of *Hopu & Bessert v France*<sup>134</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>135</sup>

#### 5.1.1 International Conventions

- *1966 International Covenant on Civil and Political Rights*: Succession 28/05/1993; *1966 Optional Protocol*: Succession 28/05/1993.
- *1972 Convention on the Protection of the World Cultural and Natural Heritage*: Notification of succession 31/03/1993.
- *1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export & Transfer of Ownership of Cultural Property*: Notification of succession 31/03/1993.
- *1954 (Hague) Convention for the Protection of Cultural Property in the Event of Armed Conflict*: Notification of succession 31/03/1993; *First Protocol*: Notification of succession 31/03/1993; *Second Protocol*: Ratified 11/02/2004.

#### 5.1.2 Council of Europe Conventions

- *2005 Framework Convention on the Value of Cultural Heritage for Society*: Not signed
- *2000 European Landscape Convention*: Signed 30/5/2005; Ratified 9/8/2005.
- *1998 Convention on the Protection of Environment through Criminal Law*: Not signed.
- *1992 European (Valletta) Convention on the Protection of the Archaeological Heritage (revised)*: Signed 30/6/1993; Ratified 31/10/2000.
- *1985 (Granada) Convention for the Protection of the Architectural Heritage of Europe*: Signed 10/10/2000; Ratified 7/3/2001.
- *1985 European Convention on Offences relating to Cultural Property*: Not signed.
- *1954 European Cultural Convention*: Acceded 10/5/1990.
- *1950 European Convention for the Protection of Human Rights and Fundamental Freedoms*: Signed 21/2/1991; Ratified 18/3/1992; *1952 Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms*: Signed 21/2/1991; Ratified 18/3/1992.

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<sup>132</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>133</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 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>134</sup> In relation to Communication No. 549/1993 submitted to the UN Human Rights Committee under the Optional Protocol of the ICCPR.

<sup>135</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.

## 5.2 *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 the Slovak Republic, a member since 1 May 2004. 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>136</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>137</sup> The Slovak law fulfilling these criteria and affecting Jewish cemetery protection and preservation is discussed in Section 5.4.3.

## 5.3 *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 Slovak Republic on Protection and Preservation of Certain Cultural Sites and Monuments* (3 March 2001).<sup>138</sup>

Article 1 of the Agreement states that each Party will take ‘appropriate steps, within its ability, to protect and preserve cultural sites and monuments of all national, religious or ethnic groups (hereafter referred to as ‘groups’) that reside or resided in its territory and were the victims of genocides. The term ‘cultural sites and monuments’ is defined as including cemeteries and memorials to the dead, as well as archival and other authentic and documentary materials relating thereto.

Article 2 of the Agreement requests co-operation in identifying items falling within the scope of Article 1, ‘particularly those which are in danger of deterioration or destruction’, with Article 5 requiring that ‘properties of special significance’ are protected, preserved and marked with a special plaque. These lists are to be overseen by a Joint Cultural Heritage Commission (Article 6).

Article 3 commits each Party to ensuring that there is no discrimination against the cultural heritage of any of the aforementioned groups – or against the nationals of the other Party.

Article 4 commits each Party to ‘take special steps to ensure...protection and preservation’ of cultural sites and monuments in its territory listed in Article 2 in cases where the group concerned is unable to do so on its own, and to invite the co-operation of the other Party and its nationals where appropriate. The Agreement operates subject to ‘the availability of funds’ (Article 8).

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<sup>136</sup> Tzanidaki, J-D., *The European Cultural Heritage: Community and National Legislation for Heritage Management in the E.U.*, Southampton 1999.

<sup>137</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>138</sup> Available in English on [www.lo-tishkach.org](http://www.lo-tishkach.org).

The broad remit of the Agreement, covering ‘all national, religious or ethnic groups’ resident in the territories of today’s Slovak Republic and victims of genocide, is unusual, as bilateral agreements ordinarily focus on issues affecting both signatories’ strict national interests. This, however, is the aspect which causes this agreement to be particularly appropriate to this project, in addition to its very specific focus on particular types of heritage and the measures necessary to protect them.

Although the Agreement is not legally binding, its specificity is particularly valuable to this project in drawing attention to the importance of the preservation of the Slovak Republic’s Jewish heritage, as is its bilateral nature, which facilitates co-operation between the parties involved.

With regards to its practical application, there is close co-operation between the US Embassy in Bratislava and the Slovak government on issues of Jewish heritage, including assistance with Slovak membership in the Task Force for International Co-operation on Holocaust Education, Remembrance, and Research and the initiation of a liaison project on Holocaust education in co-operation with the task force.<sup>139</sup>

## 5.4 *Slovak Legislation*

The following sections will outline the key Slovak legal provisions that affect the protection and preservation of Jewish cemeteries. These can be found within the following legislative areas: burial, cultural heritage, environment, planning, the Constitution and the Criminal Code.

### 5.4.1 Burial Legislation

*Act No. 470/2005 Coll. on Funerals*<sup>140</sup>

The primary instrument governing burial grounds is Act 470/2005 Coll. on Funerals, which came into force on 1 November 2005. It regulates the handling of human remains as well as their embalment and conservation, and the operation of funeral services, crematoria and burial grounds. Until this law was introduced, a single law regulating burials had not existed.<sup>141</sup> The Act is relevant to the protection of Jewish burial grounds in a number of ways as set out below.

According to Article 3 (3) (g), it is forbidden to ‘handle human remains or human relics in way that offends the dignity of the dead, or the ethical feelings of the bereaved or the general public’. Article 30(b) states that the breach of this prohibition is an offence against the law and can be penalised by a fine of up to SK 20,000<sup>142</sup>. This would appear to be of the utmost importance with regards to the protection of burial grounds from disturbance.

However, later provisions allowing exhumation, as explained in a later section, can be seen to run contrary to Article 3 in the case of Jewish burial grounds, suggesting that it is only of very limited usefulness in the context of this project (in the event of cemetery desecration involving the disturbance of graves, for instance).

Furthermore, although there is no obvious statement to this effect present within the text<sup>143</sup>, Dr Alexander of the Slovak Jewish Community<sup>144</sup> suggests that this Act is only applicable to ‘active’

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<sup>139</sup> US State Department 2007.

<sup>140</sup> Full Slovak title: *Zákon z 23. septembra 2005 o pohrebníctve a o zmene a doplnení zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov*. A copy of this Act is available from [www.lo-tishkach.org](http://www.lo-tishkach.org) in both Slovak and English.

<sup>141</sup> Buzinger, M. *Report on the Situation of Fundamental Rights in the Slovak Republic in 2005*, submitted to the EU Network of Independent Experts on Fundamental Rights in December 2005, p. 9.

<sup>142</sup> Approximately 620€/970 US\$.

<sup>143</sup> According to Article 2 (a) and (b), the Act simply deals with dead human bodies (human remains) or human remains after burial (human relics).

burial grounds, and that in fact there is no legislative prohibition of burial ground re-development (which would logically follow such a proscription) after a cemetery has been officially ‘abolished’ – which would almost certainly be the case in the event of re-development.

According to the Slovak Jewish community there have been no recent discoveries of Jewish burial grounds during construction work as has been known to happen in various other countries. Perhaps, given the possibility of such a large number still visibly in existence, the number upon which development has taken place is actually very low. Nevertheless, it would be most surprising if it had never happened; indeed, JewishGen reports numerous examples of encroachment involving excavation (housing developments for instance) and even one case of a railway station being built over a Jewish cemetery. It therefore remains crucial to identify the appropriate legislative provisions which apply in such circumstances. These are addressed within the following sections on cultural heritage, environmental and planning legislation.

Further provisions in the Funerals Act offer little additional assistance, even in the case of ‘active’ burial grounds. Exhumation is ordinarily permitted after the decay period has elapsed (at least ten years; depends on soil type)<sup>145</sup>, with the cancellation of an entire burial ground permitted to take place after a similar period.<sup>146</sup> The entity in the interest of which the cancellation is carried out organises and covers the costs of the exhumation and transfer of all human remains and tombstones to a different burial ground.

Additional protection is given to graves with protected cultural heritage status, which may only be cancelled upon the decision of the Slovak Ministry of Culture (national cultural heritage) or the municipal authorities (cultural monuments), and to war graves, which are regulated by a separate law as addressed in the following section.

Burial plots are arranged on the basis of a rental contract (although one made for an indefinite period of time), and upon the payment of a fee.<sup>147</sup> The contract can be terminated if the burial ground is cancelled, if serious conditions prevent further rental of the burial place, or if the rental fees have not been paid. The first two conditions oblige the operator to move the remains to another burial ground at his or her own cost. The latter condition obliges the operator to wait between one and five years before re-selling the grave facility.<sup>148</sup>

Article 16 (8) suggests a restriction on new development adjacent to burial grounds by stipulating a 50m protective zone around each burial ground in which such development cannot be approved. Article 33 (4), however, states that this does not apply to burial grounds established prior to the day the Act gained legal force<sup>149</sup>. As such, it is inapplicable to this case.

Finally, Article 18 (d) & (e) states that the operation of a burial ground includes an obligation of maintenance of both the graves and the surrounding pathways and vegetation. This would legally oblige the operator, ordinarily the Jewish community, to ensure at least nominal level of care for all of its ‘active’ cemeteries. ‘Inactive’ burial grounds, however, would receive no protection at all under this Act.

With regards to the definition of ‘active and ‘inactive’ burial grounds, experience in the Czech Republic suggests a reasonably broad interpretation of the term; according to Tomas Kotrlý, a burial law specialist with the Ministry of Regional Development<sup>150</sup>, all of the burial grounds currently visibly in existence (over 330) are still considered as active.

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<sup>144</sup> Interviewed March 08.

<sup>145</sup> Article 22 (2).

<sup>146</sup> Article 26.

<sup>147</sup> Article 24.

<sup>148</sup> Article 25.

<sup>149</sup> 1 November 2005.

<sup>150</sup> Correspondence between Mr Kotrlý and the author dated 27 February 2008 – 11 April 2008.

If this was applied to the Slovak example, the vast majority of Slovakia's Jewish burial grounds would be under the jurisdiction of this Act, legally requiring the owners to provide maintenance. This would be absolutely impossible to enforce, however, given the sheer numbers, the current level of neglect and the inability of the Slovak Jewish community to fund such work. Further research is needed on this point.

*Act 130/2005 Coll. on War Graves<sup>151</sup>*

Also appropriate to the protection of Jewish burial grounds is Act 130/2005 Coll. on War Graves, which stipulates the rights and duties of a community with regards to their maintenance, the granting of financial contributions from the state budget, the competency of state administrative bodies and sanctions for the breaching of duties stipulated by the Act.

Article 2 of the Act defines a war grave as 'a place where the remains of a war victim are placed, together with a tombstone, a memorial, other pious symbols or a commemorative place that remember a war event.' A war victim is defined as 'a member of the armed forces, a prisoner of war or a civilian who died due to a war event since 1914.' Certain Jewish graves – primarily those of victims of the Holocaust but also of Jewish soldiers – are clearly covered by its provisions.

Local municipalities are obligated to provide a high level of care for the war graves found in their area, for which they receive a state subvention.<sup>152</sup> A war grave can only be established, moved, renovated or abolished on a basis of a written application and after receiving the written consent of the Interior Ministry.<sup>153</sup>

According to Article 8, an offence is committed if a war grave is damaged or dirtied; established, moved, reconstructed or abolished without the Ministry's consent; or if the owner, lessee or other user of the land on which the grave is located refuses to provide access for maintenance or to visitors. This is punishable by a fine of up to SKK 50,000.<sup>154</sup>

#### 5.4.2 Cultural Heritage Legislation

*Act 49/2002 Coll. on the Protection of Monuments and Historic Sites<sup>155</sup>*

Slovak cultural heritage legislation takes the primary form of Act 49/2002 Coll. on the Protection of Monuments and Historic Sites, which came into force on 1 April 2002. The Act, quite unusually, contains no specific categorisation of what merits protection; we are informed simply that cultural heritage monuments are items of cultural heritage value<sup>156</sup> declared as such by the appropriate authorities for their protection.<sup>157</sup> However, as we are aware of at least 37 Jewish cemeteries which have been awarded this designation<sup>158</sup>, we can investigate the various aspects of this Act safe in the knowledge that it is appropriate for the protection of at least some of Slovakia's Jewish burial grounds.

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<sup>151</sup> Full Slovak title: *Zákon zo 16. marca 2005 o vojnových hrobách*. A copy of this Act is available from [www.lo-tishkach.org](http://www.lo-tishkach.org) in both Slovak and English.

<sup>152</sup> Articles 3 & 4.

<sup>153</sup> Article 3.

<sup>154</sup> \$2,400/1,560€.

<sup>155</sup> Full Slovak title: *Zákon z 19. decembra 2001 o ochrane pamiatkového fondu*. A copy of this Act is available from [www.lo-tishkach.org](http://www.lo-tishkach.org) in both Slovak and English.

<sup>156</sup> 'Cultural heritage value' is, according to Article 2 (2): 'The aggregate value of important historic, social, rural, urban, architectonic, scientific, technical, visual art, artistic and craft values for which the property or objects are subject to individual or territorial protection.'

<sup>157</sup> Article 2.

<sup>158</sup> Information from the Slovak Monuments Board [www.pamiatky.sk](http://www.pamiatky.sk). Their protection will be discussed in Section 6.



There is also the possibility that a protected area, such as a historic reserve<sup>159</sup>, a historic zone<sup>160</sup> or a protective zone<sup>161</sup> may contain a Jewish cemetery which, while not considered deserving of a cultural heritage designation in itself, would be included in the general protective measures applicable to the area. Nomination for UNESCO World Heritage status, as governed by the World Heritage Convention and applied by Article 21 of this Act, is also possible. While initial research suggests that these designations are not possessed by any of Slovakia's Jewish burial grounds, further research is needed to confirm this; even if so, this does not preclude a cemetery being included in such an area at a future point.

The designation 'cultural heritage monument' ensures wide-ranging protection of the item or site so classified. This includes protection from damage, destruction or theft<sup>162</sup>; the possible designation of a protective zone around an immovable monument<sup>163</sup>, and the requirement for planning authorities operating in an area where a protected area or archaeological find is located to gain the opinion of the competent Regional Monuments Board before approval.<sup>164</sup>

According to Article 30 (1): 'Each person shall be obliged to act in such a way so as not to endanger the basic protection of cultural heritage monuments...[and] historic sites...and not to cause any adverse changes in the status of monuments and historic sites and the status of archaeological finds'.<sup>165</sup> Nevertheless, the onus for maintaining cultural heritage monuments sits squarely on the shoulders of the owner, who is obliged to protect the cultural heritage monument at his/her own expense; use it solely in compliance with its cultural heritage values; notify the contractual party of the protected designation in the event of transfer of ownership; allow access to monument protection staff (and possibly to the general public); erect a marker on the instruction of the Monuments Board; and ensure special protection in the case of an emergency event.<sup>166</sup>

The owner must notify the authorities of 'any danger, damage, theft or destruction to the cultural heritage monument without delay; any intended change in use of the cultural heritage monument; in cases where it is an immovable cultural heritage monument, also its fixtures and fittings; any change in ownership of the cultural heritage monument within 30 days.' He or she is also required to submit an application to the Regional Monuments Board before beginning renovation.<sup>167</sup> The owner is also obliged to cover the costs of research necessary for preservation purposes, unless the research is carried out during construction or for activities which are in the public interest, in which case the authority responsible may cover these costs from the state budget.<sup>168</sup>

The listing does provide some direct benefits to owners, including the availability of financial support from the municipality or the Ministry 'in cases where an owner cannot cover, either partially or fully, the costs of renovation or restoration'<sup>169</sup> and 'free-of-charge provision of professional and methodological assistance in matters concerning the protection of the cultural

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<sup>159</sup> Article 16 (1): 'A territory with a homogenous historic residential arrangement and a massive concentration of immovable cultural heritage monuments, or territory with groups of significant archaeological finds and archaeological sites which can be topographically definable.'

<sup>160</sup> Article 17 (1): 'A territory with a historical residential arrangement, a territory of cultural heritage landscape of cultural heritage values, or a territory with archaeological finds and archaeological sites which can be topographically definable.'

<sup>161</sup> Article 18 (1): 'The territory determined for the protection and controlled development of the area or surroundings of an immovable cultural heritage monument, historic reserve or historic zone.'

<sup>162</sup> Article 15 (4).

<sup>163</sup> Article 18.

<sup>164</sup> Article 29 (4).

<sup>165</sup> Article 30 (1).

<sup>166</sup> Article 28.

<sup>167</sup> Article 32 (2)

<sup>168</sup> Article 38.

<sup>169</sup> Article 34 (1).

heritage monument'.<sup>170</sup> A further discussion of state support for monument restoration in the context of Jewish cemeteries can be found in Section 6.

In the event that the owner fails to fulfil these obligations, the Regional Monuments Board will decide upon the necessary corrective measures. In the event of imminent danger, the Board can order the prohibition or restriction of any unauthorised activity threatening the cultural heritage monument.<sup>171</sup>

A further area in which protection may be awarded to a Jewish burial ground according to this Act is in the event that it was discovered during excavation work. It is possible that this site would be awarded protected status in accordance with Article 2 (5), which defines archaeological finds as those which 'provide evidence of the life of mankind...from the oldest era to the modern times' and are usually located 'in the earth, on the ground or under water'.

According to Article 40, 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. An authorised person using methods of archaeological research can collect and move an archaeological find from its original location.<sup>172</sup> All archaeological finds are under the ownership of the Slovak Republic.<sup>173</sup>

The particular status of human remains in this instance is, however, unclear from the 2002 Act. As Article 40 (6) states: 'Movable finds shall be protected in accordance with special regulations. Immovable finds, their groups and archaeological sites can be declared cultural heritage monuments, historic reserves or historic zones on the basis of their cultural heritage values.' If the human remains were classified as movable finds, they would be protected in accordance with *Zákon č. 115/1998 Z. z. o múzeách a galériách a o ochrane predmetov múzejnej hodnoty a galérnej hodnoty*.<sup>174</sup>

It seems more likely, however, that in the case of a Jewish cemetery they would be considered as belonging to their place of burial and therefore immovable, although further research is needed to clarify this point. Finds discovered during construction are also governed by special regulations (Building Act 50/1976 Coll.), to be analysed in a later section.

Sanctions are applicable in the event of the contravention of the provisions of the Act under Article 42, with the appropriate authority able to impose a fine of between SKK 100,000 and SKK 500,000. This fine may be doubled if the unlawful act was committed in relation to a cultural heritage monument or a historic site included in the World Heritage List. 'When determining the amount of fine, the severity and duration of the unlawful act, the importance of the cultural heritage monument or historic site concerned, and the extent of threatening or caused damage shall be taken into account'.

In summary, the Act on the Protection of Monuments and Historic Sites 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 under Article 20, if this is 'in the public interest' or if 'cultural heritage values have ceased to exist, on a proposal from the Monuments Board prepared in consultation with the Slovak Academy of Sciences and sometimes also with the local municipality.

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<sup>170</sup> Article 28.

<sup>171</sup> Article 31 (1), (2).

<sup>172</sup> Article 40 (3).

<sup>173</sup> Article 40 (5).

<sup>174</sup> Not yet obtained by the author.

There will evidently be a large percentage of Jewish burial grounds that would not qualify for such a classification and therefore remain unprotected by this Act; as mentioned, only a tiny percentage of those in Slovakia are currently listed. In addition, the proportion of Jewish burial grounds discovered during excavation which would be considered to warrant such a status is also unclear and requires further attention.

Lastly, it is alarming that, as mentioned in Article 40, ‘an authorised person’ (i.e. a qualified archaeologist) alone is sanctioned to move an archaeological find from its original location: it is essential for all archaeological investigations of areas believed to contain Jewish graves to be carried out under rabbinical guidance. Article 40 also states that all archaeological finds are the property of the Slovak Republic. It would be problematic if this were to include any human remains found in a Jewish burial ground, although further research is needed to ascertain whether this is indeed the case.

#### 5.4.3 Environmental Legislation

*Act No. 24/2006 Coll. on Environmental Impact Assessment*<sup>175</sup>

Act No. 24/2006 Coll. on Environmental Impact Assessment (the EIA Act), which requires an environmental assessment to be made of the effect of certain public and private projects, acts as a useful complement to both the 2002 Act on the Protection of Monuments and Historic Sites and the 1976 Building Act (analysis to follow) with regards to the protection of Slovakia’s Jewish burial grounds.

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.

According to the 2006 Act, the developer must submit an Environmental Impact Statement (EIS) which must describe the overall development plan, give a description and evaluation of the presumed impacts of the proposed activity (based on at least two alternatives for action and also the no-action option). This is reviewed, at the cost of the developer, by specialists chosen by the Ministry of the Environment, and a Final Record is prepared. This Record is then taken into consideration during the planning permit decision-making process (see section 5.4.4 for further details).<sup>176</sup> At this point, the relevant body states whether or not it recommends the implementation of the development project, and under what conditions, as well as the requested scope of monitoring and evaluation of the activity. Its environmental impacts are then observed and evaluated. If the impacts are much worse than expected, the operator is obliged to ensure their mitigation and at the same time the change, amendment or revision of the strategic document concerned’.<sup>177</sup>

The EIA Act also contains the requirement to assess the following issues with regards to their impact on the environment:

- Basic development policies;

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<sup>175</sup> Full Slovak title: *Zákon zo 14. decembra 2005 o posudzovaní vplyvov na životné prostredie a o zmene a doplnení niektorých zákonov*. A copy of this Act is available from [www.lo-tishkach.org](http://www.lo-tishkach.org) in Slovak only – an English language version is still sought.

<sup>176</sup> Kozova, M. & George, C. ‘Environmental Impact Assessment in the Slovak Republic’ pp.132-142, in Bellinger, E., George, C., Lee, N. & Paduret, A. (eds) *Environmental Assessment in Countries in Transition*, CEU Press, Budapest, 2000; pp. 132, 135-6.

<sup>177</sup> Kamenec, T. & Karclová, M. ‘Slovakia’ in Global Legal Group, *The International Comparative Legal Guide to Environment Law 2007*, Global Legal Group & Freshfields Bruckhaus Deringer, 2007.

- Territorial planning;
- Proposals on legislation that may have an adverse effect on the environment.

This is known as Strategic Environmental Assessment (SEA).<sup>178</sup>

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>179</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.

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>180</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 very useful for the protection of Jewish cemeteries in Slovakia. 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 rabbinical guidance. 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. This is one of the aspects which provoked the comment: ‘The Slovak Republic has succeeded in including many elements of international best practice in its environmental assessment procedures’.<sup>181</sup> Members of the public are kept informed throughout the process, and can express their opinions in a spoken (e.g. public hearing) or written form, either to the Municipality or directly to the Ministry of the Environment.

All opinions have to be taken into consideration at all stages of the EIA process.<sup>182</sup> The Act also allows for members of the public to form either a civic initiative of at least 500 people, or a civic association of at least 250 people. Both groups have an open line to the Ministry of the Environment. If such a group submits a written standpoint, its representative can be a member of the administrative hearing at which the final decision is taken whether or not to grant permission to the activity.<sup>183</sup>

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<sup>178</sup> Kozova & George 2000: p. 137.

<sup>179</sup> Many Jewish burial grounds are valuable natural habitats with a broad range of flora and fauna.

<sup>180</sup> Millar, A. ‘A Cultured Environment? Construction, Heritage and EIAs’ in *The Czech and Slovak Construction Journal*, 1998.

<sup>181</sup> Kozova & George 2000: p. 140.

<sup>182</sup> Ibid.

<sup>183</sup> Ibid: pp. 133, 136.

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.

*Act No. 543/2002 Coll. on Nature and Landscape Protection*<sup>184</sup>

Environmental legislation may also be generally useful in protecting Jewish burial grounds, valuable natural habitats with a broad range of flora and fauna, from environmental pollution. It is possible that certain cemeteries may be designated as environmentally protected areas, which would help to prevent possible encroachment and development. Act No. 543/2002 Coll. on Nature and Landscape Protection is particularly interesting in this context and warrants further research.

#### 5.4.4 Planning Legislation

*Act 50/1976 Coll. on Territorial Planning and Construction*<sup>185</sup>

Act 50/1976 Coll. on Territorial Planning and Construction (the Building Act), is appropriate to the protection of Slovak Jewish burial grounds in a number of ways.

According to Article 2 (1)(c), '[Land-use planning] defines protected areas, protected buildings, quiet areas and protective zones, unless they originate under other regulations, and ensures the protection of all protected areas of land'. The designation of these protected areas is one of the binding aspects of a land-use plan.<sup>186</sup>

The conditions attached to each protected area state its boundaries, prohibit or limit certain activities for the reasons of public interest and determine the conditions of its protection, in particular the activities that cannot be carried out in the area and those that may only be performed if certain conditions are met.<sup>187</sup> When defining such areas, the planning authority uses existing documentation on natural and cultural heritage provided by the authorities responsible for these matters.<sup>188</sup>

According to Article 105(4), in the event that a developer erects a building without permission in a protected area or on land which is not to be built upon, in particular on agricultural or forestry land, an offence is deemed to have been committed which is penalised by a fine of 5,000,000 SKK.<sup>189</sup>

While Article 41 (2) allows an exception to the ban on building or to the restriction of certain activities in a protected area, this is limited to 'justified cases' and necessitates the agreement of the relevant state authorities. Their binding position is, in fact, sought at any point at which the

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<sup>184</sup> Full Slovak title: *Zákon z 25. júna 2002 o ochrane prírody a krajiny*. A copy of this Act is available from [www.lo-tishkach.org](http://www.lo-tishkach.org) in Slovak only – an English language version is still sought.

<sup>185</sup> Full Slovak title: *Zákon z 27. apríla 1976 o územnom plánovaní a stavebnom poriadku (stavebný zákon)*. English and Slovak copies of this Act are available from [www.lo-tishkach.org](http://www.lo-tishkach.org).

<sup>186</sup> Article 13.

<sup>187</sup> Article 39(c).

<sup>188</sup> Article 7a.

<sup>189</sup> 155,000€ or 239,000\$.

proceedings under the Act concern interests protected by regulations on, amongst others, cultural monuments and on the state protection of nature.<sup>190</sup>

In addition to the provisions set out above, the Building Act is valuable for its treatment of the discovery of ‘unanticipated finds of culturally valuable items, structural details or protected elements of nature or archaeological finds.’<sup>191</sup>

In the event of such a discovery, the developer and the contracting company is bound to immediately notify the Building Office and the state monument and archaeology authorities and must take all necessary measures to make sure that the find is neither damaged nor destroyed. The Building Office will then liaise with the appropriate authorities to ensure that it is protected. In the event that a find is made of exceptionally important cultural significance<sup>192</sup>, the Building Office may amend or revoke the building permission as issued and shall determine how the developer is to be compensated for the work already carried out.

In summary, a number of Slovakia’s Jewish cemeteries should be classified as protected areas as a result of their cultural and even natural heritage value – with others perhaps locally designated outside of these rather narrow criteria<sup>193</sup> – and therefore protected against development. Furthermore, in the event of the discovery of a Jewish burial ground during construction work, this Act should provide for its protection and even possibly for the cessation of works upon it.

#### 5.4.5 Act No. 460/1992 Coll. Constitution of the Slovak Republic<sup>194</sup>

The protection of Slovakia’s cultural and natural heritage is enshrined in the country’s Constitution, adopted on 1 September 1992. According to Article 44, every person has a duty to protect and improve the cultural heritage, and no-one may imperil or damage the environment, natural resources or cultural heritage beyond the limits established by law.

#### 5.4.6 Act No. 300/2005 Coll. Criminal Code<sup>195</sup>

The new Slovak Penal Code, which came into force on 1 January 2006, contains various provisions that are appropriate to this study, including trespassing on private property (Section 248), damage to cultural heritage monuments (Section 249), hooliganism (Section 364) and grave and corpse desecration (Section 365 & 366).

It also contains a number of articles which deal with racially-motivated crimes, including the defamation of a nation, race or conviction (Section 423), incitement of national, racial and ethnic hatred (Section 424), support for and propagation of movements leading to the suppression of civil rights and freedoms (Sections 421a and 422) and violence against a group of citizens or against an individual (Section 359).<sup>196</sup> It has also increased the punishment for individual racial criminal acts.<sup>197</sup>

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<sup>190</sup> Article 126 (1).

<sup>191</sup> Article 127.

<sup>192</sup> To be confirmed by the Ministry of Culture.

<sup>193</sup> The extent to which this is the case is worthy of further research.

<sup>194</sup> Full Slovak title: *Ústava Slovenskej Republiky z 1. septembra 1992*. Copies of this Act is available from [www.lo-tishkach.org](http://www.lo-tishkach.org) in both Slovak and English.

<sup>195</sup> Full Slovak title: *Zákon č. 300/2005 Z. z. Trestný zákon*. A copy of this Act is available from [www.lo-tishkach.org](http://www.lo-tishkach.org) in Slovak only – an English language version is still sought.

<sup>196</sup> Buzinger 2005: p. 51.

<sup>197</sup> European Network Against Racism, *Responding to Racism in Slovakia*, 2006.

## 5.5 Conclusion

In summary, it can be seen that there are a number of Slovak legislative provisions which may provide a level of protection to Jewish burial grounds in the country from the threats identified above: insufficient current maintenance, the development of cemetery land with impunity and criminal action by thieves, polluters and vandals.

The most comprehensive level of protection is provided by the War Graves Act, which requires full care of the graves of war victims (Holocaust victims and Jewish soldiers, for the purpose of this project) at the responsibility of the local municipality with the assistance of the state.

The designation of cultural heritage monument status (and also, no doubt, environmentally protected status) also offers a high level of protection from all threats, although care in this case must be provided by the owners, primarily the Jewish community, with some financial assistance available from the state. However, as a result of the narrow criteria of both, only very few burial grounds fall under these categorisations.

With regards to wider protection, vandalism and theft in general are covered by the Criminal Code. Direct pollution is covered to some extent by environmental legislation, and neglect (of active burial grounds, at least) is covered by the Funerals Act.

In addition to the protection afforded to War Graves and those of particular cultural or natural heritage value, there are a number of provisions which may provide protection against development:

- Cultural heritage and planning legislation contains articles relating to the discovery of 'culturally valuable' or archaeological finds during construction work, extending protection to these areas and even legislating for the permanent cessation of works in the event of the discovery of a site of particular importance. While the extent to which this covers burial grounds in general and not simply those of particular 'value' as ancient archaeological sites remains to be seen, coverage appears to be comprehensive. However, this only comes into operation once the site has already been disturbed.
- EIA legislation requires the assessment of the possible deleterious effects of large-scale development, proposed legislation and planning documentation on both environmentally important areas and cultural monuments, employing a particularly broad definition which, it is suggested, includes both cemeteries and archaeological sites. The requirement for a survey prior to development is particularly useful as it may signal the presence of a Jewish burial ground prior to excavation beginning.
- Planning legislation is primarily useful in the creation of protected areas which prevent development. While mainly focusing on areas of cultural heritage and environmental importance as discussed, this may also include locally-designated areas which fall outside of these strict criteria.

In spite of the breadth of the legislation described above, there remain a number of gaps. Of most importance is the excavation of 'inactive' burial grounds which are not considered to be of cultural heritage or archaeological value, although this requires further definition.

Neither is there legislative coverage of the neglect of inactive burial grounds if they are not designated as protected; however, this would be essentially unenforceable due to a severe shortage of funds (responsible for the level of neglect in the first place).

Lastly, while EIA legislation appears to effectively cover all cemeteries, concerns about the effects of development raised during this process would not necessarily be upheld.

A point worthy of mention is the level of involvement of the local Jewish community in decision-making allowed for in the legislation above. While the EIA Act is laudable for prioritising public involvement, other legislative instruments contain no similar provision. It is desirable for consultation with the community to be carried out in any situation involving a Jewish burial ground and such a requirement should be made binding wherever possible.

Finally it should be reiterated that no legislation is, or would ever be, able to permanently guarantee the protection and preservation of all Jewish burial grounds; even the most stringent legislation as specified above is subject to derogation, although often only in exceptional circumstances. Full consultation with the Jewish community at all stages should, however, go some way to mitigating negative effects in such cases.



## 6. LEGISLATION IN PRACTICE

### 6.1 Introduction

As outlined in the previous section, Slovak legislation certainly offers comprehensive protection to a proportion of the country's Jewish burial grounds, with all receiving some measure of protection from vandalism and theft.

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 of cultural heritage and the prevention and punishment of vandalism. A investigation of the practical application of burial, environmental and planning legislation will appear in a future update.

### 6.2 Cultural Heritage

The Czechoslovakian cultural heritage protection regime was formally established with the Cultural Heritage Act adopted in 1958 (*Act No. 22/1958 Coll.*), 'one of the best European heritage instruments of its time' which 'created a highly efficient instrument for the preservation of the cultural heritage'.<sup>198</sup>

There was, however, an alarming gap between theory and 'rapidly deteriorating practice'.<sup>199</sup> The law was insufficiently detailed to provide adequate protection in practice and there existed little political will for change. Cultural heritage suffered from the dangers of both large-scale urban development and mass neglect due to the socialisation of private property (whose owners had generally organised their maintenance).

The damage was so great that the 1987 Cultural Heritage State Preservation Act, one of the first of its kind, was 'relatively powerless in the face of economic incapability, wastefulness and a lack of political concern.' This was compounded by a number of issues that arose following the Velvet Revolution in 1989, including property speculation and an increased crime rate.<sup>200</sup> As such, a quarter of Slovakia's immovable cultural monuments are partially or critically damaged according to the Monument Board's 2003 figures.<sup>201</sup>

Official attention to the preservation of Jewish heritage during the Communist period was, at best, sporadic. A number of significant buildings of the State Jewish Museum in Prague, a showpiece under Communism, were in fact partially closed for many years, ostensibly in the interest of preservation and renovation, and state officials did not welcome financial assistance from Jewish communities abroad.

As mentioned in Section 4.1.3, there was a strong bias away from Jewish cultural heritage as the representation of a minority/religious group and towards Communist-themed heritage, although a small number of well-known sites were protected. As explained by Jiří Setlík, former cultural counsellor of the Czech and Slovak Embassy in Washington D.C, 1992, 'If the sites were world-renowned, they were protected, but others were neglected'.<sup>202</sup> This neglect included the demolition of a number of historical Jewish sites to make way for construction projects.

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<sup>198</sup> Štulc, J., 'Czech Republic', in Pickard, R. (ed.), *Policy and Law in Heritage Conservation* (Conservation of the European Built Heritage), pp. 41 – 72, London 2001, p. 44/45.

<sup>199</sup> Ibid.

<sup>200</sup> Ibid: pp. 44-56.

<sup>201</sup> <http://www.pamiatky.sk/pamiatky/en/general-inventory/immovable-cultural-monuments-in-slovakia/>.

<sup>202</sup> Gruber & Myers 1994, p. 69.

After the fall of Communism, numerous objects relating to the history of the Communist Party were deleted from the register of protected monuments in the Czech Republic, while many previously excluded from the list for ideological reasons were added, including items associated with Catholicism and Judaism.<sup>203</sup>

A similar process is likely to have occurred in Slovakia. Nevertheless, today fewer than 200 Jewish sites<sup>204</sup> feature on the list of immovable cultural monuments out of a national total of 13,212.<sup>205</sup> Of these, Košice, Prešov and Bardejov are worthy of particular note, featuring a significant number of Jewish monuments preserved within their authentic architectural context and protected as historic town reserves. Bardejov, in particular, is listed as a UNESCO World Heritage site, since it ‘provides exceptionally well-preserved evidence of the economic and social structure of trading towns in medieval Central Europe’.<sup>206</sup>

There are 392 cemeteries or mortuaries on the cultural heritage database of the Slovak Monuments Authority (*Pamiatkový úrad Slovenskej republiky*)<sup>207</sup>. Of these, 37 are listed as holding some form of protected status – although the Slovak Jewish community cite up to 50 such designations. Even using the larger figure, this constitutes between only 7% and 12% of the country’s Jewish cemeteries. Those listed are the following:

*Bardejov, Beckov, Bratislava (Neolog), Bratislava (Orthodox), Brezovica, Bystré, Častá, Giraltovce, Hanušovce nad Topľou, Hľobovec, Humenné, Jabloň, Kežmarok, Kolbasov, Kurima, Lipany, L’ubotice, Lukačovce, Medzilaborce, Pecovská, Nová Ves, Prešov (Orthodox), Radvan nad Laborcom, Runina, Sabinov, Senica, Široké, Skalica, Snina, Sobotište, Spišské Podhradie, Stará L’ubovňa, Tisinec, Topoľa, Topoľčany, Vranov nad Topľou, Vrbové and Zborov.*

With regards to the general state of Jewish heritage protected under cultural heritage legislation, Ruth Ellen Gruber notes that ‘even sites so recognized can be found in poor shape’.<sup>208</sup> This is particularly noticeable in the case of World Heritage-listed Bardejov, where an association has been formed by an American citizen to lobby for its better preservation.<sup>209</sup>

Up to date information is only available on a proportion of the protected cemeteries. A number are reported to be well-maintained. These include Bardejov<sup>210</sup>, Bratislava (Neolog & Orthodox)<sup>211</sup>, Galanta<sup>212</sup>, Komarno<sup>213</sup>, Martin (now a park), Nitra<sup>214</sup>, Prešov (all 3 cemeteries)<sup>215</sup>, Pezinok<sup>216</sup>, Pribeník (Jewish section of the municipal cemetery)<sup>217</sup>, Šaľa<sup>218</sup>, Trenčín<sup>219</sup> and Trnava<sup>220</sup> (Nitrianska cesta). Zborov, however, is insufficiently maintained and in a poor condition:

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<sup>203</sup> Štulc 2001: p. 47.

<sup>204</sup> Gruber 2007: pp. 182-3.

<sup>205</sup> Figure from 1 January 2007. Source: <http://www.pamiatky.sk/pamiatky/pamiatkovy-urad/evidencia-kulturnych-pamiatok-na-slovensku>.

<sup>206</sup> Borsky 2007: p. 78.

<sup>207</sup> <http://www.pamiatky.sk/pamiatky/fondy>.

<sup>208</sup> Gruber 2007: 182-3.

<sup>209</sup> Further information can be found at <http://www.bardejov.org>

<sup>210</sup> Database of Slovak Jewish Heritage, <http://www.slovak-jewish-heritage.org>.

<sup>211</sup> Ibid.

<sup>212</sup> Ibid.

<sup>213</sup> Gruber 2007: p. 202.

<sup>214</sup> Database of Slovak Jewish Heritage, <http://www.slovak-jewish-heritage.org>.

<sup>215</sup> Ibid.

<sup>216</sup> Gruber 2007: p. 190.

<sup>217</sup> Gruber 2007: p. 199.

<sup>218</sup> Database of Slovak Jewish Heritage, <http://www.slovak-jewish-heritage.org>.

<sup>219</sup> Gruber 2007: p. 208.

<sup>220</sup> Ibid: p. 193.

*The Jewish cemetery of Zborov is situated on a flatland in the north-western part of the village. This 150 x 100m large area is surrounded by a disintegrating old wall, overgrown with trees, bushes and grass. The gravestones are in bad condition, especially the ones from sandstone, many collapsed and the inscriptions were washed away. Pictorial motives found are: deer, lions, birds, candlesticks, blessing hands of Kobanim and Levi's jar. The lot was divided to bury men and women separately. The oldest grave dates back to 1814 and the last burial took place in 1934. Additional listing of Holocaust victims appears on some graves. This cemetery, of a great historical value, is partially overgrown and sporadically maintained by the local municipality'.<sup>221</sup>*

It was also reported in November 2007 that Hummené cemetery is at risk:

*The Humenne Jewish cemetery is in need of funds to build a solid fence around it. Bert Gross former resident of Humenne and survivor has been working to preserve and improve the condition of the cemetery through twice yearly cleanups that include cutting down of high grass. Many stones are down, weathered and unreadable. Funds are urgently needed to build a solid fence around the cemetery to insure its sanctity and prevent vandalism'.<sup>222</sup>*

Furthermore, a number of cemeteries with a cultural heritage designation have been affected by vandalism, including Vranov nad Toplou (the target of an attack in 1999)<sup>223,224</sup> and Hummené (desecrated in 2003; restoration work had finished only 6 months before the vandalism occurred).<sup>225</sup>

As mentioned in Section 5.4.2, there is a general obligation incumbent on all to protect Slovakia's designated cultural heritage monuments. This includes stronger restrictions on development and stiffer penalties in case of damage. However, while a number of those so designated are well-maintained, cultural monument status is certainly no guarantee of protection from either the effects of neglect or of vandalism (there is currently no information on the other key threats – development of cemetery land with impunity and criminal action by thieves and polluters).

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 primarily on the owner.

The Slovak Jewish community can currently afford to provide nominal maintenance to between 80 and 85 Jewish cemeteries. It would be expected that those cemeteries owned by the community with a cultural monument designation would be included in this list, although this needs confirmation. Nevertheless, as a result of financial restrictions often only basic maintenance is possible, doubtlessly leaving a number of Jewish community-owned cultural heritage sites insufficiently cared for. While the government has the legal powers to oblige owners to care for their cultural monuments, this is therefore not a viable option in this case. Information on sites owned by other parties is not currently available, but a similar conclusion could no doubt be drawn here.

Financial assistance is available to owners of cultural monuments via government grants made available under the aegis of the Ministry of Culture, including those provided by the cultural state fund 'Let's Renew Our House,' which allocates money for the upkeep of cultural and religious monuments.<sup>226</sup> However, the author was informed by Dr Fero Alexander of the Jewish Community<sup>227</sup> that, while such funding covers synagogues, cemeteries are not eligible.

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<sup>221</sup> Database of Slovak Jewish Heritage, <http://www.slovak-jewish-heritage.org>.

<sup>222</sup> <http://www.shtetlinks.jewishgen.org/humenne/humenne.htm>

<sup>223</sup> <http://www.jewishgen.org/cemetery/e-europe/slov-g-l.html>.

<sup>224</sup> <http://www.tau.ac.il/Anti-Semitism/asw2001-2/slovakia.htm>.

<sup>225</sup> [http://slovakia.usembassy.gov/text\\_041215.html](http://slovakia.usembassy.gov/text_041215.html).

<sup>226</sup> US State Department 2007.

<sup>227</sup> Dr Alexander & Mr Turčan (March 2008).

Government assistance with the renovation of the Chatam Sofer memorial, should, however be noted.<sup>228</sup>

Even in the event of state funding being available, it is unlikely to cover all of the major works that need to take place in order to ensure the proper maintenance of all of the Slovakia's Jewish cemeteries. Such grants 'can at best provide only a minimum solution as the funds allocated only cover a small fraction of the funds required.'<sup>229</sup> And of course such funding would not be available to all sites.

In the context of the huge cultural heritage burden already shouldered by the Slovak authorities<sup>230</sup>, it is unlikely that any more funds could be devoted to cemetery maintenance. In fact, 'a clear downward trend in the cultural funds available for current expenditure on the renovation of monuments'<sup>231</sup> was noted in 2002, which may or may not have since stabilised.

There are a number of other issues related to the application of cultural heritage legislation in the Czech Republic which may be appropriate in Slovakia. Štulc complains, for instance, that while the legislation itself 'theoretically goes a long way to influence owners' rights and gives a wide number of instruments for protecting cultural heritage', it is infrequently applied and not sufficiently strict. While this perspective may be valuable in certain circumstances, to severely enforce the cultural heritage protection law with regards to Jewish cemeteries would be disastrous, both for Slovakia's Jewish community as the main owner and for the authorities as they would be unable to take responsibility for the maintenance of these sites themselves.

### **6.3 Vandalism**

Police investigations are carried out promptly in cases of cemetery desecration, and while the perpetrators sometimes remain unidentified (for instance the desecration of Ružomberok and Rajec cemeteries in August 2006<sup>232</sup>, and that of Rimavská Seč in April 2006<sup>233</sup>), in most cases police catch the often adolescent vandals.

In general the perpetrators receive light sentences as minors, with those under 15 not required to stand trial at all<sup>234</sup>. In 2004, however, a judge sentenced vandals to unconditional jail sentences,

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<sup>228</sup> Renowned Orthodox rabbi and scholar Chatam Sofer (1762-1839) was buried in a Jewish cemetery in between the castle cliff and the banks of the Danube in Bratislava. Although not in use since 1847, the cemetery had been perfectly preserved until 1943, when it was partially destroyed by a tunnel was constructed for 'self-defence' purposes and the reinforcement of the embankment. While the majority of the remains contained within were exhumed and reburied at the nearby New Orthodox cemetery, the local Jewish community successfully fought for Chatam Sofer's tomb and more than 20 other nearby graves to remain in situ. The graves were encircled by concrete panels and, in spite of their dark and damp location, remained a popular place of pilgrimage. In the late 1990s, as the volume of traffic from a tram line built over the site in the 1980s began to take its toll, the Bratislava Jewish community took the decision to completely restore the premises before they were damaged beyond repair. This necessitated the relocation of the tram line at a cost of \$1.1 million to the government, in addition to renovation work costing \$1 million covered primarily by an international delegation of private donors. Sources: <http://www.slovak-jewish-heritage.org/chatam-sofer-bratislava.php>; Bennett, M. 'Rabbi's grave to be saved from the trampling of trolley cars', Jewish Telegraphic Agency, 20 October 2000.

<sup>229</sup> Council of Europe Steering Committee for Culture, *National Cultural Policy in the Slovak Republic: Summary*, July 2002.

<sup>230</sup> As Josef Štulc states of the Czech Republic, which would no doubt apply equally to the Slovak case: 'It is impossible to get rid of the debt accumulated during the decades of insufficient maintenance and this will remain the case for the foreseeable future.' Source: Štulc 2001.

<sup>231</sup> Council of Europe Steering Committee for Culture 2002.

<sup>232</sup> US State Department 2007.

<sup>233</sup> <http://www.tau.ac.il/Anti-Semitism/asw2006/slovakia.htm>

<sup>234</sup> [http://slovakia.usembassy.gov/text\\_041215.html](http://slovakia.usembassy.gov/text_041215.html)

which the Jewish community believed sent a much-needed message<sup>235</sup>, and police were reported to have stated that if convicted, three youths accused of vandalising the Chatam Sofer memorial in April 2008 would receive a prison sentence of up to two years.<sup>236</sup> In a number of cases the perpetrators were sentenced to pay for at least part of the repairs.<sup>237</sup>

The Slovak government has released official statements condemning the desecration of its country's Jewish cemeteries, such as that by Prime Minister Mikuláš Dzurinda denouncing the desecration of Košice in 2002 as 'barbarous', stating that it was 'not possible that at the beginning of the 21st century in central Europe a hatred based on religious, racial, or ethnic differences is being revived'.<sup>238</sup>

Jewish community leaders stated they were satisfied with the Government's response to these incidents, praising the quick action of the police in cases of vandalism, and emphasising that they did not believe that the local communities supported this vandalism.<sup>239,240</sup>

In general the number of prosecutions for racially-motivated crimes, although still low, has increased as a result of the creation of a specialised police unit with an NGO advisory board, the placement of an advisor in the Bratislava Regional Police, and increased training. The Ministry of Interior also assigned specialists on hate crimes to each of the country's eight regions.<sup>241</sup> However, in cases of cemetery desecration the perpetrators are often charged only with hooliganism and damaging private property, for example in the cases of Puchov (2003) and Košice (2002), because of a lack of evidence of racial motivation.<sup>242,243</sup>

Recent positive governmental attempts to counter anti-Semitism include the organisation of seminars and programmes and the provision of instructional material, particularly for teachers, by the Holocaust Documentation Centre (DSH) and the Ministry of Education on the Holocaust and the history of Judaism respectively. In 2007 the Institute for National Memory continued its work of publishing documents related to crimes committed by the state during World War II and the communist era, planning to release the list of 'aryanizers' by the end of 2007.<sup>244</sup>

#### **6.4 Conclusion**

In summary, the ability of the Slovak authorities to enforce the relevant provisions in cultural heritage legislation and those related to vandalism is variable.

Between only 7 and 12% of Jewish burial grounds enjoy protected status under cultural heritage law. A number of these are well-maintained, but there are also instances of neglect and vandalism. Evidence of the effectiveness of such a designation against the development of cemetery land with impunity, and against criminal action by thieves and polluters, has not yet been obtained. However, it is likely that cultural heritage legislation, in conjunction with planning and EIA laws, would be reasonably effective in tackling the former.

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<sup>235</sup> US State Department 2006.

<sup>236</sup> *Haaretz* 2008.

<sup>237</sup> The Jewish community successfully pressed for parents of the vandals to pay damages in the 2002 Banovce cemetery case and hoped this case could be successfully replicated. Source: [http://slovakia.usembassy.gov/text\\_041215.html](http://slovakia.usembassy.gov/text_041215.html)

<sup>238</sup> Pisárová 2002.

<sup>239</sup> US State Department 2007.

<sup>240</sup> [http://slovakia.usembassy.gov/text\\_041215.html](http://slovakia.usembassy.gov/text_041215.html)

<sup>241</sup> US State Department 2007.

<sup>242</sup> [http://slovakia.usembassy.gov/text\\_041215.html](http://slovakia.usembassy.gov/text_041215.html)

<sup>243</sup> Pisárová 2002.

<sup>244</sup> US State Department 2007.

The key issue in relation to the effective enforcement of cultural heritage legislation is the ability of the sites' owners to provide adequate maintenance. In the case of the Slovak Jewish community, this is severely attenuated by a lack of funds and insufficient government support outside of the 2002 compensation fund. This seems unlikely to change. In this context, the strict enforcement of legislation by the government – apart from in the case of possible development of a protected area – would be most unhelpful to the Jewish community.

Incidences of vandalism are pursued by the state authorities to the satisfaction of the Jewish communities. Investigations are prompt, and police often catch the primarily adolescent vandals – some of whom are simply that and are charged accordingly, while others are shown to have links to extreme groups and receive heavier penalties. Some have been made to contribute to the repairs. Anti-Semitic groups are being tackled in various ways by the police, including the creation of a specialist unit on racially-motivated crimes. Although the law may provide a disincentive to certain would-be vandals, the effective enforcement of appropriate legislation provides no water-tight guarantee of protection.

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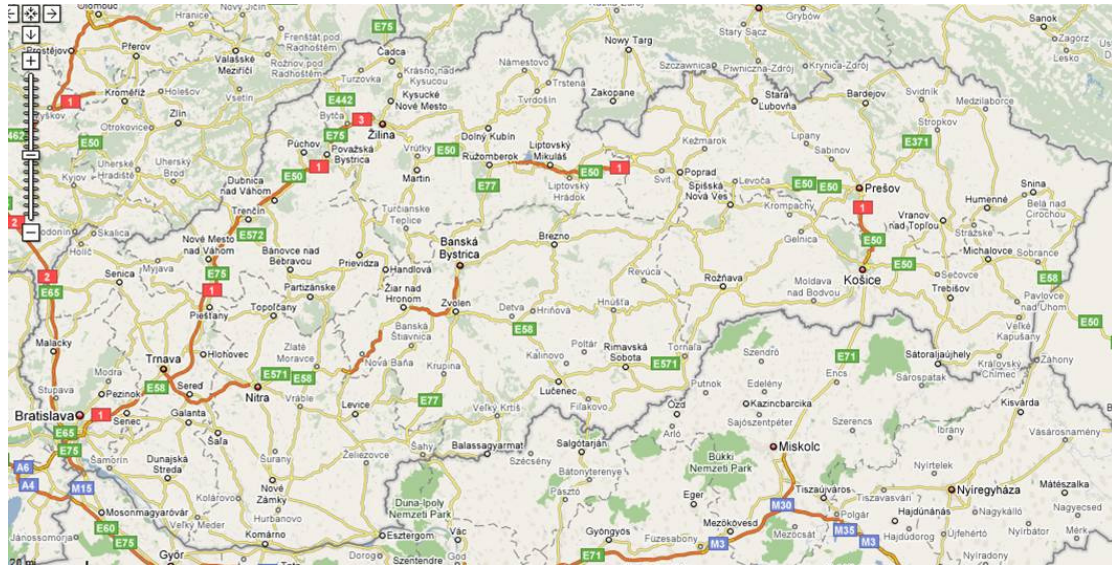
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## APPENDIX 2 – MAP OF SLOVAKIA



Source: Google maps

