




LO TISHKACH
FOUNDATION
EUROPEAN JEWISH
CEMETERIES INITIATIVE

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

Lithuania

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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) and currently features data on over 8,000 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 Lithuania 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 of Jewish burial grounds in Lithuania are as follows:

- There are thought to be around 400 Jewish burial grounds in Lithuania, including at least 202 mass graves and some 180 cemeteries which are owned by local municipalities. Over 50% of the cemeteries are thought to have fewer than 20 gravestones, and the majority have no sign/marker or effective fencing. Around 30 are checked 3-4 times a year, encouraging the local municipality to provide at least basic maintenance. They are also partially maintained by the Jewish community. In some cases, restoration of some cemeteries has been undertaken by foreign individuals. Many receive no care at all.
- The main threats faced by these sites are vegetation overgrowth, erosion, vandalism and theft – particularly of the signposts erected a few years ago to indicate the location of the mass graves. In some cases the encroaching development of private estates also poses a threat. The key issues that need to be tackled in this context are insufficient current maintenance and a lack of effective fencing.
- The legal regime offers a reasonably comprehensive level of protection to those cemeteries that are fully or initially protected as objects of cultural heritage. Non-registered burial grounds are not provided legal protection in case of desecration or demolition.
- Environmental Impact legislation requires the assessment of the possible deleterious effects of large-scale development, proposed legislation and planning documentation on the areas protected by cultural heritage legislation. The requirement for a survey prior to development is potentially useful as it may signal the presence of a Jewish burial ground prior to excavation beginning.
- Of particular concern are:
 - The lack of efficient legal protection in the case of newly-discovered or ‘inactive’ burial grounds not considered to be cultural heritage sites;
 - The lack of provision requiring the permission or the binding opinion of the Jewish community for any work involving protection of Jewish burial grounds;
 - The lack of clear identification of the boundaries of mass graves that might potentially be threatened by development works.
- The practical effectiveness of the legal regime is affected by:
 - The fact that over 40% of Lithuania’s Jewish burial grounds do not fall under cultural heritage legislation and are not therefore granted practical protection where there exists the danger of encroaching development or construction works;
 - The lack of willingness, financial constraints or simple neglect on the part of the owners of the site to undertake effective maintenance. Preliminary research shows that with regard to unused cemeteries that are not registered as cultural heritage sites, protection is limited to safeguarding but not to maintenance *per se*.
- 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 Republic of Lithuania to definitively list all areas in need of protection, in addition to the continued monitoring of these sites;

- The erection of effective fencing and signs/markers at all Jewish cemeteries with the assistance of the Lithuanian government;
- The extension of even very basic maintenance to all Lithuanian Jewish cemeteries with the assistance of Lithuanian and foreign institutions, organisations and individuals – particularly, for instance, the adoption of Jewish cemeteries by local schools or civic organisations;
- The extension of cultural heritage (or similar) designations to include all Jewish burial grounds so as to ensure their protection from (first-time or re-) development or their inclusion in the State Register of Cultural Heritage in Lithuania;
- The requirement for the agreement of the Lithuanian Jewish community in all matters concerning works on any Jewish burial ground (visible or otherwise).

2. ACKNOWLEDGMENTS

This preliminary report was written with the assistance of a number of experts. Lord Janner of Braunstone QC was approached in relation to his experiences of the sign posting at least 202 mass graves in Lithuania and kindly agreed to share these with the Lo Tishkach Foundation. Rabbi Andrew Baker of the American Jewish Committee contributed to this report by providing important information on the case of the Snipiskes cemetery in Vilnius. The report findings were also supplemented by an interview conducted by the author with Mr Simon Gurevichius, Executive Director of the Jewish Community of Lithuania, in Vilnius in September 2008. Ms Faina Kukliansky, a lawyer and a member of the Jewish Community of Vilnius, was also interviewed and commented on the legislative part of this report. Ms Rachele Kostanian of the Vilna Gaon Jewish Museum provided assistance with bibliographic research and shared a list of the Jewish burial grounds featured in the Register of the Lithuanian Department of Cultural Heritage.

Publications by Jewish heritage experts obtained in the Vilna Gaon Jewish Museum and at the British Library in London were used in the writing of this report. Further desk-based research was carried out using broad resources, in particular legal sources available on the website of the Lithuanian Parliament (available at <http://www.lrs.lt/>). The JewishGen resource of Jewish cemetery sites was also extremely helpful. Another major educational source that offers information on Jewish mass graves in Lithuania can be found at <http://www.shoah.smm.lt/Pub/default.aspx?Page=EN>.

The Lithuanian Department of Cultural Heritage was contacted via e-mail with a request to provide responses to the operation the cultural heritage legislation in the country. This state institution requested an official letter before providing any clarification of national legislation, and a further reply is now awaited. Mr Andrus Grikienis of the Permanent Representation of Lithuania to the European Union in Brussels was helpful in clarifying the legislative protection of the mass graves in the Lithuanian national legislation. Finally Ms Katrina Krzysztofiak of the US Commission on the Protection of America's Heritage Abroad also provided information on the work of the Commission with regards to the protection of Jewish heritage in Lithuania.

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*)¹, deriving benefit (*issur hana'ah*) from a corpse or grave, or performing various practices thought to ‘ridicule the helpless’ (*l'oeg l'rosh*).²

It can also be seen in the requirement for:

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

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

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

4. BACKGROUND ON LITHUANIAN JEWISH BURIAL GROUNDS

The first Jewish communities in what is present-day Lithuania are recorded as existing already in the 14th century. By the second half of the 19th century, Vilnius had become the major Jewish cultural and spiritual centre in Eastern Europe acquiring the name 'Jerusalem of Lithuania' and being renowned for its eminent rabbis and Talmudic experts.³

Before World War II, Jews were the largest ethnic group in Lithuania.⁴ On the eve of WWII, Jewish settlements existed in 239 towns in the area of today's Lithuania.⁵ The mass murder of Lithuanian Jewry began with the German invasion of the Soviet Union in June 1941. Executions were carried out by *Einsatzgruppen* and other units of the SS, the Security Police, the SD and local populations. The victims were usually shot at the edge of open pits. By the end of 1941, only 43,000 out of 220,000 – 250,000 Lithuanian Jews had survived the massacres organised by the Nazis and their local auxiliaries. Those who survived were imprisoned in the ghettos of Vilnius, Kaunas, Shauliai and Svenconys.⁶ In 1943, some 15,000 Jews were deported to labour camps in Latvia and Estonia and the remaining 5,000 were murdered in concentration camps in Poland. By 1944, the Nazis and their accomplices had murdered over 90% of pre-WWII Lithuanian Jewry, constituting one of the highest victim rates in Europe.⁷ Following the war, the Soviet occupation of Lithuania further devastated Jewish cultural and religious life and in many cases allowed for the appropriation of gravestones by the local population as well as the transfer of many cemeteries into parks and graves for Soviet soldiers. Today, there are around 5,000 Jews living in Lithuania.⁸

4.1 Numbers

According to representatives of the Lithuanian Jewish community, there are around 180 Jewish cemeteries in the country with only two – in Kaunas and Vilnius – still used for burials. Around ten municipal cemeteries in Lithuania contain Jewish sections. There are also around 200 WWII mass graves in the Republic of Lithuania, located mostly in forests and rural areas as well as inside the sites of Jewish cemeteries where deep ditches were dug for murdered Jews.⁹ Some mass graves, such as those in Birzai, Mazeikai and Kretinga, are situated within the boundaries of the Jewish cemeteries.¹⁰

While Lithuania's mass graves have been identified and marked in recent years and information can be found on these sites in *The Book of Sorrow* by Yosif Levinson, the only publicly-accessible

³ Simonas Alperavicius and Izraelis Lempertas, *Jewish Community of Lithuania on the 10th Anniversary of the Revival*, Vilnius 1999.

⁴ Marija Rupikiene, 'The Sacral Heritage of Jewish Culture' in *Jewish Heritage in Lithuania*, ed. Alfreda Jomentes (Department of Cultural Heritage of the Republic of Lithuania, 'Versus aureus' 2006) pp.145-146.

⁵ Yosif Levinson, *The Book of Sorrow*, VAGA Publishers, Vilnius 1997, pp. 25-35.

⁶ Rose Lerer Cohen and Saul Issroff, 'Liquidations and Forced Labour, Deportation and Movements' in *The Holocaust in Lithuania, 1941-1945. A Book of Remembrance*, Volume I, Gefen Publishing House, Jerusalem and New York, p.25.

⁷ United States Holocaust Memorial,

<http://www.ushmm.org/wlc/article.php?lang=en&ModuleId=10005444>, last access on 25 September 2008.

⁸ Simonas Gurevichius, Executive Director of the Jewish Community of Lithuania, interviewed in Vilnius, Lithuania, on 11 September 2008.

⁹ Ibid.

¹⁰ Levinson, 1997.

source of information on the location and state of Lithuanian Jewish cemeteries can be found on the website of the International Association of Jewish Genealogical Societies. This source, however, does not provide up-to-date information on all of the cemeteries.¹¹ According to Mr Simonas Gurevichius, Executive Director of the Jewish Community of Lithuania, research documenting all Jewish cemeteries in Lithuania was carried out in the late 1990s, but the results of these surveys have yet to be made accessible to the general public. In the opinion of the representatives of the Jewish Community of Lithuania, there is a need to ascertain the location and the state of all the Jewish cemeteries in the country.¹²

Another relevant source of information on Jewish burial grounds in Lithuania is the Register of the Cultural Heritage in Lithuania, managed by the national government's Department of Cultural Heritage of the Republic of Lithuania.¹³ The importance of this register, as discussed below in the section on legislation, derives from the fact that it features all Jewish burial grounds which have been granted legal protection. According to the Register, there are 115 Jewish cemeteries and 68 mass graves with the status of 'national heritage sites'. In total, 183 Jewish burial grounds are therefore legally protected under Lithuanian national legislation. In addition, so-called 'initial protection' has been granted to 38 Jewish burial grounds, including at least 8 mass graves.¹⁴ According to the State Register, 221 Jewish burial grounds, 57% of those that are known to exist, have been recognised by the state authorities and granted some form of protection from desecration. On the other hand, the website of the Vilna Gaon Jewish Museum provides the names of 90 burial grounds categorised as mass graves by the Lithuanian Department of Cultural Heritage. Approximately 70 of the 200 burial grounds listed on this site have been identified as Jewish cemeteries, with most of them containing the graves of Jews murdered in the Holocaust.¹⁵ It is important to note that, according to the Andrius Grikienis of the Permanent Representation of Lithuania to the European Union, according to the Department of Cultural Heritage almost all mass graves are legally protected sites.¹⁶ This discrepancy should be further verified and any changes in the Register monitored.

In the 1990s, following the proclamation and recognition of the independent Republic of Lithuania and in response to efforts of the Lithuanian Jewish community, local municipalities began signposting and maintenance work on the sites of the mass graves of thousands of Lithuanian Jews murdered during World War II.¹⁷ The identification and signposting of Jewish mass graves in Lithuania took place also as a result of an initiative led by Lord Greville Janner of Braunstone QC, a British peer and longstanding international Jewish leader. Having traced his family roots to Lithuania and Latvia, where many of his family members were murdered during the Holocaust, Lord Janner led a project that culminated in the signposting of 202 mass graves in Lithuania by 2004.¹⁸ These mass graves were identified with the assistance of the Jewish

¹¹ *Lithuania*, International Association of Jewish Genealogical Societies, <http://www.jewishgen.org/cemetery/e-europe/>, last accessed on 23 September 2003.

¹² Gurevichius, September 2008.

¹³ The list of Jewish burial grounds registered in the Register of the Department of Cultural Heritage, hard copy of the document provided by Rachele Kostanian of the Vilna Gaon Jewish Museum, September 2008. This list can be checked for updates at the Register of the Department of Cultural Heritage at <http://kvr.kpd.lt/>.

¹⁴ *Ibid.*

¹⁵ Vilna Gaon Jewish Museum, <http://www.jmuseum.lt/index.aspx?Element=ViewArticle&TopicID=256> last accessed on 27 September 2008.

¹⁶ Andrius Grikienis, Permanent Representation of Lithuania to the European Union, *Legislation on protection of burial grounds in Lithuania*, E-mail to Lo Tishkach on 22 September 2008.

¹⁷ Levinson, 1997, p.15.

¹⁸ During the meeting, Lord Janner added that 84 out of nearly 200 mass graves in Latvia have been signposted to date under the same initiative. In Estonia, there are six known mass graves. Two of them had

communities in Lithuania and with the help of local inhabitants; a Lithuanian graduate literally drove thousands of kilometres to identify the location of these mass graves. The project was realised with the assistance of the British Embassy in Vilnius, the UK Holocaust Education Trust and descendants of Lithuanian Holocaust victims, who also contributed to the cost of the project.

The signposting of the mass graves, located mostly in rural areas and forests, necessitated consultations with and awareness-raising among senior Lithuanian politicians, including President Valdas Adamkus and Prime Minister at the time Algirdas Brazauskas, who publicly expressed their support and promised to preserve the mass graves. Lord Janner told Lo Tishkach that he regarded the level of co-operation received at the time from Lithuanian municipalities as satisfactory.¹⁹ As of today, 202 mass graves have been signposted under this project and monuments have been erected on the sites of the massacres.²⁰

4.2 Ownership & Maintenance

Lithuania has some 5,000 Jews out of a total population of around 3.5 million.²¹ The majority lives in Vilnius and Kaunas, while other communities can be found in Druskininkai, Klaipeda, Panevezhys, Plunge, Shiauliai, Shvenchionys and Ukmerge. These communities function under the umbrella of the Jewish Community of Lithuania (JCL).²²

All Jewish burial grounds in Lithuania fall under the ownership of local municipalities. The two active cemeteries of Vilnius and Kaunas are also owned by the municipalities and are operated by sub-contracted companies.²³

In recent years, the restitution of Jewish communal property in Lithuania has become an issue that has gained national and international attention. It has also influenced and revealed new manifestations of anti-Semitism in the country. Until now, the Lithuanian Parliament has not enacted legislation that comprehensively addresses the restitution of Jewish property.²⁴ The

been marked earlier. The local Jewish community was provided with assistance under Janner's initiative to mark the remaining four mass graves. Lord Greville Janner of Braunstone QC, interviewed in the House of Lords, London, UK, on 18 September 2008; Lord Janner of Braunstone QC, *To Life! The Memoirs of Greville Janner* (Sutton Publishing, United Kingdom 2006), pp. 222-226.

¹⁹ Ibid.

²⁰ Ibid, p. 226. The database containing the location of the mass graves can be found at the following address: <http://www.shoah.smm.lt/Pub/default.aspx?Page=EN>.

²¹ Lithuanian Ministry of Foreign Relations, <http://www.urm.lt/index.php?-1618162325#GENERAL> and the Jewish community of Lithuania, <http://www.litjews.org/Default.aspx?Element=ViewArticle&ArticleID=911&TopicID=117&Lang=EN> last accessed on 23 September 2008.

²² Jewish Community of Lithuania, *ibid*.

²³ Gurevichius, September 2008.

²⁴ The current Jewish property restitution legislation relevant for the ownership status of community property is limited to the Law on the Procedure for the Restoration of the Rights of Religious Communities to the Existing Real Property (passed in 1995). This Law however deals only with real estate property that belonged to the religious communities that existed in Lithuania prior to 21 July 1941 and not with property owned by secular communities. Another problem posed by the Law is the stipulation found in Article 2 that the property should be returned to the religious communities that were re-established or to their successors. The overwhelming majority of the Jewish communities have never revived after WWII. In many cases, therefore, there is no legal successor to the Jewish property. According to Simonas Gurevichius, the Acting Director of the Vilnius Jewish community, the Jewish communities have recovered two buildings in Vilnius, six in Kaunas, and one in each of Telšiai and Plungė. Source: Aras Luksas, *Restitution of Jewish Property: The Wagon Remains Stuck*, Jewish Community of Lithuania, last accessed on 16

return of or provision of adequate compensation for lost property has been discussed for years. In recent months, various Lithuanian politicians and state institutions have promised to enact legislation related to restitution following elections scheduled for the autumn of 2008. The Jewish community of Lithuania however, remains sceptical about these promises, believing they will only drag out the restitution issue even further.²⁵ With regard to the legal status of the burial grounds, the Jewish Community is apparently not eager to include the burial grounds into future restitution legislation.²⁶

As of 2008, the financial maintenance and responsibility for the state of registered burial grounds is vested in the local municipalities. Realistically speaking, this financial support is not sufficient for the upkeep of the burial grounds. Local Jewish community representatives currently visit 30 burial grounds three to four times a year, including 20 cemeteries and 10 mass graves. Another 50 sites are occasionally visited. Twice a year, the Jewish communities contact local municipalities to verify the state of Jewish burial grounds in their localities. These pre-scheduled visits and enquiries often mobilise the local municipality to clean the site. In addition, during the year prior to their *bar* and *bat mitzvat*, local boys and girls clean up a chosen cemetery three to four times. The maintenance of some cemeteries has been also supported by individuals of Lithuanian descent.²⁷ For instance, the Obeliai Jewish cemetery containing 120 gravestones was renovated in 2003 by the descendants of local Jews. Most burial grounds, however, are located in remote areas and are rarely visited. Due to the financial and organisational constraints of the local Jewish communities, the majority of the burial grounds are not regularly monitored. No specific foundation or non-governmental organisation was recorded as protecting and preserving Jewish burial grounds in Lithuania. According to representatives of the Jewish Community of Lithuania, there is an important need to identify and provide for regular monitoring and maintenance of Jewish cemeteries in Lithuania.²⁸

4.3 Current State

The JewishGen cemetery database features information on some 200 mass graves and around 90 out of 180 Jewish cemeteries in Lithuania. The information was taken from the *Book of Sorrow* by Yosif Levinson, and *Lithuanian Jews*, vol. 4, published in Tel Aviv in 1984, as well as other private sources.²⁹ According to the US Commission on America's Heritage Abroad, a survey on the state of the cultural heritage, including the state of the Jewish burial grounds in the country has been carried out and should be available in 2009.³⁰

September 2008,

<http://www.litjews.org/Default.aspx?Element=ViewArticle&ArticleID=1682&TopicID=2&Lang=EN> ; *Law on the Procedure for the Restoration of the Rights of Religious Communities to the Existing Real Property (21 March 1995)*, No.I-822, last accessed on 16 September 2008,

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=24746&p_query=&p_tr2=.

²⁵ Gurevichius, September 2008; Ms Faina Kukliansky, lawyer and member of the Lithuanian Jewish community, interviewed by the author in Vilnius in September 2008.

²⁶ Rabbi Andrew Baker, e-mail response to Lo Tishkach in September 2008.

²⁷ Gurevichius, September 2008.

²⁸ Ibid.

²⁹ <http://www.jewishgen.org/cemetery/e-europe/lithuania.html> , last accessed on 25 September 2008.

³⁰ Telephone conversation with Ms Katarina Krzysztofciak from the *United States Commission for the Preservation of America's Heritage Abroad* on 17 September 2008.

Although somewhat out of date and incomplete, the JewishGen cemetery database nevertheless offers an interesting overview of the general state of around 90 Jewish cemeteries in Lithuania:

- 15.5% contain no gravestones at all;
- 22% have between 1 and 20 gravestones;
- 30% of cemeteries have between 20 and 100 gravestones;
- 18% have between 100 and 500 gravestones;
- 2% have between 500 and 5,000 gravestones.

The information found on the JewishGen website is limited to providing the number of tombstones. The database does not tend to provide the information on whether the remaining stones are in their original locations. Those gravestones that are readable bear inscriptions mostly in Yiddish and Hebrew.³¹

In many cases, tombstones have been appropriated by local inhabitants for construction purposes. In Keidan, for example, some tombstones were used in the building of front steps at private properties. In Krakiai, the local non-Jewish population used the gravestones from the Jewish cemetery at their own burial ground. Around 6% of the cemeteries identified by JewishGen were built over by buildings. Some 5% of the cemeteries had been changed into town parks.³² Around 70% of the cemeteries are fenced, but most of these have broken walls or fences. Some 20% of the mass graves are fenced and all have been indicated by memorials and metal signposts that have often been stolen.

4.3.1 Erosion and vegetation overgrowth

The main threats to Jewish burials grounds in Lithuania, in particular the cemeteries, were considered to be vegetation overgrowth and erosion caused by nearby rivers.³³ According to the Jewish community in Lithuania, most Jewish cemeteries are overgrown; many of them are littered or serve as waste dumps. Others are located in remote areas and their current condition is not even known.

4.3.2 Development

There is no knowledge of cemeteries which have suffered from encroachment or even full-scale re-development apart from the Snipiskes Jewish cemetery in Vilnius, which has been widely covered in the international media, and the attempted construction works at the Marijampole mass grave (see Section 6). Given the fact that most burial grounds are not monitored and are situated in remote areas there is a certain risk of such a threat in the event of future excavations and economic development of these areas.

4.3.3 Vandalism

According to the ECRI³⁴ Third Report on Lithuania, manifestations of anti-Semitism in 2003-2005 continued to take the form of articles published in the press, statements by public figures,

³¹ <http://www.jewishgen.org/cemetery/e-europe/lithuania.html>

³² Ibid.

³³ Ibid.

³⁴ The European Commission against Racism and Intolerance (ECRI) is the Council of Europe's monitoring body, combating racism, xenophobia, antisemitism and intolerance in Europe, from the perspective of the protection of human rights. It clearly examines the situation in each Member State of the Council of Europe by publishing periodical country reports.

types of conduct displayed at mass events and the desecration of graves and monuments.³⁵ ECRI noted that while investigations were opened into cases of desecration of Jewish cemeteries, the outcome of these investigations was generally not recorded. ECRI therefore called upon the Lithuanian authorities to strengthen their efforts in punishing the perpetrators of these anti-Semitic crimes.³⁶

In 2006, there were several instances of Jewish cemeteries being desecrated. A Jewish cemetery in Vilnius was vandalised twice, with 18 tombstones being damaged. A similar incident took place in the nearby town of Suderve in June 2006, where 19 gravestones were toppled and smashed. The police investigated the incident, but no information on the prosecution of offenders was found.³⁷ The following year twelve stones in the new Jewish cemetery in Vilnius were smashed.³⁸ In September 2007, vandals damaged one of the gravestones at the Jewish cemetery in Panevezys, but the suspects were not identified.³⁹

According to representatives of the Jewish community of Lithuania, in recent months there have been at least seven instances of criminal damage to Jewish property bearing anti-Semitic slogans and swastikas.⁴⁰ No information was obtained on criminal investigations with regard to these offences. In May 2008, a Holocaust memorial was damaged on the site of the mass grave in the Varnikai forest. Again, it was not clear whether this criminal offence was investigated. In August the same year, during Tisha B'Av, unknown vandals inscribed swastikas, depictions of concentration camps and calls for Jews to leave Lithuania on a community centre building in Vilnius.⁴¹

4.3.4 Theft

The theft of tombstones and other materials has, in the past, been a serious problem. While there are no particular recent reports on the theft of tombstones, there are problems in certain areas with the theft of metalwork – generally signposts that were erected on the initiative of Lord Janner in an attempt to mark the location of the mass graves.⁴²

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 could be presumed 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 Conclusion

There are thought to be around 400 Jewish burial grounds in Lithuania, including at least 202 mass graves and some 180 cemeteries which are owned by local municipalities. Over 50% of the cemeteries are thought to have fewer than 20 gravestones, and the majority have no sign/marker

³⁵ *Third Report on Lithuania*, ECRI, http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-country-by-country_approach/Lithuania/Lithuania_CBC_3.asp, last accessed on 27 September 2008.

³⁶ *Ibid.*

³⁷ FSU Monitor, *European Jewish Cemetery Vandalised*, <http://www.fsmonitor.com/stories/090706Lithuania.shtml>, last accessed on 27 September 2008.

³⁸ ADL, <http://www.adl.org>, last accessed on 27 September 2008.

³⁹ *Lithuania: International Religious Freedom Report 2008*, <http://www.state.gov/g/drl/rls/irf/2008/108456.htm>, US Department of State, last accessed on 26 September 2006.

⁴⁰ Gurevichius, September 2008.

⁴¹ ADL, *ADL Welcomes Lithuanian's President Condemnation of Attack on a Jewish Community Center*, http://www.adl.org/PresRele/ASInt_13/5343_13.htm, last accessed on 27 September 2008.

⁴² Gurevichius, September 2008.

or effective fencing. Around 30 are checked 3-4 times a year, encouraging the local municipality to provide at least basic maintenance. They are also partially maintained by the Jewish community. In some cases, restoration of some cemeteries has been undertaken by foreign individuals. Many receive no care at all.

The main threats faced by these sites are vegetation overgrowth, erosion, vandalism and theft – particularly of the signposts erected a few years ago to indicate the location of the mass graves. In some cases the encroaching development of private estates also poses a threat. The key issues that need to be tackled in this context are insufficient current maintenance and a lack of effective fencing.

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 Lithuania include insufficient current maintenance, appropriation of the signposts by thieves, the use of the gravestones by the local populace and damage caused by vandals. Addressing these problems remains possible through many legal instruments available to the Lithuanian state.

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 international 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. It is recommended that further research be conducted on the application of and state compliance with the legal instruments referred to below.

5.1.1 International Conventions

- *1972 Convention on the Protection of the World Cultural and Natural Heritage*: Acceptance by Lithuania on 31 March 1992.
- *1954 (Hague) Convention for the Protection of Cultural Property in the Event of Armed Conflict*: 14 May 1954: Not adopted by Lithuania.

5.1.2 Council of Europe Conventions

- *2005 Framework Convention on the Value of Cultural Heritage for Society*: Not ratified by Lithuania
- *1992 European (Valletta) Convention on the Protection of the Archaeological Heritage (revised)*: Signed by Lithuania on 26 January 1992, entered into force on 8 June 2000.
- *1985 (Granada) Convention for the Protection of the Architectural Heritage of Europe*: Ratified by Lithuania on 7 December 1999, entered into force on 1 April 2000.
- *1985 European Convention on Offences relating to Cultural Property*: Not signed.
- *1954 European Cultural Convention*: Ratified by Lithuania on 7 May 1992, entered into force on the same day.

5.2 *European Union Legislation*

There are a number of binding EU directives⁴³ and regulations that have cultural heritage implications. While these primarily address the theft and export of cultural property and are not directly relevant with regards to the protection of Jewish burial grounds, there are also several environmental regulations which affect the treatment of immovable cultural heritage.

⁴³ According to Article 249 of the EC Treaty, directives are binding as to the effect, but they leave the choice and the method to the Member State. Although regarded as a flexible legal instrument, directives may pose difficulties if wrongly interpreted and implemented. Source: Margot Horspool and Matthew Humphreys, *European Union Law*, Oxford University Press 2006, p.76.

The most important of these is *Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private proposed economic activities on the environment (as amended by Directive of the European Parliament and the Council 2003/35/EC of 26 May 2003)*⁴⁴. 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.⁴⁵ The Republic of Lithuania adopted the Directive basically unchanged by virtue of *The Law Amending the Law on the Assessment of the Impact of Proposed Economic Activities on the Environment* (25 June 2005, No. X-258) (see point 5.4.3).

5.3 *Bilateral Agreements*

The most important bilateral agreement in this context is the *Agreement between the Government of the United States of America and the Government of the Republic of Lithuania on Protection and Preservation of Certain Cultural Properties* (15 October 2002).⁴⁶

Article 3 of this Agreement specifies that each party will take appropriate steps to preserve the cultural heritage of religious and ethnic groups, including the victims of the genocide during WWII. According to Article 1 of the Agreement, the term ‘cultural heritage’ is defined as including cemeteries, memorial and monuments to the dead.⁴⁷

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. These lists are to be overseen by a Joint Cultural Heritage Commission (Article 6).⁴⁸

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).⁴⁹

The broad remit of the Agreement, covering ‘all national, religious or ethnic groups’ resident in the territories of today’s Republic of Lithuania 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 because of 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 in drawing attention to the importance of the preservation of the Lithuania’s Jewish heritage, as is its bilateral nature, which facilitates compliance. The Agreement also provided the basis for the US Congress concurrent resolution No. 255, passed by the House of Representatives on 25 September 2008, calling upon the Lithuanian government to stop the construction works taking place on the site of the Snipiskes cemetery (for discussion see point 6.2).

⁴⁴ *Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private proposed economic activities on the environment* (as amended by Directive of the European Parliament and the Council 2003/35/EC of 26 May 2003), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:156:0017:0024:EN:PDF>, last accessed on 27 September 2008.

⁴⁵ Ibid.

⁴⁶ Available in English on www.lo-tishkach.org.

⁴⁷ Articles 1 & 3, *Agreement between the Government of the United States of America and the Government of the Republic of Lithuania on Protection and Preservation of Certain Cultural Properties*, <http://www.state.gov/documents/organization/75413.pdf>, last accessed on 28 September 2008

⁴⁸ Articles 2, 5 & 6, *ibid.*

⁴⁹ Articles 4 & 8, *ibid.*

5.4 *Lithuanian Legislation*

As there are only two cemeteries in Lithuania that are still being used and maintained by the Jewish community, the legal overview pertaining to the protection and preservation of the Jewish burial grounds shall focus on the unused cemeteries and WWII mass graves. For this purpose, the relevant legislation that will be discussed below includes the Constitution, the Law on the Protection of Immovable Cultural Heritage and the Law on Protected Territories. Moreover, the Environment Impact Assessment legislation also seems relevant in safeguarding the burial grounds.

5.4.1 Constitution of the Republic of Lithuania

The supreme Act of the Republic of Lithuania, the Constitution⁵⁰, contains two provisions that are directly related to the preservation of cultural property (heritage). Article 42 stipulates that the state shall be concerned with the protection of ‘cultural monuments and culturally valuable objects’⁵¹, while Article 94 states that the Lithuanian government bears a final responsibility for the protection of cultural heritage.⁵² In summary, once a Jewish burial ground is legally recognised as a site of cultural heritage, the state bears a constitutional responsibility for its protection.

5.4.2 Cultural Heritage Legislation

Law on Protection of Immovable Cultural Heritage of 22 December 1994, No I-733 (as last amended on 8 May 2008 – No X-1531)

The primary Lithuanian legislative instrument which applies to the protection of Jewish burial grounds is the Law on Protection of Immovable Cultural Heritage of 22 December 1994, No I-733 (as last amended on 8 May 2008 – No X-1531). Article 3 of the Law provides a broad classification of immovable cultural heritage. Article 3(2)(3) contains a provision that ‘according to the structure, immovable cultural heritage shall be a site’, while Article 3(3)(12) further stipulates that a property may be of sacral nature, including sites significant for religious communities.⁵³ The Jewish burial grounds would therefore be *prima facie* subject to the legal protection guaranteed by this law.⁵⁴

The legal provision that explicitly refers to the protection of the cemeteries as ‘immovable cultural heritage of public respect’ is Article 20, which states that ‘all cemeteries’ should be subject to the government-approved rules pertaining to the maintenance of the cemeteries (presumably the Law on the Burial of Human Remains – see Section 5.4.3). The same article stipulates that the land of unused cemeteries should be safeguarded. The purpose of such land could be changed ‘(...) only upon recognising the priority of another public need and upon transferring the bodies of the dead’.⁵⁵ There have been no recent instances of applying this

⁵⁰ The constitution came into force in 1992 with the latest amendments introduced in 2006, Constitution of the Republic of Lithuania, <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>, last accessed on 24 September 2008.

⁵¹ Article 42, *ibid.*

⁵² Article 94, *ibid.*

⁵³ Articles 3(2)(3) and 3(3)(12), *Law on Protection of Immovable Cultural Heritage of 22 December 1994, No I-733 (as last amended on 8 May 2008 – No X-1531)*, last accessed on 16 September 2008, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=326112&p_query=&p_tr2=.

⁵⁴ *Ibid.*

⁵⁵ Article 20, *ibid.*

provision with reference to Jewish cemeteries. It should also be noted that although there is an explicit reference made to the cemeteries in the Law, there is no explicit reference made in the Act to the mass graves. Nevertheless, according to the Permanent Representation of Lithuania to the European Union, the Law on Protection of Immovable Cultural Heritage does also encompass mass graves.⁵⁶

It is important to emphasise that upon the overall analysis of the Law, as presented below, it seems that the legal ('safeguarding') protection under Article 20 mentioned above seems to be granted only to the burial grounds already legally recognised as protected cultural heritage or having been granted 'initial protection' (Articles 9 and 10 of the Law).⁵⁷

The recognition of cemeteries as objects of state or municipality-protected cultural heritage is vested in the Department of Cultural Heritage of Lithuania's Ministry of Culture as well as in the municipal authorities.⁵⁸ The Department is not only responsible for initiating the declaration of state-protected objects of immovable heritage, but can also submit proposals on the initiation of the declaration of municipality-protected cultural heritage by subdivisions of municipality.⁵⁹

For the purpose of protecting Jewish cemeteries from desecration, it is also necessary to assess the role given to the Jewish community in protecting its burial grounds. Article 8(4) stipulates that traditional religious communities are entitled to prepare inventories and 'make known specific immovable cultural property' in co-operation with the Department of Cultural Heritage if the property corresponds to the community's 'field of activities or belongs to it by right of ownership'.⁶⁰ Although the Jewish community is not a legal owner of the land plots i.e. the Jewish cemeteries, it seems that through its 'field of activities' it is still entitled to participate in the process that would lead to the recognition of the Jewish cemetery as a protected site.

According to Article 8(5) of the Law, the existence of the sites of cultural heritage and the boundaries of the protected sites shall be determined by the so-called 'assessment councils' that should consist of religious communities, societies, science and academic as well as state research institutions.⁶¹ Although this provision seems to provide the legal ground for the participation of the representatives of the Lithuanian Jewish community in determining the boundaries of the cemeteries, the final decision on the assessment criteria and the amount of the required research and evidence rests with the Minister of Culture.⁶² The state, therefore, is not obliged to conform to the opinions of the religious communities. Nevertheless, the immovable cultural property still has a chance of being registered in the Register held by the state Department of Cultural Heritage if the 'assessment council' decides there is a need for its legal protection.⁶³

However, the final decision on granting legal protection to a site in question rests with the Minister of Culture and municipal councils.⁶⁴ Moreover, the registration in the Register does not necessarily guarantee full legal protection; it could also provide for the 'initial protection' as

⁵⁶ Andrius Grikienis, Third Secretary, Permanent Representation of Lithuania to the European Union, E-mail received 21 September 2008.

⁵⁷ *Law on Protection of Immovable Cultural Heritage*.

⁵⁸ Article 5(10)(6), *ibid.*

⁵⁹ *Ibid.*

⁶⁰ Article 8(4), *ibid.*

⁶¹ Article 8(5), *ibid.*

⁶² Article 8(6), *ibid.*

⁶³ Article 8(8), *ibid.*

⁶⁴ Article 10(3) & (4), *ibid.*

stipulated in Article 9 of the Law. This legal provision is relevant for the protection of a proportion of the Jewish cemeteries and mass graves featured in the Register of Cultural Property. Article 9(1) of the Law states that the ‘manager’ of the ‘object of cultural heritage’ registered in the Register should inform the municipality about planned maintenance works that could affect the site in question. Where it is indeed established that the proposed operations could damage the property, the state and the municipality authorities should initiate the process of the declaration of an object of protected cultural heritage.⁶⁵ In such a case, the operations should be suspended for a period of six to eight months. Within this period, the necessary research should be undertaken and the procedure for declaring an object of cultural heritage protected shall be launched.⁶⁶ Article 9 of the Law on the ‘Initial Protection of Immovable Cultural Heritage’ provides an interesting insight into the possibility of protecting these Jewish burial grounds that have not been granted full legal protection under Article 10 of the Law but nevertheless appear in the Register. At the moment of writing this report, there were 38 Jewish burial grounds granted ‘initial legal protection’ under Article 9 of the Law on Protection of Immovable Cultural Heritage and listed in the State Register of Cultural Heritage.⁶⁷

Another potentially applicable provision for the further protection of Jewish cemeteries is contained in Article 9(3) of the Law, which states that the managers of the property in specific cases shall notify municipal authorities in cases where ‘archaeological findings’ are discovered during the development works. The Department ‘may’ suspend the operation works for 15 days and initiate the process of declaring an object of protected cultural heritage.⁶⁸ Article 9(5) of the Law, however, does not necessitate preventing further desecration of any cemetery not registered as ‘initially protected immovable cultural heritage’. The Snipiskes cemetery, for instance, had not been registered in the Registry of Cultural Heritage prior to the initiation of development works and Article 9(5) therefore was not applicable.

5.4.3 Burial Legislation

Law on the Burial of Human Remains (20 December 2007, X-1404)

Another legal source that seems to be relevant for the protection of Jewish burial grounds in Lithuania is the Law on the Burial of Human Remains. The Act deals with both used and unused cemeteries.⁶⁹ Article 29(4) of the Law states that it is forbidden to destroy cemeteries recognised as objects of cultural heritage.⁷⁰ However, Article 20 of the Law on the Protection of Immovable Cultural Property provides for the removal of the cemetery in case of the priority of another public need, the notion of which seems to be a broad concept. In summary, the protection under Article 29(4) is granted only to those Jewish burial grounds that have been recognised as objects of cultural heritage in accordance with the provisions of the aforementioned Law on Protection of Immovable Cultural Heritage. The provisions forbidding destruction of the burial grounds apply to some 221 cemeteries and mass graves recognised as protected sites by the Lithuanian

⁶⁵ Article 9(2), *ibid.*

⁶⁶ Article 9(5), *ibid.*

⁶⁷ The list of the protected Jewish burial grounds in Lithuania provided by Ms Rachele Kostanian of Vilna Gaon Jewish Museum, Lithuania, and compiled by the Register of Cultural Heritage in Lithuania, September 2008.

⁶⁸ *Ibid.*

⁶⁹ Article 23(2)(1), *Law on the Burial of Human Remains* (20 December 2007, X-1404), http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=324890&p_query=&p_tr2=, last accessed on 23 September 2008.

⁷⁰ Article 29(4), *ibid.*

Ministry of Culture. The scope of Article 29(4) does not seem to provide legal protection against destruction to the remaining unprotected Jewish burial sites.

Meanwhile, Article 29(1)-(3) of the Law on the Burial of Human Remains provides that the destruction of the cemetery is permissible only in the case of danger to public health.⁷¹ However, it was not clear within this preliminary research whether this provision applies to all cemeteries or only to protected ones. This issue requires future research.

5.4.4 Environmental Legislation

The Law Amending the Law on the Assessment of the Impact of Proposed Economic Activities on the Environment (25 June 2005, No. X-258)

Environmental Impact Assessment (EIA) is a process that predicts, examines and evaluates the potential environmental impacts of a development project. In Lithuania, the EIA consists of the law passed by the Parliament and Ministerial orders and regulations.⁷² With regards to the protection of Jewish burial grounds in Lithuania, the primary EIA legislative source is the Law Amending the Law on the Assessment of the Impact of Proposed Economic Activities on the Environment (25 June 2005, No. X-258) (further referred to in this section as the ‘Law’). The preliminary analysis of the Law indicates that it should act as a complement to other national legal provisions on the protection of Lithuania’s Jewish burial grounds. It should be noted, however, that the representatives of the Jewish community of Lithuania were not familiar with the instances of the up-to-date application of the Law with regards to the protection of Jewish burial grounds in the country.⁷³

The Law requires an environmental assessment to be made of the effect of certain public and private development projects. According to this law, the developments that shall automatically need an Environmental Impact Assessment (EIA) before permission is given, referred to in Article 7 (1) and Annex 1 of the Law, include a number of industries such as agriculture and aquaculture, extractive and manufacturing industry and infrastructure activities.⁷⁴ Those development works that do not fall automatically under the EIA shall be a subject of a screening procedure by a ‘competent authority’ authorised by the government in order to determine whether environmental impact assessment is obligatory.⁷⁵

While ostensibly environmentally-focused, the criteria of the EIA also cover the assessment of the impact of development projects on cultural heritage sites. Article 4 (1) of the Law stipulates that the purpose of the EIA shall be to ‘determine, describe and evaluate any potential direct and indirect impact of a proposed economic activity upon (...) immovable cultural values heritage’.⁷⁶ The Law does not contain a definition of the ‘immovable cultural values’, yet the term should most probably be interpreted in line with the provisions of the Law on Protection of Immovable Cultural Heritage (1994, No. I-733, last amended on 8 May 2008, No. X-1531). Thus, once

⁷¹ Article 29(1)-(3), *ibid.*

⁷² *Manual for Environmental Impact Assessment in Lithuania*, Ministry of the Environment of the Republic of Lithuania, Finnish Environment Institute, pp. 2-4, <http://www.am.lt/VI/en/VI/files/0.740565001014724261.pdf>, last accessed on 15 September 2008.

⁷³ Gurevichius, Kukliansky, September 2008.

⁷⁴ Article 7(1), *The Law Amending the Law on the Assessment of the Impact of Proposed Economic Activities on the Environment* (25 June 2005, No. X-258) <http://www.am.lt/VI/en/VI/index.php>, last accessed on 15 September 2008.

⁷⁵ Article 7(1) & (3) & Annexe 2, *ibid.*

⁷⁶ Article 4 (1), *ibid.*

recognised by law as an immovable cultural property, Jewish burial grounds could theoretically be subject to the EIA. Unfortunately, the provisions of this Law do not seem to include the burial grounds that have not been recognised as cultural heritage sites. This would appear to be the case with the Snipiskes cemetery in Vilnius, which was built over by a private development.⁷⁷

Among the most relevant aspects of the Law mentioned above for the protection of Jewish burial grounds is the provision contained in Article 5 (1) that stipulates that participants of the Environmental Impact Assessment include the relevant state authorities, the developer, the preparer of the EIA and the public.⁷⁸ According to Article 1 (9), the public concerned is the public that is affected or is most likely to be affected by the development project. Thus, it could be argued that with regards to the Jewish burial grounds in Lithuania the term ‘public’ would also refer to the Jewish community. Nevertheless, the Jewish community of Lithuania has not been so far a participant to the assessment of a development project that would affect a Jewish burial ground and which falls under the EIA legislation.⁷⁹ The other limitation to the effectiveness of the Law is the fact that it contains no binding article to this effect.

Article 6 (5) of the Law further states that ‘the public may make, in accordance with the procedure established by the Ministry of Environment, ground proposals concerning the environmental impact assessment of proposed economic activities and potential impact of proposed economic activities upon the environment’.⁸⁰ These provisions serve the idea that all interested citizens and interest groups have the right to express their opinions before the proposed development project (‘economic activity’) takes place.⁸¹ The Law further stipulates that in the case of disagreement between the relevant parties to the EIA (this presumably includes the public), the participants shall be invited to a meeting where the conclusions are considered.⁸² This provision, however does not grant the public, i.e. the Jewish community, the power of veto regarding the granting of permission for development works on the site of the Jewish cemetery. Instead, the competent authority is given the right to decide that ‘the proposed economic activity is not permissible in the selected location as its implementation would constitute violation of laws and regulations and/or have potential negative impact upon the environment’.⁸³ The purposive interpretation of the Law might indicate that this provision gives the Jewish community only consultation powers with regards to the impact the project would have on immovable cultural heritage – Jewish mass graves and cemeteries.

5.4.5 Planning Legislation

Law on Territorial Planning, No I-1120

Another primary source of legislation relevant to the protection and preservation of Jewish burial grounds in Lithuania is the Law on Territorial Planning, which regulates the process and procedure for land use planning and its intended purpose, including monument protection and

⁷⁷ Gurevichius, September 2008.

⁷⁸ Article 5 (1)(5), *The Law Amending the Law on the Assessment of the Impact of Proposed Economic Activities on the Environment* (25 June 2005, No. X-258).

⁷⁹ Gurevichius and Kukliansky, September 2008.

⁸⁰ Article 6 (5), *The Law Amending the Law on the Assessment of the Impact of Proposed Economic Activities on the Environment* (25 June 2005, No. X-258).

⁸¹ *Manual for Environmental Impact Assessment in Lithuania*.

⁸² Article 10 (3), *The Law Amending the Law on the Assessment of the Impact of Proposed Economic Activities on the Environment* (25 June 2005, No. X-258).

⁸³ Article 10 (6), *ibid*.

developing a system of land, residential areas, industry and infrastructure.⁸⁴ The Law also contains provisions on ‘special planning’, the objects of which are ‘immovable cultural properties’ and the aim of which is to formulate land management programmes.⁸⁵ The provisions of the Law on Territorial Planning might be a useful legal tool only with regards to the protection and preservation of those burial grounds that are already recognised as immovable cultural properties or monuments.

According to Article 25 (1) of the Law on Territorial Planning, planning documents must be submitted for public discussion. Furthermore, Article 27(1) stipulates that ‘all natural and legal persons and public organisations concerned with planning shall be entitled to submit their proposals and make comments respecting the planning solutions (...)’.⁸⁶ The initiators of the rejected documents or opinions can appeal to the state planning supervision bodies within a month from the day of the public meeting. The state body will deliver a justified decision within three weeks from the receipt of the complaint.⁸⁷ The expression ‘all natural and legal persons and public organisations concerned with planning’ seems to be a very broad concept but its purposive interpretation may also include the Jewish community. In common with the Law Amending the Law on the Assessment of the Impact of Proposed Economic Activities on the Environment (25 June 2005, No. X-258), the comments of the Jewish community, if given the status of public with regards to the protection of Jewish burial grounds, do not seem to be legally binding for the state bodies concerned with delivering the decisions on the territorial planning documents. The representatives of the Jewish community of Lithuania did not confirm an up-to-date application of the Law on Territorial Planning with regards to the protection and preservation of Jewish burial grounds.⁸⁸

5.5 Conclusion

In summary, it can be seen that there are a number of Lithuanian legislative provisions which may provide a level of protection to Jewish burial grounds. The national legal provisions, however, seem to be limited to the sites already protected under the cultural heritage law.

The most comprehensive level of protection is provided by the Law on the Protection of Immovable Property, which requires maintenance of the burial grounds at the responsibility of the owners – in this case the local municipality. The designation of cultural heritage sites also offers care and maintenance which, in this case, must be provided by the owners and managers, the local municipalities. With regards to wider protection, vandalism and theft in general are covered by the Lithuanian Criminal Code.

The legislation necessitating the assessment of the environmental impact of development projects, in appearing to extend protection only to the sites recognised by law as cultural heritage, is complementary to the Law on the Protection of Immovable Property. The opinions of the Jewish community, if given the status of ‘public’ with regard to the protection of Jewish burial grounds, are not legally binding for the authority granting the permission to launch the development projects.

⁸⁴ Article 2, *Law on Territorial Planning*, (12 December 1995, No. I-1120), http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=75358&p_query=&p_tr2=, last accessed on 15 September 2008.

⁸⁵ Articles 2 & 10 (4), *ibid.*

⁸⁶ Article 27(1), *ibid.*

⁸⁷ Article 28(3), *ibid.*

⁸⁸ Gurevichius and Kukliansky, September 2008.

Planning legislation is also primarily useful in the protection of those areas which are already registered by the cultural heritage legislation. In common with the EIA legislation, the opinion of the Jewish community is not binding with regard to territorial planning.

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

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. LEGAL APPLICATION

6.1 Introduction

As outlined in the previous section, Lithuanian legislation offers legal protection to those burial grounds that are recognised as objects of cultural heritage. This means that only a proportion of the country's Jewish burial grounds qualify for legal protection from encroaching development.

Legislation serves no real purpose unless the provisions within it are adhered to. The following sections will be limited to the examination of state action in the area of protecting Jewish burial grounds particularly through the relevant cultural heritage legislation as this seems to be the only relevant source of law at the moment of writing this report. The legal application of the cultural heritage protection provisions will be illustrated in the example of the Snipiskes Jewish cemetery in Vilnius and the Marijampole Jewish mass grave. These two cases provide the best illustration of the legal effectiveness and the shortcomings pertaining to the protection of Jewish burial grounds in Lithuania. It should also be noted that further investigation on the practical application of burial, environmental and planning legislation should be carried out in future.

6.2 *Snipiskes Jewish cemetery, Vilnius*

Recently, discussion of Lithuanian law as it pertains to the Jewish community has focused on restitution and on the construction works taking place at the Snipiskes Jewish cemetery in Vilnius. The development works that were approved by the local municipality and were launched a few years ago led to the construction of the Mindaugas apartments at the site of the Snipiskes cemetery, established in the 16th century and containing the bones of thousands of Jews buried there until the closure of the cemetery in the 19th century. These construction works provoked wide protests by Jewish organisations in Lithuania, Brussels and the United States in 2007 attempting to halt the desecration of this cemetery.

These international protests led the Lithuanian government to set up a commission which recommended the formation of a committee of experts to determine a future course of action. Prior to the formation of this working committee, the government promised that development work would be halted until the boundaries were determined, yet the construction work continued. The committee, including members of the Committee for the Preservation of Jewish Cemeteries in Europe (CPCJE), a representative of the Conference of European Rabbis, Jewish historians from Israel and the US and engineers and archaeologists from Israel and Lithuania, recommended that construction work be halted. Despite this, construction works continued. The developer claimed that he had met all the legal requirements and possessed a construction permit from the city to continue the development works.⁸⁹

On 25 September 2008, the US House of Representatives passed concurrent resolution No. 255 regarding the United States' commitment to the preservation of religious and cultural sites and condemning instances where sites are desecrated. Although its wording seems to be outdated due to the finalisation of the construction works at the Snipiskes Jewish cemetery, it carries a strong message to the Lithuanian authorities, in particular:

⁸⁹ *Rabbis Protest Construction on Jewish Cemetery*, FSU Monitor, <http://www.fsmonitor.com/stories/072707Lithuania.shtml>, last accessed on 27 September 2008.

(...) *That Congress—*

(1) expresses strong support for the work of the United States Commission for the Preservation of America's Heritage Abroad and for the European countries that continue to work to preserve sacred historical sites, despite ongoing challenges;

(2) expresses strong sentiments to the Government of Lithuania that the people of the United States believe the Jewish cemetery located in the Snipiskes area of Vilnius, Lithuania, must not be further desecrated;

(3) declares that constructive bilateral relations between Lithuania and the United States are important to the governments, citizens, and shared agendas of both countries; and

(4) declares that if the Government of Lithuania fails to immediately stop construction and protect the Jewish cemetery located in the Snipiskes area of Vilnius, Lithuania, it will jeopardize its important relationship with the United States and its standing in the international community.⁹⁰

In the context of growing mistrust within the local and international Jewish community vis-à-vis the Lithuanian state authorities regarding the latter's intent and legal efficacy to prevent the construction works, the government claimed it was seeking legal measures to halt the construction permit provided by the local municipality. International protests led the Lithuanian President, Valdas Adamkus, to conclude that the Snipiskes cemetery case should be resolved as the controversy risked damaging Lithuania's position and image in the international community.⁹¹

In June and July 2008, an Israeli company was contracted by the above-mentioned working group to carry out sub-surface sonar examination. The examination could not ascertain the precise location of the cemetery boundaries as the contractor was not permitted to enter the key areas i.e. the area of the Mindaugas buildings and the sports stadium located in the northern part of the cemetery. The large concrete plates covering the sports hall prevented the signals of the sub-sonar examination to penetrate underneath. Nevertheless, according to the Israeli contractor, enough evidence was gathered to conclude that the Mindaugas buildings were constructed on the site of the Jewish cemetery and that the anomalies registered across the surveyed area were most probably the graves. In order to complete the survey, further examinations would need to be carried out in the northern part of the area, the sports stadium and under the above-mentioned concrete plates.⁹²

In early September 2008, representatives of the Jewish community of Lithuania claimed that the owner of the northern part of the presumed cemetery had carried out excavation works removing human bones.⁹³ If true, the owner of the property may have violated Article 9(3) of the Law on Protection of Immovable Cultural Property, which specifies that the managers of the estate in

⁹⁰ *Expressing the sense of Congress regarding the United States commitment to preservation of religious and cultural sites and condemning instances where sites are desecrated*, HCON 255 IH, <http://www.govtrack.us/congress/billtext.xpd?bill=hc110-255>, last accessed on 24 September 2008.

⁹¹ 'President, Prime Minister and Foreign Minister discuss European Council's agenda and construction works within possible boundaries of former Jewish cemetery in Šnipiškės', President of the Republic of Lithuania, <http://www.president.lt/en/news.full/8855>, last accessed on 24 September 2008.

⁹² *Snipiskes Jewish Cemetery, Vilnius, Lithuania – Summary Report*, Arieh Klein M.Sc. Geotechnical and Geo-environmental Consultant, 19 August 2008.

⁹³ Gurevichius, September 2008.

question are obliged to notify the municipality authorities of any ‘archaeological findings’ discovered during the development works (see point 5.4.2).

Meanwhile, in April 2008 the site of the Snipiskes Jewish cemetery (territory of 4.45 ha) was registered as a protected object of cultural heritage and the information on it can now be found in the Register of the Department of Cultural Heritage.⁹⁴ However, the territory of the now legally protected Snipiskes cemetery does not encompass the built-over cemetery by the Mindaugas apartments and the fenced-off northern part of the cemetery which the Israeli contractor was unable to examine.⁹⁵

At the time the Israeli contractor was carrying out his sub-sonar survey, Lithuanian archaeologists excavated human bones in the vicinity of the Mindaugas buildings. The rabbinical authorities opposed further excavations. In early September 2008, the findings of the Lithuanian and Israeli researchers were provided to the Ministry of the Environment which claimed that the results found by the Israeli contractor were contradictory.

On 23 September 2008, the Lithuanian Minister of Foreign Affairs, chairman of the working group, reiterated that the Snipiskes Jewish cemetery was listed as a legally protected site of cultural heritage and that the government of Lithuania should continue its dialogue with the international Jewish community in order to ascertain the boundaries of the cemetery. The Minister emphasized that the research work on the site of the cemetery was comprehensive and it represented the ‘good willingness of Lithuania to the international Jewish community in solving the issue of preserving the former Jewish cemetery in Snipiskes’.⁹⁶ However, this position does not confer any explicit obligation on the owner(s) of the areas that were not surveyed to provide the possibility for conducting such an examination. It might, therefore, be relevant to explore the possibility of a further examination.

The inability of the Lithuanian state authorities to provide effective legal measures preventing further desecration of the cemetery by the development works has been seen as a lack of political willingness to protect the burial site. This argument is supported by the fact that only after years of international protests did the authorities agree to grant the Snipiskes Jewish cemetery official legal protection under the Law on the Protection of Immovable Cultural Heritage – at which point this instrument was not able to prevent the completed construction of the apartments on the site.

The Snipiskes case also illustrates the difficulty of protecting cemeteries which do not already possess the status of cultural heritage sites. It has been explained above that the Law on the Protection of Immovable Cultural Heritage, No.I-733 provides legal protection only to those burial grounds that are declared and registered as cultural property in the Register of Cultural Heritage. Until April 2008, the Snipiskes Jewish cemetery did not appear on the Register. This was probably the legal ground upon which the government claimed it could not prevent development works. Taking the figure of around 160 cemeteries and mass graves registered as fully or initially protected, there are still some 40% of burial grounds that remain outside any legal protection if similar construction works were to be carried out as occurred in the case of the

⁹⁴ Register of Cultural Heritage, <http://kvr.kpd.lt/heritage/Pages/KVRDetail.aspx?lang=en&MC=31812>, last accessed on 24 September 2008.

⁹⁵ Gurevichius, September 2008.

⁹⁶ ‘Working group headed by the Lithuanian Minister of Foreign Affairs presents suggestion to the government on the former Jewish cemetery in Snipiskes’, Ministry of Foreign Affairs of Lithuania.

Snipiskes cemetery. If the law remains unchanged, theoretically it would be recommended to have all burial grounds registered as cultural heritage sites. This possibility should be further researched especially since Article 8(4) of the Law provides that Lithuania's 'traditional communities' should be entitled to prepare inventories of cultural immovable property which correspond to their activities. Clearly, in this respect, all burial grounds are of religious significance to the Jewish communities.

The case of the Snipiskes cemetery reveals another legal constraint pertaining to the practical protection of burial grounds. This refers to the opinions and surveys performed by the representatives of the Jewish communities and organisations that are listed as members of the 'assessment councils' (working groups) in accordance with Article 8(5) of the Law on the Protection of Immovable Property. Despite this provision, the final decision on the registration of the burial ground as a cultural heritage site rests with the state authorities (Article 10 of the Law). The Act does not contain any provision on the ability of the religious communities to appeal the decisions of the state or municipal authorities. This anomaly was illustrated by the refusal of the state authorities to recognise the findings of the survey performed by the Israeli contractor. No precise explanations on this decision were provided to the public. It could be presumed that the authorities were not inclined to accept anything less than archaeological material evidence.

6.3 *Marijampole mass grave*

Another recent case concerned construction plans at Marijampole, where thousands of Jewish victims were killed on a single day in 1941 and buried in a mass grave, part of which now lies under military buildings at the site or in their surroundings. The Register of Cultural Heritage states that the site of the mass grave had already been registered as a protected cultural heritage site in 2005.⁹⁷ It would appear, however, that while the site is marked by a memorial, its boundaries have not been ascertained, thus comprehensive legal protection had not been granted to the entire territory of the mass grave. Nevertheless, whatever the exact legal status of the site, the local municipality did not consult with the Department of Cultural Heritage when issuing a construction permit to a private company to demolish the buildings on the site. Human bones were revealed when removing the concrete buildings. Following intervention by Jewish organisations, the town authorities halted construction works at the site.⁹⁸

As the territory of the Marijampole mass grave under question had been a registered cultural heritage site, the halting of the construction works would appear to have posed no legal obstacles. According to Article 20 of the Law on the Protection of Immovable Heritage and Article 29(4) of the Burial of Human Remains, it is forbidden to destroy cemeteries that are recognised objects of cultural heritage. However, the Marijampole case does reveal another problem faced by many mass graves – the lack of ascertained boundaries. Most mass graves are located in forests and remote areas, and while signposted and marked by memorials, only 20% of them are demarcated. The lack of clearly defined boundaries may lead to future development works taking place near the mass graves and encroaching on these sites.

⁹⁷ Marijampole mass grave, Register of Department of Cultural Heritage, <http://kvr.kpd.lt/heritage/Pages/KVRDetail.aspx?lang=en&MC=21991>, last accessed on 27 September 2008.

⁹⁸ The Baltic Times, *Jewish execution site laid to rest*, <http://www.baltictimes.com/news/articles/21119/>, last accessed on 23 September 2008.

6.4 Conclusion

The Snipiskes cemetery and the Marijampole mass grave illustrate two distinct cases of burial grounds desecrated by encroaching development works. The former, unrecognised as a cultural heritage site at the moment construction began, was not successfully protected against development as a result of both a lack of political willingness on the part of the state authorities to find a solution that would halt the construction of the apartments, and also the limitations of the national legislation with regards to the protection of unregistered burial grounds. Provided the legislation does not change in the near future, it might be recommended to attempt registering as sites of cultural heritage as many burial grounds as possible. Though most burial grounds are located in remote rural areas, any development of economic activities could pose a realistic threat to legally unprotected cemeteries and mass graves those of which the boundaries have not been clearly defined.

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APPENDIX 2 – MAP OF LITHUANIA



Lithuania

Source: <http://wwp.greenwichmeantime.com>

